

ORIGINAL

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

RECEIVED-FPSC
00 FEB 17 PM 2:40
RECORDS AND REPORTING

BlueStar Networks, Inc.'s Response to BellSouth Telecommunications, Inc.'s Motion to Strike Testimony and Motion for Protective Order or Alternatively Motion to Continue Hearing

BlueStar Networks, Inc. (BlueStar), pursuant to rule 28-106.204, Florida Administrative Code, files its Response to BellSouth Telecommunications, Inc.'s (BellSouth) Motion to Strike Testimony and Motion for Protective Order or Alternatively Motion to Continue Hearing. BellSouth's motion should be denied in its entirety.

1. On December 7, 1999, BlueStar filed a petition for arbitration to address issues which it could not resolve with BellSouth during negotiations. One of those issues is the inclusion of an alternative dispute resolution process in the interconnection agreement to quickly resolve disputes between the parties.
2. On January 10, 2000, Staff held an issue identification meeting. One of the issues identified for resolution (though the parties disagreed on the wording of the issue) was alternative dispute resolution. BellSouth did not object to the inclusion of this issue.
3. The issue on alternative dispute resolution was included in Order No. PSC-00-0141-PCO-TP as Issue 15.

AFA _____
 APP _____
 CAF _____
 CMU _____
 CTR _____
 EAG _____
 LEG _____
 MAS _____
 OPC _____
 RRR _____
 SEC _____
 WAW _____
 OTH _____

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

02209 FEB 17 8

FPSC-RECORDS/REPORTING

4. On January 25, 2000, BlueStar filed its direct testimony. In the testimony of Ms. Carty Hassett, BlueStar included information as to experiences it had had with BellSouth illustrating the pressing need for expedited alternative dispute resolution.

5. On January 25, 2000, BellSouth filed the direct testimony of Mr. Varner and addressed this issue. On February 14, BellSouth filed rebuttal testimony and in the testimony of Mr. Varner again addressed its position on Issue 15.

6. On February 9, 2000, BellSouth filed a motion to strike that portion of Ms. Hassett's testimony dealing with expedited dispute resolution, essentially complaining about the information supplied by Ms. Hassett and reiterating several times that her "allegations" are "vague." Despite the fact that BellSouth is displeased with the content of Ms. Hassett's testimony, it has provided no basis to strike testimony directed to an issue in the case.

7. BlueStar is pleased to find that BellSouth agrees that there are disputes between BellSouth and competitive carriers that require resolution. The correct procedure to quickly resolve these disputes may well be a legal question that does not require testimony. However, BlueStar believes that the Commission may want to hear evidence about why disputes with BellSouth are resolved so slowly and how the slow resolution affects BlueStar. This is exactly the information set out in Ms. Hassett's testimony to which BellSouth objects. BellSouth's position here, similar to its position in most disputes, is that rather than decide this issue or any other issue now in this case, it should be postponed to some other proceeding or somehow otherwise delayed.

8. BellSouth also objects to Ms. Hassett's description of the Florida collocation issues but this simply illustrates the problem and goes to the heart of Issue 15. BlueStar filed

collocation applications in May 1999. By September 1999, BellSouth had stalled for five months and only then given BlueStar a date of January 2000 for space acceptance for all the offices claiming that both permitting and extensive renovation of the offices causes this delay. In frustration, BlueStar filed a complaint and sought resolution of the issue from this Commission. BellSouth, after several telephone calls, agreed to jointly visit the permit office and only then found out that the permit applications which were only filed in early October were about to be granted. It then took BellSouth another two weeks to decide that one or two offices could be entered early, but even then only in November. The dates for the rest of the Florida offices are still well beyond the 90 day window. BlueStar must constantly nag BellSouth to simply find out the facts to move up the dates. For example, in Orlando, there were supposedly permitting problems which magically disappeared on the eve of a planned meeting with permit authorities there. In south Florida, several sites had dates over 90 days from the firm order which were accelerated by over a month when BlueStar inspected the site and forced the INAC or the common systems personnel to review the facts and move up the dates. Again, this illustrates the need for expedited dispute resolution--the subject of Issue 15.

9. BellSouth further objects to BlueStar's intent to depose BellSouth employees Aguayo and Solon. However, these employees have first-hand knowledge of the type of real world disputes for which expedited dispute resolution is critical. For example, *after* BlueStar installed over 75 sites with a five-inch overhang in numerous states, Mr. Aguayo started complaining that BlueStar no longer could allow a DSLAM to overhang the edge of a rack by five inches. Indeed, the BellSouth offices at issue had numerous racks with overhanging

BellSouth equipment. After a week of discussions, but with no notice at all (and no way to quickly resolve the dispute), Mr. Aguayo decided that BlueStar had to stop work in three offices. BlueStar finally found an escalation point, but it still took several days to reverse that order. With expedited dispute resolution, the parties could have sought independent review of the issue, received a decision and adapted to the decision in a reasonable fashion instead of suffering through BellSouth's arbitrary work stoppage. These issues are discussed in Mr. Milner's testimony and BlueStar should have an opportunity to explore them by deposing Mr. Aguayo as well as Ms. Solon, instead of Mr. Milner who has no personal knowledge of the events.

10. As BellSouth hints, BlueStar does not oppose the Commission instituting some form of generic proceeding on expedited dispute resolution. Georgia already has a seven-day expedited procedure. The Florida Commission has proposed its own three-day procedure for consumer complaints. These expedited procedures are perfectly normal for competitive complaints. Particularly because the Commission believes that it cannot order liquidated damages or penalties, it seems that expedited dispute resolution is necessary.

11. BellSouth's opposition to testimony regarding expedited dispute resolution is disingenuous at best. First, BlueStar sought private arbitration so that the Commission would not have to devote resources to resolving these issues. The proposed procedure would have allowed Commission review of the private arbitrators decision so that the Commission could safeguard the public interest, but there would be an interim speedy resolution of the dispute. BellSouth then insisted that the Commission had to resolve these highly technical issues itself. Now that BlueStar has accepted that suggestion, BellSouth claims that the

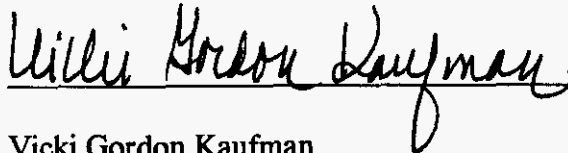
Commission does not have the time to deal with these disputes or that some other proceeding should resolve these issues. BellSouth's real position is obvious, there is nothing BellSouth fears more than speed in any activity. BellSouth doesn't want to install loops on any set schedule, provide on-line OSS on any schedule or resolve disputes on any set schedule. To hasten competition, and bring high speed access to its citizens nothing is more important than making BellSouth take fast action in numerous areas, including resolving disputes with its interconnecting competitors.

12. If the Commission believes that no facts are necessary to decide this issue, then BlueStar will address this issue as a legal question. However, BlueStar believes the Commission will benefit from factual evidence on the question. Thus, BlueStar wants an opportunity to prove that both Ms. Solon and Mr. Aguayo have information illustrating that BellSouth has delayed collocation by inactivity rather than finding out the facts necessary to allow BlueStar access to BellSouth offices in the time limits already set by Florida rules or negotiate reasonable resolution to requested changes in configurations. Simply by refusing to meet those limits, BellSouth gains the advantage sought by delaying, because absent expedited dispute resolution, there will be no decision on any complaint until well after BellSouth achieves the goal of its illegally extended deadline, stopping BlueStar work or late delivery of a UNE.

14. Finally, BellSouth's suggestion that the hearing should be continued should be rejected out of hand. If BellSouth wants more information from Ms. Hassett about her testimony, it can inquire at her deposition scheduled for February 24. BellSouth has

provided no basis for a continuation of the hearing based on the content of Ms. Hassett's testimony.

WHEREFORE, BellSouth's motion should be denied in its entirety.



Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson, Decker,
Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
850-222-2525 (telephone)
850-222-5606 (facsimile)

Henry C. Campen
John A. Doyle
Parker, Poe, Adams & Bernstein, LLP
First Union Capitol Center
150 Fayetteville Street Mall, Suite 1400
Raleigh, North Carolina 27602
919-828-0564 (telephone)
919-834-4564 (facsimile)

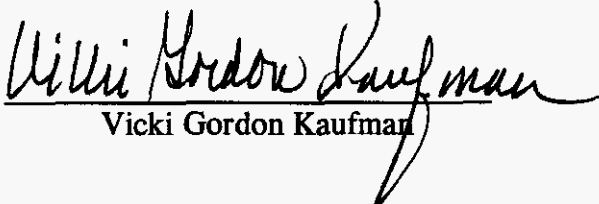
Attorneys for BlueStar Networks, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of BlueStar Networks, Inc.'s foregoing Response to BellSouth Telecommunications, Inc.'s Motion to Strike Testimony and Motion for Protective Order or Alternatively Motion to Continue Hearing has been furnished by (*) hand delivery this 17th day of February, 2000, to the following:

(*) Donna Clemons
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Gunter Building, room 370
Tallahassee, Florida 32399-0850

Phil Carver
BellSouth Telecommunications, Inc.
Legal Department, Suite 4300
675 West Peachtree Street, NE
Atlanta, Georgia 30375-0001


Vicki Gordon Kaufman