

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BlueStar Networks, Inc. for arbitration of certain unresolved issues in interconnection negotiations with BellSouth Telecommunications, Inc.

DOCKET NO. 991838-TP
ORDER NO. PSC-00-0423-PHO-TP
ISSUED: March 1, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on February 21, 2000, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, Jr., as Prehearing Officer.

APPEARANCES:

VICKI GORDON KAUFMAN, ESQUIRE, McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301 and NORTON CUTLER, GENERAL COUNSEL, BlueStar Networks, Inc., 401 Church Street, 24th Floor, North, Nashville, Tennessee 37201.
On behalf of BlueStar Networks, Inc.

J. PHILLIP CARVER, ESQUIRE, 675 West Peachtree Street, N.E., Suite 4300, Atlanta, Georgia 30375 and MICHAEL P. GOGGIN, ESQUIRE, Museum Tower, Suite 1910, 150 West Flagler Street, Miami, Florida 33130.
On behalf of BellSouth Telecommunications, Inc.

DONNA M. CLEMONS, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE
02709 MAR-18
FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On December 7, 1999, BlueStar Networks, Inc. (BlueStar) filed a Petition for arbitration of certain unresolved issues in its interconnection negotiations with BellSouth Telecommunications, Inc. (BellSouth). On January 3, 2000, BellSouth filed its Response. This matter is currently scheduled for hearing on March 2-3, 2000.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the

Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct and Rebuttal</u>		
Carty Hassett	BlueStar	3,4,6(a),9,14-16

<u>Direct</u>		
Dr. Gus Ankum (adopting the testimony of Michael Starkey)	BlueStar	2(a),(b),6(a), 10,11,16
Alphonso J. Varner	BellSouth	2,10,11,15
Ronald M. Pate	BellSouth	2(b),3,4,5,6,7
W. Keith Milner	BellSouth	9,16

<u>Rebuttal</u>		
Dr. Gus Ankum (adopting the testimony of Michael Starkey)	BlueStar	10,16
Alphonso J. Varner	BellSouth	2(a),3,10,11,15,16
Ronald M. Pate	BellSouth	6,7
W. Keith Milner	BellSouth	9,15,16

VII. BASIC POSITIONS

BLUESTAR: While BlueStar and BellSouth have settled many issues that led to BlueStar's arbitration petition, those that remain are critical to BlueStar's ability to provide DSL services in competition with BellSouth. For example, BlueStar must have access to information concerning loop make up and availability in order to serve its customers efficiently. Similarly, BlueStar must have access to riser cable to enable it to serve a number of multi-

tenant buildings. In addition, the FCC has recently ordered incumbents to provide line sharing. It is critical that the Commission set TELRIC-based prices for the loops BlueStar has requested from BellSouth as well as for the high frequency portion of a shared loop. An expedited repair process is critical because many of BlueStar's customers need 24 hour a day on line access. An expedited dispute resolution process (either privately or through the Commission) and provisions for consequences if BellSouth does not perform under the agreement are essential to ensure local competition.

BELLSOUTH:

Each of the individually numbered issues in this docket represents a specific dispute between BellSouth and BlueStar as to what should be included in the Interconnection Agreement between the parties. BellSouth's positions are the more consistent with the Act, the pertinent rulings of the FCC, this Commission's previous orders and the rules of this Commission. Therefore, each of BellSouth's positions should be sustained by this Commission.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: How should an unbundled copper loop ("UCL") be defined?

RESOLVED

ISSUE 2: Should BellSouth be required to:

- a) conduct a trial of line sharing with BlueStar, and if so, when?

WITHDRAWN

ISSUE 2:

- b) conduct a trial of electronic ordering and provisioning of line sharing with BlueStar, and if so, when?

WITHDRAWN

ISSUE 3: What information should BellSouth be required to provide to BlueStar on loop orders that are rejected because the requested facilities are unavailable?

POSITION

BLUESTAR: BellSouth should be required to provide to BlueStar the information it uses to reject a loop order so that BlueStar can make appropriate arrangements to serve a customer's needs in a timely fashion. The information should be provided manually if it is not available electronically.

BELLSOUTH:

BellSouth has offered to provide to BlueStar complete and appropriate information through the service inquiry process concerning loop orders that are rejected. It is not possible to provide BlueStar with a design layout record on a rejected order.

STAFF: Staff has no position at this time.

ISSUE 4: When should the information identified in Issue 3 be provided?

POSITION

BLUESTAR: Manual access should be provided immediately. BlueStar should be provided electronic access to this information by July 1, 2000.

BELLSOUTH:

BellSouth typically provides the information identified in Issue 3 in the form of a completed service inquiry form within a three to five day targeted service interval that begins when the order is placed. This is an appropriate response interval.

STAFF: Staff has no position at this time.

ISSUE 5: Should BellSouth be required to implement a process whereby xDSL loop orders that are rejected are automatically converted to orders for UCLs without requiring BlueStar to resubmit the order?

POSITION

BLUESTAR: BellSouth is currently developing and will make available to BlueStar as an interim process until the loop qualification interface is available, a process whereby xDSL loop orders that are rejected by BellSouth will automatically be converted to orders for UCLs without requiring BlueStar to resubmit the order.

BELLSOUTH: No. If the loop that BlueStar orders is not available, BellSouth cannot make on behalf of BlueStar the business decision as to what is the next best loop. For this reason, BellSouth cannot "automatically convert" a rejected xDSL loop order to an order for a UCL.

STAFF: Staff has no position at this time.

ISSUE 6: For xDSL orders, should BellSouth be required to provide real time access to the following, and if so, when?

a) OSS for loop makeup information qualification;

POSITION

BLUESTAR: BellSouth should be required to provide electronic access by July 1, 2000 to LFACs, MapViewer and any other electronic database which contains loop make-up information. LQS should be modified so that it can be searched by address instead of by telephone number.

BELLSOUTH: BellSouth currently provides nondiscriminatory access to the functions of preordering, provisioning, repair/maintenance and billing for xDSL. The FCC's UNE Remand Order clarified that access to loop qualification information is part of the pre-ordering function. BellSouth will comply with the requirements of that order within the time frame set by the order.

STAFF: Staff has no position at this time.

ISSUE 6:

b) preordering;

POSITION

BLUESTAR: Interfaces for xDSL will be available between March 2000 and May 2000.

BELLSOUTH: BellSouth currently provides nondiscriminatory access to the functions of preordering, provisioning, repair/maintenance and billing for xDSL. The FCC's UNE Remand Order clarified that access to loop qualification information is part of the pre-ordering function. BellSouth will comply with the requirements of that order within the timeframe set by the order.

STAFF: Staff has no position at this time.

ISSUE 6:

c) provisioning;

POSITION

BLUESTAR: Interfaces for xDSL will be available between March 2000 and May 2000.

BELLSOUTH:

BellSouth currently provides nondiscriminatory access to the functions of preordering, provisioning, repair/maintenance and billing for xDSL. The FCC's UNE Remand Order clarified that access to loop qualification information is part of the pre-ordering function. BellSouth will comply with the requirements of that order within the time frame set by the order.

STAFF: Staff has no position at this time.

ISSUE 6:

d) repair/maintenance, and

POSITION

BLUESTAR: Interfaces for xDSL will be available between March 2000 and May 2000.

BELLSOUTH:

BellSouth currently provides nondiscriminatory access to the functions of preordering, provisioning, repair/maintenance and billing for xDSL. The FCC's UNE Remand Order clarified that access to loop qualification information is part of the pre-ordering function. BellSouth will comply with the requirements of that order within the time frame set by the order.

STAFF: Staff has no position at this time.

ISSUE 6:

e) billing.

POSITION

BLUESTAR: Interfaces for xDSL will be available between March 2000 and May 2000.

BELLSOUTH:

BellSouth currently provides nondiscriminatory access to the functions of preordering, provisioning, repair/maintenance and billing for xDSL. The FCC's UNE Remand Order clarified that access to loop qualification information is part of the pre-ordering function. BellSouth will comply with the requirements of that order within the time frame set by the order.

STAFF: Staff has no position at this time.

ISSUE 7: Should the interconnection agreement include a time interval for BellSouth provisioning of xDSL loops and UCLs?

POSITION

BLUESTAR: Where facilities are available, BellSouth will install loops within a 5-7 business day interval. For orders of 14 or more loops, the installation will be handled on a project basis and the intervals will be set by the BellSouth project manager for that order. Some loops require a Service Inquiry (SI) to determine if facilities are available prior to issue the order. BellSouth will use best efforts to respond to the service inquiry within a 3-5 business day period. The interval for SI process is separate from the installation interval. For expedite requests by BlueStar, expedite charges will apply for intervals less than 5 days. These charges outlined in BellSouth's FCC#1 Tariff, Section 5.1.1 will apply. If BlueStar cancels an order for network elements and other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC#1 Tariff, Section 5.4.

BELLSOUTH:

BellSouth proposes to include a time interval for the provisioning of xDSL loops and UCLs. The dispute between BlueStar and BellSouth involves the fact that BlueStar apparently believes that this time interval should be guaranteed, i.e., that it should never be missed under any circumstances. BellSouth believes that, given the complexity of the orders in question, BlueStar's position is not reasonable. Therefore, BellSouth has proposed that the interval be utilized as a target.

STAFF: Staff has no position at this time.

ISSUE 8: Can xDSL loops retain repeaters at the ALEC's option?

RESOLVED

ISSUE 9: Should the interconnection agreement include expedited procedures for repairs?

POSITION

BLUESTAR: Yes. Many of BlueStar's customers require 24 hour a day on line access due to the nature of their businesses. When their connection is down, they cannot conduct business. Therefore, in the case of these types of customers BellSouth should be required to at least attempt a repair within one hour.

BELLSOUTH:

No. BlueStar has demanded that repair service to at least some of its customers be completed in one hour regardless of specific circumstances. This demand should be rejected because it would result in discriminatorily favorable treatment to BlueStar, it would be virtually impossible to implement, and it would be inappropriate as a matter of public policy to give a particular carrier priority in repair service over entities such as hospitals, fire departments and police departments that may be in need of repair service.

STAFF: Staff has no position at this time.

ISSUE 10: What are the TELRIC-based rates for the following:

- a) 2-wire ADSL compatible loops, both recurring and nonrecurring;

POSITION

BLUESTAR: The recurring cost for 2-wire ADSL compatible loops is \$15.81 and the nonrecurring cost for 2-wire ADSL compatible loops is \$113.85(1st) and \$99.61 (addt'l). These rates are contained in BlueStar's contract with BellSouth and BlueStar believes there is agreement with BellSouth on these rates.

BELLSOUTH:

The Commission should approve the rates set forth in Exhibit AJV-2 to the Testimony of Alphonso J. Varner.

STAFF: Staff has no position at this time.

ISSUE 10:

- b) 2-wire HDSL compatible loops, both recurring and nonrecurring;

POSITION

BLUESTAR: The recurring cost for 2-wire HDSL compatible loops is \$12.12 and the nonrecurring cost for 2-wire ADSL compatible loops is \$113.85(1st) and \$99.61(addt'l). These rates are contained in BlueStar's contract with BellSouth and BlueStar believes there is agreement with BellSouth on these rates.

BELLSOUTH:

The Commission should approve the rates set forth in Exhibit AJV-2 to the Testimony of Alphonso J. Varner.

STAFF: Staff has no position at this time.

ISSUE 10:

- c) "UCL" loops, both recurring and nonrecurring;

POSITION

BLUESTAR: The rates should be those found in Mr. Varner's Exhibit AJV-1 and where no rates are provided by Mr. Varner, the Commission should adopt the rates provided in Mr. Starkey's direct testimony at pp. 26-27 as modified by his rebuttal testimony at pps 5-6.

BELLSOUTH:

The Commission should approve the rates set forth in Exhibit AJV-2 to the Testimony of Alphonso J. Varner.

STAFF: Staff has no position at this time.

ISSUE 10:

- d) loop conditioning for each of the loops listed above, as well as the 4-wire HDSL loop.

POSITION

BLUESTAR: The rates should be those found in Mr. Varner's Exhibit AJV-1 and where no rates are provided by Mr. Varner, the Commission should adopt the rates provided in Mr. Starkey's direct testimony at pp. 26-27 as modified by his rebuttal testimony at pps 5-6.

BELLSOUTH:

The Commission should approve the rates set forth in Exhibit AJV-2 to the Testimony of Alphonso J. Varner.

STAFF: Staff has no position at this time.

ISSUE 11: What are the TELRIC-based recurring and nonrecurring rates for the high frequency portion of a shared loop?

WITHDRAWN

ISSUE 12: For purposes of reciprocal compensation, should the parties be required to adopt bill and keep for transport and termination of local, intraLATA and interLATA voice traffic?

RESOLVED

ISSUE 13: What, if any, provisions should the agreement include for performance measures?

RESOLVED

ISSUE 14:

REMOVED (Pending a ruling on BlueStar's Motion for Reconsideration of Order No. PSC-00-0185-PCO-TP).

BLUESTAR: Yes. A liquidated damages provision is needed in order to ensure that BellSouth performs under the agreement.

ISSUE 15: What, if any, provisions should the agreement include for alternative dispute resolution?

POSITION

BLUESTAR: Lack of an expedited dispute resolution process has interfered with BlueStar's ability to enter markets and obtain UNEs on a reasonable schedule. When there is a dispute, BellSouth often gains an advantage by failing to promptly resolve the situation. Therefore, the agreement should include provisions similar to those used to resolve consumer complaints so that disputes between BlueStar and BellSouth are quickly resolved.

BELLSOUTH:

BellSouth does not believe that an alternate dispute resolution ("ADR") provision is suitable for interconnection agreements. The Commission has successfully handled disputes involving interconnection agreements in the past through the complaint process. There is no need now (nearly four years after passage of the Act) for the Commission to set some special procedure to handle complaints that are specific to interconnection agreements.

STAFF: Staff has no position at this time.

ISSUE 16: What is the appropriate method for BlueStar to gain access to BellSouth's riser cables, allowing BlueStar to provision its digital subscriber line access multiplexer (DSLAM)?

POSITION

BLUESTAR: BlueStar should be able to run its own cross connects between its DSLAM that is prewired to the NID and the riser cable used by both BellSouth and the other ALECs. This will cause no harm to BellSouth's network and will eliminate needless activity and expense.

BELLSOUTH:

BlueStar and BellSouth should negotiate an agreement on rates, terms and conditions for access to BellSouth's riser cable. BellSouth's proposal for providing ALECs with access to riser cable and network terminating wire as a sub-loop element retains network reliability, integrity, and security for both BellSouth's network and the ALECs network. BlueStar should not be allowed to use a DSLAM as a demarcation point or to cross connect directly to BellSouth's riser cable.

STAFF: Staff has no position at this time.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Carty Hassett	BlueStar	_____	Excerpt from Bell ordering guide
		(CH-1)	
		_____	Bell liquidated damages proposal
		(CH-2)	
Dr. Gus Ankum (adopting exhibits of Michael Starkey, with the exception of Exhibit MS-1, resume, which will be substituted for Dr. Ankum's resume)	BlueStar	_____	résumé
		(MS-1)	
		_____	Diagram 1
		(MS-2)	
		_____	Diagram 2
		(MS-3)	
Alphonso J. Varner	BellSouth	_____	Proposed Rates
		(AJV-1)	
Alphonso J. Varner	BellSouth	_____	Amendment to Interconnection Agreement
		(R-AJV-1)	
		_____	Revised Proposed Rates
		(R-AJV-2)	
Ronald M. Pate	BellSouth	_____	Service Inquiry Form
		(RPM-1)	
		_____	BellSouth Interval Guide for Interconnection Services
		(RPM-2)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		_____ (RPM-3)	BellSouth Interval Guide for Interconnec- tion Services (updated version)
W. Keith Milner	BellSouth	_____ (WKM-1)	NTW Diagrams
		_____ (WKM-2)	Photographs- Central Office A
		_____ (WKM-3)	Photographs- Central Office B

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. RULINGS

A. BlueStar's Motion for Reconsideration of Order No. PSC-00-0185-PCO-TP

A ruling on this motion is deferred until the March 2-3, 2000 hearing in this matter.

B. BlueStar's Motion to Compel BellSouth Telecommunications, Inc. to Respond to Discovery

On January 5, 2000, BlueStar filed its Notice of Service of First Set of Interrogatories Nos. 1-23 and First Request for Production of Documents, Nos. 1-23 to BellSouth. On January 18, 2000, BellSouth filed its Objections to BlueStar's First Request for Production of Documents and First Set of Interrogatories.

On January 20, 2000, BlueStar filed its motion to compel. On January 25, 2000, BellSouth filed its Responses and Objections to BlueStar's First Request for Production of Documents and a letter of notification that it had served its Responses to BlueStar's

First Set of Interrogatories, Nos. 1-23, upon BlueStar. On January 26, 2000, BellSouth filed its Amendment to Discovery Responses. On January 27, 2000, BellSouth filed its response to BlueStar's motion to compel.

At the prehearing conference, the parties agreed that Interrogatories Nos. 9, 16, 17, and 18, and Production Requests Nos. 5, 6, 7, 12, 17, and 20 were still at issue.

Upon consideration, I find that Interrogatory No. 9 and Production Requests Nos. 6 and 7 are not reasonably calculated to lead to admissible evidence. See Calderbank v. Cazares, 435 So.2d 377 (Fla. 5th DCA 1983), and Rule 1.280(b)(1), Florida Rules of Civil Procedure. Interrogatory No. 9 seeks information relating to the cost of the loop BellSouth attributes to its own retail ADSL service. Production Request No. 6 seeks BellSouth's policies and practices relative to BellSouth's cost recovery plans associated with line conditioning that BellSouth might choose to perform in order to satisfy a request for its retail digital services. Request No. 7 calls for any cost study BellSouth has developed to determine its cost to provide retail ADSL service. The cost information requested by BlueStar in Interrogatory No. 9 and Requests Nos. 6 and 7 specifically relate to BellSouth's retail offerings. Therefore, it does not appear that the requested information will provide BlueStar with cost data relevant to the provisioning of the unbundled local loop. Therefore, BlueStar's motion is denied as to Interrogatory No. 9 and Production Requests Nos. 6 and 7.

With regard to Interrogatory No. 17, BlueStar argues that the response was incomplete. Notwithstanding, I find that BellSouth has responded to Interrogatory No. 17 in full. Interrogatory No. 17 states:

For each item that BellSouth's Engineering personnel currently researches to determine if an unbundled loop is DSL qualified on a competitive carrier's behalf (e.g., splice points, bridge taps, load coils, cable gauge, etc.) please indicate the name of any BellSouth electronic database that is designed to hold that data (e.g., "BellSouth reviews cable gauge information. LFACS is designed to include cable gauge information.") Please specify if any data that BellSouth believes is

required to qualify an unbundled loop for DSL services is not designed to be included in any current BellSouth database/system (i.e., if the data is only found on paper records 100 percent of the time). If data resides both on mechanized systems and via paper records, please identify specifically what information resides on each and the extent to which the data, or portions thereof, is included in both.

BlueStar argues that Interrogatory No. 17 incorporates a request for it to review the contents of the electronic database, LFACS. I find, however, that the request to review the contents of LFACS is more appropriate for a production request. Therefore, BlueStar's motion is denied with regard to Interrogatory No. 17.

Interrogatory No. 18 seeks information relating to BellSouth's plans to expand mechanization of its retail DSL ordering capabilities. I find that this request is also not reasonably calculated to lead to admissible evidence. Id. at 379. I find that BellSouth's future plans to expand mechanization of its retail DSL ordering capabilities is not a relevant consideration in whether BellSouth is offering nondiscriminatory service to BlueStar at the present. Therefore, BlueStar's motion is denied in this regard.

With regard to Production Request No. 17, which seeks all documents measuring provisioning intervals for retail digital services provided by BellSouth or its affiliates, BellSouth states that the requested documents do not exist. Based upon this response, BlueStar's motion is denied as to Request No. 17.

Request No. 20 calls for all documents reflecting repair interval measurements on repair services provided by BellSouth for its retail and wholesale customers. BellSouth argues that the request literally requires a response for every repair record having to do with every BellSouth customer, both retail and wholesale, in the entire nine-state region, "since the beginning of time." I agree that the request is overly broad, and therefore, is not reasonably calculated to lead to admissible evidence. Id. at 379. Accordingly, BlueStar's motion is denied with regard to Request No. 20.

Interrogatory No. 16 seeks a detailed description of the process that BellSouth uses to determine if specific customer locations qualify for BellSouth's retail ADSL service. Request No. 5 seeks BellSouth's procedures and guidelines regarding its policies and practices relative to line conditioning in order to satisfy a request for retail digital services. Request No. 12 seeks BellSouth's documentation related to present plans to mechanize any portion of BellSouth's systems and processes to qualify loops for its retail ADSL services. I find that Interrogatory No. 16 and Production Requests Nos. 5 and 12 are reasonably calculated to lead to admissible evidence. Id. at 379. Accordingly, BlueStar's motion is granted in that regard.

C. BlueStar's Motion to File Supplemental Rebuttal Testimony

On February 10, 2000, BlueStar filed its Motion to File Supplemental Rebuttal Testimony. On February 17, 2000, BellSouth filed its response.

1) BlueStar's motion

In its motion, BlueStar states that on January 5, 2000, it served BellSouth with its First Request for Production of Documents. It further states that Requests Nos. 7 and 8 sought cost studies related to ADSL service and unbundled copper loops (UCL). BlueStar maintains that, in addition to seeking hard copies of these studies, it requested "all computerized models involved in preparing the costs with data intact."

BlueStar maintains that on January 18, 2000, BellSouth objected to the production of the described requests, claiming the information was irrelevant and proprietary. BlueStar also states that BellSouth continued to object to producing the requested information in its response on January 28, 2000. According to BlueStar, it then filed a Motion to Compel on January 20, 2000. BlueStar states that BellSouth responded to its Motion to Compel on January 7, 2000, essentially withdrawing its objection to Request No. 8.

BlueStar asserts that on February 2, 2000, its representatives traveled to Atlanta to review the subject BellSouth cost studies. It states that its representatives identified documents for which they wanted copies, and BellSouth indicated that copies would be provided. BlueStar maintains, however, that, as of February 10, 2000, the cost studies had yet to be provided. Further, it states

that it repeatedly inquired about electronic copies of the information, but that electronic copies were also never provided by BellSouth.

BlueStar argues that since it has not received copies of the requested documents from BellSouth, it has been unable to provide the information to its expert witness for review and formulation of his testimony. Further, it argues, if BellSouth provides the information on February 11, 2000, three days is woefully inadequate for BlueStar and its expert witness to review and digest the information and then write rebuttal testimony by February 14, 2000. Thus, BlueStar asserts, BellSouth's failure to provide the requested documents in a timely manner necessitates its request to file supplemental testimony on the cost issues.

2) BellSouth's position

BellSouth responds that BlueStar, on more than one occasion, has failed to diligently pursue some aspect of this case, and then has attempted to visit the result of its conduct upon BellSouth. It states that BlueStar is now making another request for some special dispensation in response to a situation which it has created. It argues that BlueStar's motion is unique in that a party typically requests an opportunity to file expanded or postponed rebuttal testimony based upon a contention that it has not had adequate time to review the testimony to which the rebuttal is directed. Instead, BellSouth points out, BlueStar is alleging that it cannot respond to prefiled testimony which has been in its possession for three weeks because it has not received requested discovery.

BellSouth further maintains that BlueStar's argument is weakened by the fact that the requested information are cost studies which relate to the rates in Issue 10. According to BellSouth, BlueStar has signed an Amendment to the parties' agreement in which it has agreed to rates. Thus, BellSouth argues, the discovery that BlueStar is claiming it needs relates only to an issue which has been settled.

Additionally, BellSouth asserts that on February 2, 2000, BlueStar marked 217 pages of documents it wished to have copied. It states that BlueStar's general counsel, Mr. Norton Cutler, indicated that he did not want BellSouth to begin copying of the material because he planned to discuss obtaining cost studies in electronic format from counsel for BellSouth. BellSouth maintains that Mr. Cutler did not contact them for that purpose. Instead,

BellSouth states, Mr. Cutler contacted BellSouth on February 7, 2000, stating that he wanted the paper copies after all. BellSouth further states that three days later, on February 10, 2000, it hand delivered the copies to counsel for BlueStar. According to BellSouth, later that same day, BlueStar again contacted BellSouth and requested the entire ADSL and UCL cost studies, in addition to the 217 pages initially marked for copying. It states that within 24 hours of the request, it made available 3,001 pages, as well as a series of compact discs containing both the ADSL and the UCL cost studies.

Based upon the foregoing, BellSouth argues that any delay that BlueStar encountered in receiving the requested documents is strictly its own fault. Further, it states, even if the Commission were to grant BlueStar's request, testimony would still be due no later than February 16, 2000. Additionally, BellSouth states that it does not believe it is appropriate to allow parties to supplement their rebuttal testimony in response to discovery, rather than in response to the testimony being rebutted. However, it argues, if the Commission allows BlueStar to file supplemental rebuttal testimony, then fairness dictates that it should also have the same opportunity.

3) Decision

Pursuant to Order No. PSC-00-0141-PCO-TP, issued January 21, 2000, responses to discovery requests shall be served within 20 days after service of the request by either express mail, facsimile, or hand delivery, due to the expedited nature of this proceeding. Accordingly, BellSouth's response to BlueStar's January 5, 2000, production requests were due by January 25, 2000. On January 18, 2000, BellSouth filed its objections to the production requests. On January 26, 2000, BellSouth withdrew its objection with regard to Request No. 8. Based upon the foregoing, I find that BellSouth's objection as to Request No. 8 was responsible for the delay in BlueStar's receipt of the requested information.

Accordingly, BlueStar's motion to file supplemental rebuttal testimony is granted. BlueStar shall file the supplemental testimony by close of business on February 22, 2000.

D. BellSouth's Motion to Strike Testimony and Motion for Protective Order or, Alternatively, Motion to Continue Hearing

On February 9, 2000, BellSouth filed its Motion to Strike Testimony and Motion for Protective Order or, Alternatively, Motion to Continue Hearing. On February 17, 2000, BlueStar filed its response.

1) BellSouth's motion

In its motion, BellSouth states that Issue 15 is defined in the procedural order as follows:

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

BellSouth also states that, in its Direct Testimony, BlueStar responded to Issue 15 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. BellSouth maintains that BlueStar, in effect, requested that BellSouth enter into an agreement whereby the two parties would delegate to the Commission the task of resolving disputes between them. It argues that, 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, since any ALEC could opt into this agreement. Therefore, BellSouth argues, the more appropriate method for BlueStar to request such a generic procedure is to file a petition for rulemaking, rather than through arbitration.

Notwithstanding, BellSouth argues that BlueStar has stated nothing in its testimony to support the notion that an expedited process for dealing with carrier complaints is necessary, desirable, or even possible. Instead, it maintains, BlueStar devoted most of the testimony of witness Carty Hassett to a series of vague allegations that there are disputes between BellSouth and BlueStar. BellSouth insists, however, that the real issue, which BlueStar has ignored, is what should be done to deal with the disputes. Instead, it argues, BlueStar has attempted to turn this proceeding into a complaint proceeding. BellSouth points out that BlueStar's alleged grievances have only given rise to one actual complaint filed with the Commission, which was subsequently voluntarily withdrawn by BlueStar.

BellSouth states that BlueStar has set the depositions of two BellSouth employees, Pat Solon and Gill Aguayo, allegedly because they have some knowledge of the collocation dispute between BellSouth and BlueStar, which was the subject of the now dismissed complaint. BellSouth argues that BlueStar should not be allowed to use Issue 15 to turn this proceeding into a quasi-complaint proceeding. It maintains that if BlueStar has legitimate grievances, then it is free to pursue them by filing a complaint.

BellSouth, therefore, requests that the Commission strike the testimony of Carty Hassett from page 12, line 20 to page 15, line 2. BellSouth also requests that the Commission issue a protective order to prevent BlueStar from taking the depositions of Pat Solon and Gill Aguayo, or any other witnesses who have nothing to do with the issues in this proceeding. Additionally, BellSouth requests that the Commission make clear in its order that further attempts to misuse this arbitration proceeding for a complaint will not be allowed.

Alternatively, BellSouth argues that, if the Commission believes that the ADR issue does revolve around the matters described in witness Hassett's testimony, BellSouth should have the opportunity to defend itself against the allegations and to prove that they are frivolous. BellSouth maintains that witness Hassett's allegations are extremely vague, and that it has filed discovery to attempt to obtain more details about the allegations. It states, however, that the responses to the discovery requests were not due until February 17, 2000 during a week which is filled with depositions and the prehearing conference on February 21, 2000. Further, BellSouth argues, the discovery deadline is one week later, such that if BellSouth were to set depositions within that time, BlueStar would likely object on the grounds of less than adequate notice.

According to BellSouth, if the Commission allows the above-described allegations to remain in the case without allowing BellSouth the opportunity to develop evidence to disprove them, BellSouth will be prejudiced. Therefore, if the Commission allows the evidence, it requests that the hearing and the discovery cut-off date be postponed for a minimum of thirty days to allow it to conduct appropriate discovery.

2) BlueStar's response

BlueStar responds that BellSouth's opposition to testimony regarding expedited dispute resolution is disingenuous at best. It states that it first sought private arbitration of its collocation dispute issues with BellSouth, but that BellSouth insisted that the Commission should resolve these highly technical matters itself. BlueStar argues that now that it has accepted that suggestion, BellSouth claims that the Commission does not have time to deal with the disputes, or that some other proceeding should resolve the issues. BlueStar asserts that BellSouth's real position is that it fears speedy resolution of any activity that hastens competition.

BlueStar argues that with expedited dispute resolution, it could have sought independent review of many of its collocation disputes with BellSouth. It states that these issues are addressed in witness Milner's testimony, and that it should have the opportunity to explore them by deposing Mr. Solon and Mr. Aguayo, instead of witness Milner, who has no personal knowledge of the events. BlueStar maintains that Mr. Solon and Mr. Aguayo have first-hand knowledge of the type of real world disputes for which expedited dispute resolution is critical.

BlueStar further states that witness Hassett's testimony includes information as to experiences BlueStar had with BellSouth, illustrating the pressing need for expedited alternative dispute resolution. It maintains that witness Hassett's testimony only presents evidence as to why disputes with BellSouth are resolved so slowly and how such slow resolution affects BlueStar. It argues that witness Hassett's testimony relating to the Florida collocation issues simply illustrates the need for expedited dispute resolution and goes to the heart of Issue 15. Further, BlueStar states that BellSouth presented its own position on Issue 15 when it filed on January 15 and February 14, 2000 the testimony of witness Varner.

Finally, BlueStar argues that the Commission should reject BellSouth's suggestion that the hearing be continued. According to BlueStar, if BellSouth wants more information concerning witness Hassett's testimony, it can simply inquire at her deposition scheduled for February 24, 2000.

3) Decision

Upon consideration, BellSouth's motion to strike or alternative motion for continuance is denied. I find, however, that Mr. Solon and Mr. Aguayo's testimony will only provide additional facts as to specific instances where disputes arose between the parties. Their testimonies will not address why present dispute resolution procedures are inadequate or not or why an expedited dispute resolution process would have been appropriate in a particular instance or not. Accordingly, BellSouth's motion for protective order is granted in this regard.

It is therefore,

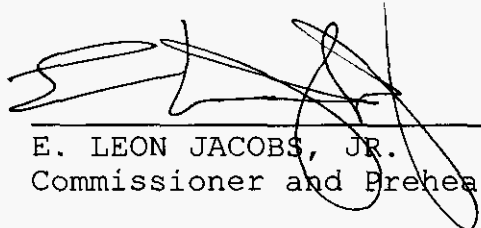
ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED that BlueStar Networks, Inc.'s Motion to Compel BellSouth Telecommunications, Inc. to Respond to Discovery is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that BlueStar Networks, Inc.'s Motion to File Supplemental Rebuttal Testimony is granted. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Motion to Strike Testimony and Motion for Protective Order or, Alternatively, Motion to Continue Hearing is granted in part and denied in part as set forth in the body of this Order.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 1st day of March, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

DMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.