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September 17, 1999

VIA HAND-DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

991405-TP

Re: In re: Complaint of Bluestar Networks
against BellSouth Telecommunications, Inc. - Docket No. _____

Dear Ms. Bayo:

Enclosed for entering and filing are the original and fifteen copies of the Complaint of Bluestar Networks against BellSouth Telecommunications, Inc.

Thank you for your assistance in this matter.

Yours truly,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

VGk/jk

enc.

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J. Gordon Kaufman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. _____

Filed: September 17, 1999

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

Bluestar Networks (Bluestar), through its undersigned counsel, files this Complaint against BellSouth Telecommunications, Inc. (BellSouth) for failure to provide collocation to BlueStar in a reasonable period of time in violation of the Telecommunications Act of 1996, § 364.01, Florida Statutes, and implementing Federal Communications Commission (FCC) regulations. As grounds for this Complaint and demand for relief, Bluestar states:

I. Introduction

1. Bluestar is an alternative local exchange company certificated to provide local exchange services in Florida. Bluestar's address is:

401 Church Street, 24th Floor
Nashville, Tennessee 37201

2. Copies of pleadings, notices and other documents in this docket should be provided to:

Norton Cutler
General Counsel
Bluestar Networks
401 Church Street, 24th Floor
Nashville, Tennessee 37210

Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson Decker
Kaufman Arnold & Steen, P.A.
117 South Gadsden Street

Tallahassee, Florida 32301

3. Bluestar is a Delaware corporation, having its principal place of business at 401 Church Street, 24th Floor, North, Nashville, Tennessee 37201. Bluestar is a certified provider of local exchange and/or long distance service in 14 states. In Florida, Bluestar is authorized as an alternative local exchange company providing telephone services in competition with BellSouth.

4. BellSouth is an incumbent local exchange carrier (ILEC) as defined by § 251(h) of the Telecommunications Act of 1996 (1996 Act). BellSouth is a Georgia corporation with its principal place of business at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth provides intrastate local exchange and exchange access service in Florida subject to the regulatory authority of this Commission.

5. Bluestar seeks an order from the Commission requiring BellSouth to complete by October 15, 1999, work on seven Bluestar applications for cageless collocation filed on or before May 7, 1999. BellSouth waited until August 6 to provide a quote to Bluestar which was immediately turned into a firm order. On September 10, 1999, BellSouth claimed that it will take until *January 10, 2000* to complete all work and permitting on the space.

6. The Commission attempted to bring this type of anticompetitive delay in processing collocation applications to an end in its recent Order No. PSC-99-1744-PAA-TP (Collocation Orders), in which it set out time frames for collocation order processing and implementation.¹

7. This Commission should not reward BellSouth for sitting on its hands instead of moving

¹Bluestar recognizes that this order is a PAA and subject to protest; nonetheless, it is an indication of the Commission's intent to require BellSouth to promptly act on collocation applications.

forward with Bluestar's applications. At the very least, BellSouth should have filed the needed permit applications promptly, if not actually beginning the work required to provide cageless collocation when Bluestar filed its applications in May of this year.

8. While delaying Bluestar's ability to compete, BellSouth continues to sell services which directly compete with Bluestar and lock up potential Bluestar customers, while Bluestar waits for collocation spaces totally in BellSouth's control.

II. Factual Background

9. Bluestar intends to begin competing with BellSouth in Jacksonville by offering high speed Internet access on existing copper loops. Bluestar will use Digital Subscriber Lines (DSL) technology which raises the transmission rate of data from the 26kbps normally found on analog modems to up to 2.5 mbps. As the Commission is well aware, the explosive growth of the Internet has raised the demand for high-speed access to unprecedented levels. Bluestar is one of the first carriers to attempt to offer services in competition with BellSouth in North Florida and plans to provide many services that BellSouth does not currently offer.

10. To provide DSL, Bluestar must collocate in BellSouth central offices and needs an extremely small amount of space (three bays in an existing BellSouth lineup of equipment) to receive unbundled loops and concentrate data for forwarding to and from the Internet.

11. In its dealings with Bluestar, BellSouth has consistently dragged its feet in providing collocation. Only after the FCC, in its advanced services order², ordered BellSouth to provide cageless collocation for data ALECs like Bluestar, did BellSouth begin to offer the required cageless

² FCC 99-48.

collocation. BellSouth still refuses to commit to any time limits for processing in its collocation amendment to the BellSouth/Bluestar interconnection agreement. Bluestar signed that portion of the amendment under protest.

12. Bluestar filed the instant applications on *May 7, 1999*, but BellSouth did not provide a quote until *August 6, 1999*. Bluestar turned these applications into firm orders on August 12, and made repeated phone calls and email inquiries about the date for completion. These requests were met with every excuse imaginable, including lack of a contract (even though Bluestar had an interconnection contract requiring collocation) and simple failure to even return telephone calls. Finally, BellSouth agreed to an initial planning meeting (required by contract language insisted upon by BellSouth) for September 10, 1999. During this meeting, Bluestar was shocked to learn that according to BellSouth, "Florida doesn't do things like the rest of BellSouth territory." This time BellSouth used time for permitting and excessive demand as an excuse. BellSouth unreasonably claimed that it could not begin *any* work until it received permits for power and air conditioning increases that would increase central office capacity *by less than 1%*.³ Thus, the space would not be available for Bluestar occupancy until January 10, 2000! Bluestar even offered to decrease the number of requested bays from 12 to 3 to decrease BellSouth's workload, but BellSouth claimed that would only delay processing further.

13. Because Bluestar filed its collocation applications in May, it hired a sales force and leased office space in Jacksonville, which now appears to be useless until January. Bluestar paid BellSouth over \$160,000 for these applications and has received nothing. BellSouth is selling its own DSL in

³ Again, it should be noted that BellSouth should have begun the permit process in May when Bluestar filed its applications.

Jacksonville and presumably locking up customers that Bluestar should have the opportunity to win.

III. BellSouth is Obligated to Provide Timely Collocation

14. BellSouth has an obligation under the 1996⁴ Act and Florida law to provide Bluestar with efficient and timely access to collocation space. As the FCC has stated:

In order to encourage competition among carriers to develop and deploy new advanced services, it is critical that the marketplace be conducive to investment, innovation, and meeting the needs of the consumers.

To this end, we [the FCC] are committed to removing barriers to competition so that competing providers are able to compete effectively with incumbent LECs and their affiliates in the provision of advanced services.⁵

15. This Commission has decided that ordinarily a carrier should fulfill a physical collocation application within 90 days:

Upon firm order by an applicant carrier, the ILEC shall provision physical collocation within 90 days or virtual collocation within 60 days. If the ILEC believes it will be unable to meet the applicable time frame, the ILEC shall seek an extension of time from the Commission within 45 days of receipt of the firm order. The request shall be styled as a Motion for Extension of Time, instead of a waiver of this guideline. The ILEC shall explain, in detail, the reasons necessitating the extension and shall have an opportunity to respond to the ILEC's request for an extension of time. The Commission will rule upon the request as a procedural matter at an Agenda Conference.⁶

The 90-day time frame applies to caged physical collocation; cageless collocation requires even less activity by BellSouth who need only provide the infrastructure for a standard equipment bay.

16. Bluestar filed its collocation applications on May 7, over 120 days ago, and is now

⁴§ 251(c)(6).

⁵FCC 99-48 at 3.

⁶Order No. PSC-99-1744-PAA-TP at 15.

offered space acceptance in January 2000, another 120 days from now. There simply can be no excuse for this type of behavior. Presumably, the Commission was well aware of the Florida permitting requirements when it issued its order requiring physical collocation in 90 days. Why did BellSouth wait until now to bring the issue up and apply for the permits?

17. Bluestar offered to work with BellSouth to obtain some type of earlier date for at least some of the offices in Jacksonville. Bluestar suggested reducing the number of bays in all the applications and finishing some offices prior to others. All of these normal customer supplier methods of reaching a win/win business solution met stony silence or complete obstinance. This leads to only one conclusion: BellSouth doesn't want Bluestar in business in Jacksonville anytime soon. BellSouth wants all the DSL business for itself. Bluestar has filed another 32 applications in other Florida cities, including Jacksonville, and not one of these has a space acceptance date prior to January 2000. Through all these applications, BellSouth is now holding over \$442,000 of Bluestar's funds and Bluestar has not one single physical facility to show for it. BellSouth has simply ignored both this Commission and the FCC.

IV. Remedy and Conclusion

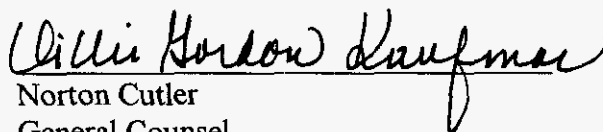
18. This Commission should not reward BellSouth for its delaying tactics. The Commission should take the following action on this Complaint:

a. The Commission should order BellSouth to complete at least three Bluestar collocation spaces in Jacksonville by October 1, 1999 and set a reasonable schedule for the rest of the applications to conclude;

b. To prevent BellSouth from reaping the rewards of its collocation delay strategy, the Commission should prevent BellSouth from offering DSL in any city where Bluestar has a pending

collocation application until 30 days after it has turned at least three central offices or 50% of the requested central offices over to Bluestar;

- c. The Commission should process this Complaint on an expedited basis;
- d. The Commission should grant such other relief as it deems appropriate.



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Nashville, Tennessee 37210
1-615-346-3875

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Tallahassee, Florida 32301
1-850-222-2525


Attorneys for Bluestar Networks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint of Bluestar Networks against BellSouth Telecommunications, Inc. has been furnished by (*) hand delivery or U.S. Mail to the following this 17th day of September, 1999:

(*) Beth Keating
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Nancy White
(*) c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, #400
Tallahassee, Florida 32301-1556


Vicki Gordon Kaufman