

RECEIVED

MAY 04 2000

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 3, 2000

TN REGULATORY AUTHORITY
GENERAL COUNSEL'S OFFICE

IN RE:

PETITION BY BLUESTAR NETWORKS, INC.,
FOR ARBITRATION OF AN
INTERCONNECTION AGREEMENT WITH
BELLSOUTH TELECOMMUNICATIONS, INC.
PURSUANT TO SECTION 252(b) OF THE
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO.
99-00945

EXECUTIVE SECRETARY

REPORT AND INITIAL ORDER OF PRE-ARBITRATION OFFICER

On December 7, 1999, BlueStar Networks, Inc. ("BlueStar") filed a Petition for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "Act"); such petition included sixteen (16) unresolved issues. BellSouth filed a Response to BlueStar's petition on January 3, 2000. The Directors of the Tennessee Regulatory Authority ("Authority"), at a regularly scheduled Authority Conference held on January 25, 2000, unanimously accepted this petition for arbitration, appointed themselves as Arbitrators, directed the General Counsel to either serve as or to designate a pre-arbitration officer, and directed the parties to mediate the issues prior to formal arbitration.

The Act imposes a duty to negotiate in good faith. At the January 25th Authority Conference, the Directors determined that good faith negotiations could be demonstrated in part by the parties through productive mediation. As a result, the parties entered into an Agreement

to Mediate this arbitration, which they filed with the Authority on March 13, 2000. Mediation sessions were then conducted under the auspices of the Authority's Executive Secretary, K. David Waddell. Upon the March 31, 2000 joint filing of an Issues Matrix which included four (4) remaining unresolved issues and showed the fruits of such mediation, the Pre-Arbitration Officer determined that good faith negotiations had occurred and accordingly scheduled a Pre-Arbitration Conference. On April 14, 2000, a Notice of Pre-Arbitration Conference was sent to both parties; such conference was scheduled for Thursday, April 20, 2000.

Pre-Arbitration Conference

The Pre-Arbitration Conference was held on April 20, 2000, before Gary Hotvedt, Counsel, designated as Pre-Arbitration Officer. Appearances were as follows:

For BlueStar: Henry Walker, Esq., Michael B. Bressman, Esq., Norton Cutler, Esq.;

For BellSouth: Guy Hicks, Esq., Jerry Jones, (by telephone) Phil Carver, Esq.; and

For TRA Staff: David Foster, David Hood.

The Pre-Arbitration Officer ("PAO") has determined that this proceeding is not a "contested case" as defined by the Uniform Administrative Procedures Act ("UAPA"), and as such, the UAPA does not control nor do parties have any appellate rights in state courts. Specifically, this is an arbitration pursuant to § 252(b) of the Federal Telecommunications Act of 1996, and any relief a party may seek must be via the Federal Communications Commission ("FCC") or the United States District Court. Nevertheless, the UAPA, the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence will be relied upon for guidance.

The following procedural matters were discussed at the Conference, matters that the parties have subsequently agreed upon:

- a) Neither BlueStar nor BellSouth object to the participation of the TRA Staff during the Arbitration, including Staff directly asking questions of witnesses during the proceeding itself;
- b) Both parties agree to abide by the arbitration rules proposed at the Conference (TRA Rules 1220-5-1 through 1220-5-3, Rules of Practice and Procedure Governing Proceedings under Section 252 of the Federal Telecommunications Act of 1996);
- c) The parties submitted a proposed Protective Order, which was approved by the PAO and entered on May 2, 2000; and
- d) On May 2, 2000, BlueStar and BellSouth jointly filed an agreement to extend the arbitration period until September 15, 2000.

Clarification and Refinement of Issues

At the start of the April 20th Conference, four (4) issues remained to be resolved by the Authority: Issue 5, 11, 14 and 16. After discussion between the PAO, the parties and the TRA Staff, Issue 5 was refined; Issue 11 was limited (by a stipulation between the parties that resolved a previous issue -- such stipulation is attached to this Report as Attachment A); Issue 14 was removed by an on-the-record stipulation of the parties (which is memorialized in a letter filed on May 2, 2000 -- such letter is attached to this Report as Attachment B); and Issue 16 was determined to be arbitrable in its current posture. On April 27, 2000, the parties filed a revised Issues Matrix that incorporates the changes that were agreed to at the Pre-Arbitration Conference. The remaining issues are currently articulated as follows:

Issue 5: What rates, terms and conditions should apply to BellSouth's Loop Make-Up Service Inquiry (LMUSI) process?

- Issue 11: What rates should be included in this interconnection agreement for unbundled copper loops and loop conditioning?
- Issue 16: Should the interconnection agreement include a provision allowing BlueStar to cross connect its digital subscriber line access multiplexer (DSLAM) directly to BellSouth's riser cable network interface device (NID) in buildings, and if so, what, if any, rates, terms and conditions should apply?

Schedule

At the April 20th Conference, a schedule was determined by agreement of the parties, which the PAO hereby recommends:

April 27, 2000	Parties file joint positions matrix including proposed remedies
May 3, 2000	Pre-Arbitration Officer's Report with adoption of issues
May 3, 2000	Discovery Requests
May 10, 2000	Objections to Discovery Requests
May 24, 2000	Discovery Responses due
May 31, 2000	Direct Testimony due
June 7, 2000	Rebuttal Testimony due
To be scheduled in late June or early July	Arbitration Hearing (Parties require no more than one full day)

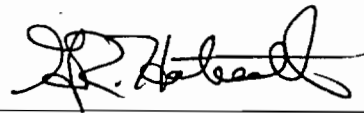
Other Procedural Matters

For purposes of service, all documents are to be faxed or hand-delivered by 2:00 PM on the date that they are due. Discovery requests will be limited to thirty (30) requests, including sub-parts, although either party may seek leave from the Authority to serve additional discovery

requests upon a showing of good cause. All prefiled testimony shall state the issue number, the issue and then address that specific issue only.

IT IS THEREFORE ORDERED THAT:

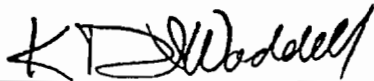
1. The issues as set forth in this Report are hereby adopted for arbitration;
2. The schedule as set forth in this Report is hereby adopted;
3. Upon written motion, this Initial Order may be appealed to the Arbitrators within fifteen (15) days from its entry; and
4. If no party has appealed this Initial Order, after fifteen (15) days this Initial Order will become final.



Gary Hotvedt, Pre-Arbitration Officer

ENTERED: May 3, 2000

ATTEST:



K. David Waddell, Executive Secretary

Legdata/GRH/PAO-report99-00945

ATTACHMENT A

STIPULATION
(Tennessee)

THIS STIPULATION between BellSouth Telecommunications, Inc. ("BellSouth") and BlueStar Networks, Inc. ("BlueStar") is entered into and effective this 12th day of April, 2000. BellSouth and BlueStar are collectively referred to herein as the "Parties."

WHEREAS, BlueStar filed a Petition for Arbitration with BellSouth pursuant to the Telecommunications Act of 1996 ("Petition") on December 7, 1999 with the Tennessee Regulatory Authority (the "Authority");

WHEREAS, the Parties have continued to negotiate to resolve the issues contained in the Petition; and

WHEREAS, the Parties have resolved Issue 15 of the Petition and have agreed to set interim rates subject to true up for elements covered by Issue 11.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The Parties have resolved Issue 15 of the Petition in Tennessee and have agreed in Tennessee to set interim rates subject to true up for elements covered by Issue 11. An Amendment reflecting this resolution and agreement is attached.
2. All other issues not resolved by the Parties remain pending in this proceeding.
3. Either or both of the Parties shall submit this Stipulation to the Authority.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed by their respective duly authorized representatives on the date indicated below.

BlueStar Networks, Inc.

BellSouth Telecommunications, Inc.

By: [Signature]

By: [Signature]

Name: Nathan Cutler

Name: Jerry D. Hendrix

Title: VP Regulatory & General Counsel

Title: Sr. Director

Date: April 12, 2000

Date: 4/12/00

04/18/00 15:17

BELLSOUTH INTERCONNECTION SERV* → 615 346 3875

NO.517 P003/005

615 346 3875

Sent By: BLUESTAR COMMUNICATIONS;

615 348 3875;

Apr-12-00 10:54AM;

Page 2

**AMENDMENT TO THE
AGREEMENT BETWEEN
BLUESTAR NETWORKS, INC.
AND BELLSOUTH TELECOMMUNICATIONS, INC.
DATED DECEMBER 28, 1999
(Tennessee)**

Pursuant to this Amendment, BlueStar Networks, Inc. ("BlueStar") and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to individually as a "Party" or collectively as the "Parties," hereby amend that certain Interconnection Agreement between the Parties dated December 28, 1999 (the "Interconnection Agreement") in the state of Tennessee.

WHEREAS, the Parties entered into an Interconnection Agreement on December 28, 1999; and

WHEREAS, the Parties desire to amend that Interconnection Agreement.

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The ADSL/HDSL rates contained in Attachment 2, Exhibit C are hereby revised as follows:

2-Wire Asymmetrical Dig Subscriber Line (ADSL) Compatible Loop	USOC	Tennessee Rates*
Per Month	UAL2X	\$12.16
NRC- First	UAL2X	\$270.01
NRC - Add'l	UAL2X	\$234.63
NRC - Disconnect - First	SOMAN	\$74.54
NRC - Disconnect - Add'l	SOMAN	\$39.14
Order Coordination for Specified Conversion Time		\$34.29
2-Wire High Bit Rate Digital Subscriber Line (HDSL) Compatible Loop		
Per Month	UHL2X	\$8.78
NRC - First	UHL2X	\$270.01
NRC - Add'l	UHL2X	\$234.63
NRC - Disconnect - First	SOMAN	\$74.54
NRC - Disconnect - Add'l	SOMAN	\$39.14
Order Coordination for Specified Conversion Time		\$34.29

* All rates are interim, subject to true-up once rates are ordered by the TRA.

615 346 3875

Sent By: BLUESTAR COMMUNICATIONS;

615 346 3875;

Apr-12-00 10:54AM;

Page 3/5

2. The Unbundled Copper Loop (UCL) rates and Loop Conditioning rates for Tennessee in the January 27, 2000 Amendment are hereby revised as follows:

2.1.2.8.1 The following rates for Tennessee are interim rates subject to true-up.

2-Wire Unbundled Copper Loop (18 kft. or less)	USOC	Tennessee Rates*
Recurring	UCLPB	\$12.16
Non-Recurring, 1"	UCLPB	\$270.01
Non-Recurring, Add'l	UCLPB	\$234.63
Disconnect - 1"	UCLPB	\$74.54
Disconnect - Add'l	UCLPB	\$39.14
Order Coordination	UCLMC	\$34.29
2-Wire Unbundled Copper Loop (> 18 kft.)		
Recurring	UCL2L	\$12.16
Non-Recurring, 1"	UCL2L	\$270.01
Non-Recurring, Add'l	UCL2L	\$234.63
Disconnect - 1"	UCL2L	\$74.54
Disconnect - Add'l	UCL2L	\$39.14
Order Coordination	UCLMC	\$34.29
Loop Conditioning**		Tennessee Rates*
Remove Equipment <18kft		
First Install		\$70.04
Add'l Install		\$70.04
Remove Equipment > 18kft		
First Install		\$765.29
Add'l Install		\$23.74
Remove Bridge Tap		
Per Pair		\$105.34

* All rates are interim rates, subject to true-up once final cost are determined. However, until final cost are determined, the UCL rates will be true-up based on the ADSL/HDSL rates once final costs are determined.

** The Loop Conditioning charges apply in addition to the UCL NRCs.

The Parties agree that the prices reflected herein shall be "true-up" (up or down) based on final prices either determined by further agreement or by final order, including any appeals, in a proceeding involving BellSouth before the regulatory authority for the state in which the services are being performed or any other body having jurisdiction over this agreement, including the FCC. Under the "true-up" process, the price for each service shall be multiplied by the volume of that service purchased to arrive at the total interim amount paid for that service ("Total Interim Price"). The final price for that service shall be multiplied by the volume purchased to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, Bluestar shall pay the difference to BellSouth. If the Total Final Price is less than the Total Interim Price, BellSouth shall pay the difference to Bluestar. Each party shall keep its own records upon which a "true-up" can be based and any final payment from one party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records of the Parties regarding the amount of such "true-up," the Parties agree that such differences shall be resolved through arbitration.

04/18/00 15:18

BELLSOUTH INTERCONNECTION SERV* -> 615 346 3875

NO.517 P005/005

Sent By: BLUESTAR COMMUNICATIONS;

615 346 3875
615 348 3875;

Apr-12-00 10:54AM;

Page 4/5

3. Section 12 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following language:

12. Resolution of Disputes

The Parties agree that it is in their interest to resolve disputes arising under this contract in an expedited manner. To expedite resolution of disputes, such as access to collocations or provisioning, the Parties agree to form an Intercompany Board. Each Party will designate one person (and one alternative person in case the primary designee is unavailable) with sufficient authority to resolve disputes quickly. If a dispute arises that is not being resolved quickly in the ordinary course, a Party's designee shall contact the other Party's designee. The two will then work together to resolve the dispute within 2 business days. If the dispute cannot be resolved within the 2 business days, either Party may file a Petition or Complaint or otherwise seek resolution of the dispute from the Tennessee Regulatory Authority.

4. This Amendment shall have an effective date of April 12, 2000.

5. All other provisions of the Interconnection Agreement dated December 28, 1999 shall remain in full force and effect.

6. Either or both of the Parties shall submit this Amendment to the appropriate Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to the Interconnection Agreement be executed by their respective duly authorized representatives on the date indicated below.

BlueStar Networks, Inc.

By: [Signature]Name: Norbert CurranTitle: VP Regulatory & General CounselDate: April 12, 2000

BellSouth Telecommunications, Inc.

By: [Signature]Name: Larry D. HendrieTitle: Sr. DirectorDate: 4/13/00



BellSouth Telecommunications, Inc. 615 214-6301
Suite 2101 Fax 615 214-7406
333 Commerce Street
Nashville, Tennessee 37201-3300

Guy M. Hicks
General Counsel

ATTACHMENT B

May 2, 2000

RECEIVED

MAY 03 2000

VIA HAND DELIVERY

Honorable Gary Hotvedt, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

TN REGULATORY AUTHORITY
GENERAL COUNSEL'S OFFICE

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. Hotvedt:

Last week, BlueStar submitted a revised Joint Issues Matrix to you. By agreement of the parties, Issue 14 was deleted from the Issues Matrix. This will confirm that in lieu of asking the Arbitrators to rule on Issue 14, which deals with BellSouth's proposed self-effectuating enforcement mechanisms, the parties have agreed to accept the Arbitrators' final decision regarding this issue in the DeltaCom proceeding, Docket No. 99-00430, subject to the parties' rights to challenge and/or appeal the decision.

Counsel for BlueStar has authorized me to file this letter on BlueStar's behalf.

Very truly yours,


Guy M. Hicks

GMH/jem

cc: Michael Bressman, Esquire
Henry Walker, Esquire