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Guy M. Hicks
General Counsel

January 3, 2000

EXECUTIVE SECRETARY

VIA HAND DELIVERY

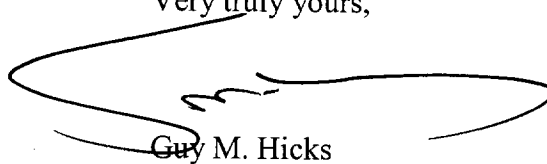
David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Arbitration of BlueStar Networks, Inc. with BellSouth
Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*
Docket No. 99-00945

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response to BlueStar Networks, Inc.'s Petition for Arbitration. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH:ch
Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

REC'D TN
REGULATORY AUTH.
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EXECUTIVE SECRETARY

In Re:)
)
Petition for Arbitration of BlueStar) Docket No. 99-00945
Networks, Inc. with BellSouth)
Telecommunications, Inc. Pursuant) Filed: January 3, 2000
To the Telecommunications Act of)
1996)
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO BLUESTAR NETWORKS, INC.'S PETITION FOR ARBITRATION**

Pursuant to 47 U.S.C. § 252(b)(3) of the Telecommunications Act of 1996, ("the Act") BellSouth Telecommunications, Inc. ("BellSouth") responds to the Petition for Arbitration ("Petition") filed by BlueStar Networks, Inc. ("BlueStar"), and states:

I. INTRODUCTION

1. Sections 251 and 252 of the Act encourage negotiations between parties to reach voluntary local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2-6).

2. Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with numerous competitive local exchange carriers ("CLECs"), and the Tennessee Regulatory Authority ("TRA") has approved numerous agreements between BellSouth and CLECs. The nature and extent of these agreements vary, depending upon the individual needs of the companies, but the conclusion is

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inescapable. BellSouth has a record of embracing competition and reaching agreement to interconnect on fair and reasonable terms.

3. The 1996 Act allows a party to petition the TRA for arbitration of unresolved issues.¹ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.² The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties.”³ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after the TRA receives the petition.⁴ The Act limits a state commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁵

II. SPECIFIC RESPONSES

4. Because BlueStar has not stated the allegations of its Petition in numbered paragraphs, it is difficult for BellSouth to address the contentions of BlueStar by admitting or denying the allegations of the Petition in the manner that would typically be utilized. Therefore, BellSouth will attempt herein to admit or deny the allegations of the Petition on a section by section basis. In any instance in which BellSouth does not respond to a specific factual allegation of BlueStar, that allegation is hereby denied.

¹ 47 U.S.C. § 252(b)(2).

² *See generally*, 47 U.S.C. §§ 252(b)(2)(A) and 252 (b)(4).

³ 47 U.S.C. § 252(b)(2).

⁴ 47 U.S.C. § 252(b)(3).

⁵ 47 U.S.C. § 252(b)(4).

STATEMENT OF FACTS

5. BellSouth is without knowledge of BlueStar's allegations as to its address, the areas in which it does business and the nature of its business.

6. BellSouth admits that it is an incumbent local exchange carrier as that term is defined in the Act. BellSouth denies that it is a monopoly provider of local exchange services.

7. BellSouth admits that the factual rendition set forth in Section B of BlueStar's petition is generally accurate. However, BellSouth notes that the agreement between BellSouth and BlueStar that expired December 31, 1999 does not apply in BellSouth's entire region, but rather in eight of the nine states in its region.

8. BellSouth admits that the document attached to the Petition as Exhibit A appears to be as described by BlueStar. BellSouth admits that the document attached to the Petition as Exhibit B purports to be a matrix of the parties' positions on unresolved issues. BellSouth denies that Exhibit B accurately and completely sets forth BellSouth's positions on the issues.

JURISDICTION

9. BellSouth admits that the TRA has jurisdiction to arbitrate this matter pursuant to the Act. BellSouth also admits the allegations that the "window for requesting arbitration" opened on November 12, 1999 and closed on December 7, 1999.

DESIGNATED CONTACTS

10. BellSouth is without knowledge of the designated contacts identified as representing BlueStar. BellSouth admits that the negotiators for BellSouth are as alleged in the Petition.

ISSUES FOR ARBITRATION

11. In the main, this section of BlueStar's Petition does not set forth specific factual allegations, but rather a statement of each issue along with BlueStar's position and what BlueStar claims to be BellSouth's position. BellSouth will respond by stating each issue as framed by BlueStar (although, in some instances, the issues are not framed in the most appropriate manner), and by stating its position on each issue. In some instances, BellSouth's statement of position is fairly consistent with BlueStar's description of BellSouth's position. In other instances, the difference between BlueStar's rendition of BellSouth's position and BellSouth's actual position is pronounced. As to any factual allegations in this portion of the Petition that BellSouth does not specifically respond to, these allegations are denied.

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

12. A UCL is defined as a dry copper loop of up to 18,000 feet, which may have up to 6,000 feet of bridge tap and has resistance of 1300 ohms or less. This definition is consistent with industry standards for "resistance design" (RD) loops. To change this definition would compromise the integrity of BellSouth's network and create problems in maintaining and repairing these loops to industry standards. However, BellSouth believes that the real issue is not the definition of UCL, but rather BlueStar's desire to obtain loops that do not meet this definition. BellSouth is willing to provide copper loops longer than 18,000 feet, but can only ensure that these loops have electrical continuity and balance between tip and ring. BellSouth is in the process of operationalizing a "long" dry copper loop. In addition, BellSouth will offer optional line

conditioning for the removal of load coils. This new loop type is expected to be available in early 2000.

Issue 2: Should BellSouth be required to conduct a trial of line sharing and electronic ordering and provisioning of line sharing now?

13. No. BlueStar's request for an immediate trial of line sharing electronic ordering and provisioning implies that these capabilities are presently available and that BellSouth is simply withholding them from BlueStar. To the contrary, BellSouth does not yet have a line sharing unbundled network element nor the associated electronic ordering and provisioning capabilities with which to conduct a meaningful trial. In order to develop these elements, BellSouth must analyze the CLEC's specific needs, make modifications to systems, make vendor selections for required hardware (especially the splitter devices), and develop methods and procedures. BellSouth will do so consistent with the time frames set forth by the FCC for implementing line sharing.

14. It is possible that a technical trial will be an appropriate means to test the equipment and procedures developed by BellSouth. However, BellSouth does not know whether such a test is needed, or whether any such test can best be performed with a specific CLEC as a trial partner or, alternatively, with a neutral third-party as a trial partner. Moreover, even if it were appropriate to conduct a line sharing trial with a particular CLEC, it is not necessary or practical to conduct a trial with every CLEC. For these reasons, it would be premature for BellSouth to commit to a line sharing trial with any particular CLEC at this time. Further, based on the information available to BellSouth, it appears that BlueStar would be a poor choice of trial partner since it

currently does not have in place the electronic interfaces that are required. Thus, BlueStar has demanded an immediate test even though it apparently lacks the current capacity to participate in such a test.

Issue 3: Should BellSouth be required to provide design layout records (“DLRs”) or its equivalent on rejected orders or, in the alternative, be required to provide BlueStar with the DLR or its equivalent on the best available loop at that premise?

15. It is not possible to provide a DLR on rejected loops because the DLR does not exist until the appropriate design work is performed during the provisioning cycle. In the ordering process, a CLEC requests a particular type of loop through the service inquiry process, and that request is accepted or rejected based upon established criteria. If the requested facility is available, the Local Service Request (“LSR”) is sent to the LCSC that issues a Firm Order Commitment (“FOC”) to the CLEC, and the provisioning process begins. At the conclusion of the provisioning process, a DLR is created. Thus, if a request is rejected, the provisioning process (of which the DLR is a product) never begins. However, BellSouth does provide detailed information during the service inquiry process as to why a loop is rejected. This information would include remarks such as “customer is out of range,” “location is served by fiber only” or “load coils are present.” This will provide the CLEC with information that it can use to determine what, if any, actions can be taken to condition the loop for its xDSL service.

16. BellSouth cannot agree to choose on behalf of BlueStar the “best available loop” when the type of loop that has been requested is unavailable. Choosing the “best”

loop requires a judgment that can only be made by BlueStar based on information that is solely at its disposal. It is simply not practical for BlueStar to delegate this business decision to BellSouth. Further, even if BellSouth could perform this function, it should only do so if BlueStar compensates BellSouth for undertaking this labor.

Issue 4: When should BellSouth provide the DLR to BlueStar?

17. The DLR is not available until after the Firm Order Commitment (“FOC”) is sent to the CLEC. The FOC tells the CLEC that an accurate order has been submitted to the appropriate BellSouth work centers in order to provision the loop on the due date. One of the BellSouth work centers (Circuit Provisioning Group) creates the DLR and sends it to the CLEC prior to the due date. However, once a mechanized interface to the loop makeup information is available, the CLEC can get most of the DLR information prior to even issuing the order.

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?

18. BellSouth is developing this capability as an interim process until the loop qualification interface is developed. The interim process is expected to be available by the end of January 2000.

Issue 6: Should BellSouth be required to disclose the reasons a loop is unavailable?

19. As stated above in response to Issue 3, BellSouth provides detailed information during the service inquiry process as to why a loop is rejected. This information will tell the CLEC what, if any, actions can be taken to condition the loop for xDSL service.

20. BlueStar is mistaken in its contention that BellSouth is prohibited by any FCC order from denying the provisioning of a loop unless BellSouth “first justifies that denial before the Commission.” The situation at issue occurs when a CLEC request for a loop is denied because ILEC facilities are not available. No FCC order requires prior state commission approval prior to denial in this circumstance.

Issue 7: When should BellSouth be required to provide real time access to OSS for loop makeup information qualification, preordering, provisioning, repair/maintenance and billing?

21. The FCC’s UNE Remand Order states that the pre-ordering function includes access to loop qualification information. This requirement is effective 120 days after publication in the Federal Register. Specifically, an incumbent LEC must provide to the requesting carrier the same information that is available to the incumbent. BellSouth will comply with the requirements of the FCC’s UNE Remand Order within the timeframe provided by the Order. During negotiations, it was unclear what specific pre-ordering functions BlueStar wishes to obtain. It is likewise unclear from BlueStar’s statement of its position whether it is now demanding pre-ordering functions that are not required by the FCC Order. If so, BellSouth declines to provide functions that are beyond with the requirements of the FCC Order.

Issue 8: Should the interconnection agreement include a time interval for BellSouth provisioning of xDSL loops and UCLs?

22. The interconnection agreement should not include a specific time interval for the provision of xDSL loops and UCLs. A service inquiry (which is required on both BellSouth's retail orders and UNEs of this complexity) is necessary to determine whether network facilities are available to provide the desired service. BellSouth has committed that it will exert its best efforts to respond to the service inquiry within the 3-5 business day period. However, the complexity of individual requests varies widely, and therefore some inquiries may require a longer period of time to be evaluated by BellSouth's field forces and/or engineers. Given this, BellSouth cannot guarantee that the service inquiry will be completed within the target interval in every instance.

Issue 9: Can xDSL loops retain repeaters at the ALEC's option?

23. This issue is not ripe for arbitration because BlueStar did not raise the issue at any time during its negotiations with BellSouth. Moreover, the issue as framed by BlueStar makes no sense. xDSL loops are not equipped with repeaters. Thus, BlueStar appears to contend that these loops should "retain" equipment that does not exist on these loops.

Issue 10: Should the interconnection agreement include expedited procedures for repairs?

24. No. The Act requires that BlueStar be provided nondiscriminatory repair services. BlueStar's demand for expedited repair services goes beyond the requirements of the Act, and is, therefore, not a proper subject for arbitration.

25. Nevertheless, BellSouth is always willing to discuss (outside of the context of negotiations pursuant to the Act) any reasonable proposal for enhanced customer service, including the development of expedited procedures for repair. However, BellSouth is concerned that expediting the repair service to one CLEC's customer ahead of another CLEC's customer or a BellSouth retail customer raises difficult issues that would have to be resolved. In any event, if an expedited process required additional work beyond that normally involved in the repair process, the service contract for this expedited service should include the costs of that additional work. BellSouth anticipates that these costs would be substantial.

Issue 11: What are the TELRIC-based recurring and nonrecurring rates for xDSL loops and for a UCL?

26. BellSouth's proposed rates are cost based. BlueStar's allegations that BellSouth's cost studies include unnecessary activities are unfounded. Cost studies have not been previously filed for certain types of loops that BellSouth will be offering in the future based upon FCC orders. Appropriate cost studies will be developed for these elements as well.

Issue 12: What is the TELRIC-based recurring and nonrecurring rate for the high frequency portion of a shared loop?

27. Subsequent to the filing of BlueStar's Arbitration Petition, the FCC released its line sharing Order. BellSouth will propose a rate for line sharing that is consistent with this Order.

Issue 13: In lieu of reciprocal compensation, should the parties be required to adopt bill and keep for transport and termination of local, intraLATA and interLATA voice traffic?

28. No. Non-local traffic, such as intraLATA toll traffic and interLATA traffic (including traffic bound for Internet Service Providers), is not subject to the reciprocal compensation obligations contained in Section 251 of the Act. Therefore, compensation for such traffic is not an appropriate issue for a Section 252 arbitration. Reciprocal compensation applies only when local traffic is terminated on either party's network (regardless of the type of switch deployed). One of the Act's basic interconnection rules is contained in 47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 251(b)(5)'s reciprocal compensation duty arises, however, only in the case of local calls. In fact, in its August 1996 Local Interconnection Order (CC Docket No. 96-98), paragraph 1034, the FCC made it clear that reciprocal compensation rules do not apply to interstate or interLATA traffic such as interexchange traffic.

29. As to local traffic, the FCC has promulgated rules that provide the circumstances under which a bill-and-keep arrangement is appropriate as a form of reciprocal compensation (47 CFR §§ 51.701 – 51.717). Specifically, § 51.713 provides

that a state commission may only impose bill-and-keep arrangements “if the state commission determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b).” Based on the information available to it, BellSouth believes that the requirements of § 51.713 cannot be met, and, therefore, bill-and-keep cannot be ordered. BellSouth proposes that each party compensate the other for interconnection of local traffic at elemental UNE rates.

Issue 14: Should the interconnection agreement include the liquidated damages provision and performance measures recently adopted by the Public Utility Commission of Texas?

30. No. BellSouth has developed a set of performance measurements and associated systems over the last several years to demonstrate the non-discriminatory provision of service to CLECs. Adopting the Texas measurements would require replacing the BellSouth measurements at considerable effort and expense with no apparent benefit. BellSouth has voluntarily offered the performance measurements that it has developed to BlueStar during negotiations. BellSouth does not believe that the Act contemplates the imposition of alternative performance measurements or enforcement mechanisms to which an incumbent does not agree. Moreover, the TRA has previously declined to order “penalties” of the sort requested by BlueStar. Nevertheless, BellSouth is developing a set of enforcement mechanisms jointly with the FCC and will make those available upon acceptance by the FCC.

Issue 15: Should the interconnection agreement include a dispute resolution provision that would create a permanent arbitrator agreed on by the parties and serving under the auspices of the American Arbitration Association (“AAA”)?

31. No. BellSouth opposes the designation of a permanent arbitrator to serve under the auspices of the American Arbitration Association. Although BellSouth has included Alternative Dispute Resolution (“ADR”) provisions in prior Interconnection Agreements, these provisions have proven unworkable. Specifically, the use of a commercial arbitrator to resolve possible future disputes is costly, unnecessary, and less likely to lead to a well-informed decision. A commercial arbitrator without experience in telecommunications cannot have the expertise to resolve complex issues that arise in the context of Interconnection Agreements. Moreover, an approved Arbitrated Agreement necessarily reflects policy decisions made by the state commission that approves the Agreement. A commercial arbitrator cannot resolve future disputes under the Agreement without impinging upon the TRA’s power to make policy decisions in light of the particular public interest concerns that pertain in the state.

32. BellSouth submits that if the TRA is inclined to adopt a form of ADR, then the best way to do so would be to provide for an abbreviated, expedited proceeding before the TRA. The TRA has both the technical expertise and the knowledge of the relevant policy concerns necessary to resolve any disputes that may arise, qualities that a commercial arbitrator would almost certainly lack.

Issue 16: Should the interconnection agreement include a provision concerning access to riser cable in buildings that would allow BlueStar to use its digital subscriber line access multiplexer (DSLAM) as the demarcation point in the building and would allow BlueStar to cross-connect directly to the riser cable network interface device (NID)?

33. No. BellSouth believes that BlueStar should not be allowed to use its DSLAM as the demarcation point in buildings nor be allowed to cross-connect directly to BellSouth's riser cable and NID. Demarcation points, wherever they are located, establish where one service provider's network ends (and thus its responsibilities for provisioning, maintenance, and repair) and another service provider's network begins. BellSouth believes some mutually accessible device such as a connector block is a far more appropriate demarcation device than a DSLAM.

34. Because BellSouth's network terminating wire and riser cable constitute sub-loop elements, BlueStar should obtain access to network terminating wire and riser cable in the same manner as it obtains access to any other network element—by placing an order with BellSouth and paying a just and reasonable price for the element.

TIMING AND PROCESS

STANDARD OF REVIEW

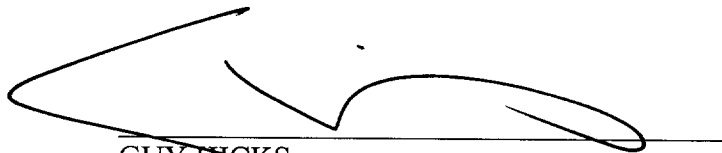
CONCLUSION

In response to Sections F through H of the Petition, BellSouth states that these sections do not contain factual allegations to which a response is required. To the extent that they are intended to do so, however, BellSouth denies these allegations.

WHEREFORE, BellSouth respectfully requests that the TRA approve the various positions of BellSouth set forth herein and order that these positions be included in an Arbitrated Agreement between the parties.

Respectfully submitted this 3rd day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

A large, stylized handwritten signature in black ink, appearing to read 'GUY HICKS', is written over a horizontal line.

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191266-JPC/gbt

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight

Richard Collier, Esquire
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- ☐ Hand
- ☒ Mail
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A handwritten signature in dark ink, appearing to be 'J. M.', is written over a horizontal line.