

MICHAEL P. GOGGIN
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

January 14, 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 (BlueStar Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Remove Issues from Arbitration, which we ask that you file in the captioned docket.

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,

Michael P. Goggin
Michael P. Goggin

- AFA _____
- APP _____
- CAE _____
- CMU 5
- CTR _____
- EAG _____
- LEG 1
- MAS 5
- OPC _____
- RPR _____
- SEC 1
- UAW _____
- OTH _____

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

RECEIVED

JAN 14 2000

CMU

DOCUMENT NUMBER-DATE

00712 JAN 18 8

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:)	
)	Docket No. 991838-TP
Petition for Arbitration of BlueStar Networks,)	
Inc. with BellSouthTelecommunications, Inc.)	
pursuant to theTelecommunications Act)	Filed: January 14, 2000
of 1996.)	
_____)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO REMOVE ISSUES FROM ARBITRATION**

On December 7, 1999, BlueStar Networks, Inc. ("BlueStar") filed this petition for arbitration of a new interconnection agreement with BellSouth Telecommunications, Inc. (the "Petition") with the Florida Public Service Commission ("Commission"). In its Petition, BlueStar has asked the Commission to impose liquidated damages provisions that would apply if BellSouth were to miss certain performance measurements. This Commission has repeatedly ruled that the imposition of liquidated damages is not an appropriate issue to be arbitrated in a proceeding under Section 252 of the Telecommunications Act. Accordingly, BellSouth requests that this issue be removed from this proceeding. In addition, BellSouth requests an expedited ruling from the Prehearing Officer on its motion to save the parties from having to prepare and submit testimony on this issue.

In its Petition, BlueStar asks the Commission to arbitrate the following issue: "Should the interconnection agreement include the liquidated damages provision and performance measures recently adopted by the Public Utility Commission of Texas?" Petition, Issue 14 at p. 12. During the issues identification workshop in this matter held on January 10, 2000, BlueStar agreed to include BellSouth's Service Quality

DOCUMENT NUMBER-DATE
00712 JAN 18 8
 FPSC-RECORDS/REPORTING

Measurements in the interconnection agreement as proposed by BellSouth, but still insisted on having the Commission arbitrate the issue of whether liquidated damages provisions should be included in the agreement. In fact, BlueStar proposed a new issue to replace Issue 14 in its Petition: "Should the interconnection agreement include the liquidated damages provisions filed by BellSouth in Tennessee Docket Nos. 99430 and 99377 as Exhibit no. AJV-1 which relate to BellSouth's Service Quality Measurements (SQMs)?" Leaving aside the fact that the issue proposed by BlueStar at the issue identification meeting had not been included in its Petition, and would not, therefore, be appropriate for arbitration in any event, the newly proposed issue, like Issue 14 in the Petition, asks the Commission to arbitrate the question of whether liquidated damages should be imposed.

BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Prehearing Officer remove BlueStar's Issue 14 from this arbitration. The Commission has established a clear chain of precedent that damage and penalty issues are not appropriate for arbitration because the Commission lacks the statutory authority to award such damages. See Order No. PSC-96-1579-FOF-TP (December 31, 1996); Pre-Hearing Order No. PSC-99-01715-PHO (April 15, 1999); Pre-Hearing Order No. PSC-99-1309-PHO-TP (July 8, 1999); Pre-Hearing Order No. PSC-99-1926-PHO-TP (September 28, 1999); and Pre-Hearing Order No. PSC-99-2117-PHO-TP (October 25, 1999). Thus, Issue 14, simply is not appropriate for arbitration and should be removed from the proceeding.

In addition, BellSouth requests that the Prehearing Officer in this matter rule on this motion in an expedited manner. Direct testimony is due to be filed in this matter on

January 25, 2000. The prehearing conference, at which such motions ordinarily would be heard, is scheduled for February 21, 2000. Thus, if the Prehearing Officer waits until the prehearing conference to take up this motion, the parties will have had to prepare and file testimony regarding an issue that, given the unbroken chain of prior rulings by the Commission, seems certain to be removed from this arbitration at the prehearing conference. An expedited ruling would spare the parties this unnecessary exercise.

CONCLUSION

For the reasons stated above, BellSouth requests that Issue 14, relating to liquidated damages, be removed from this arbitration. BellSouth further requests that the Prehearing Officer issue an expedited ruling on its motion.

Respectfully submitted this 14th day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE
MICHAEL P. GOGGIN

c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301
(305) 347-5558

R Douglas Lackey

R. DOUGLAS LACKEY
J. PHILLIP CARVER
E. EARL EDENFIELD JR.
675 West Peachtree Street N.E.
Suite 4300, BellSouth Center
Atlanta, Georgia 30375-0001
(404) 335-0747

192718

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via facsimilie(*) and U.S. Mail this 14th day of January, 2000 to the following:

Donna Clemons (*)
Staff Counsel
Division of Legal Services
Florida Public Service Comm.
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Bluestar Networks, Inc.
131 2nd Avenue North
Suite 500
Nashville, Tennessee 37201
Tel. No. (615) 255-2100
Fax. No. (615) 255-2102

Henry C. Campen
John A. Doyle
Parker, Poe, Adams & Berstein, LLP
First Union Captiol Center
150 Fayetteville Street Mall
Suite 1400
Raleigh, N.C. 27602
Tel. No. (919) 828-0564
Fax. No. (919) 834-4564

John A. Doyle, Jr.
Parker, Poe, Adams & Berstein, LLP
First Union Capitol Center
150 Fayetteville Street Mall
Suite 1400
Raleigh, North Carolina 27602

Vicki Gordon Kaufman (*)
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 222-2525
Fax. No. (850) 222-5606


Michael P. Goggin

Norton Cutler
V.P. Regulatory & General Counsel
BlueStar Networks, Inc.
L & C Tower, 24th Floor
401 Church Street
Nashville, Tennessee 37219