

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE INTERCONNECTION AGREEMENT	)	
NEGOTIATIONS BETWEEN BLUESTAR	)	
NETWORKS, INC. AND BELL SOUTH	)	CASE NO. 99-498
TELECOMMUNICATIONS, INC. PURSUANT	)	
TO THE TELECOMMUNICATIONS ACT OF 1996	)	
APPROVAL OF THE	)	
INTERCONNECTION AGREEMENT	)	
NEGOTIATED BY BELL SOUTH	)	
TELECOMMUNICATIONS, INC. AND	)	CASE NO. 98-587
BLUESTAR COMMUNICATIONS, L.L.C.	)	
PURSUANT TO SECTIONS 251 AND 252	)	
OF THE TELECOMMUNICATIONS ACT OF 1996	)	

O R D E R

Before the Commission are two cases addressing the same interconnection agreement and arbitration issues. Case No. 98-587 addresses the agreed upon portions of the agreement and Case No. 99-498 addresses the arbitration issues.

On December 9, 1999, BlueStar Networks, Inc. ("BlueStar") filed its petition for arbitration of its existing interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth")(collectively "Parties"). The interconnection agreement between the Parties expired on December 31, 1999. Pursuant to the Telecommunications Act of 1996 ("Act"), the Parties identified sixteen issues that were initially submitted to the Commission for arbitration and resolution. The Parties, through diligent and continuous negotiations, resolved all but two issues and agreed that a Commission hearing on the two remaining issues was not necessary. The Parties filed briefs on Issue 14,

Performance Measures and Liquidated Damages, and Issue 15, Dispute Resolution. The matter was submitted to the Commission for resolution and decision.

#### ISSUE 14

#### PERFORMANCE MEASURES AND LIQUIDATED DAMAGES

BlueStar's initial position was that liquidated damages should be available on all performance measures when BellSouth does not meet the standard performance intervals. BlueStar requests that the Texas model relative to this issue should be adopted by the Commission. BellSouth's initial position was that the Texas model should be rejected and that, if the Commission now deems it necessary to address the issue, the Commission should adopt the Voluntary Self-Effectuating Enforcement Mechanisms ("VSEEM") proposal that BellSouth has developed to ensure parity.

Continuing their good faith negotiations, the Parties agreed that BellSouth's VSEEM proposal would be acceptable to partially resolve Issue 14. The resulting narrow issue to be resolved by the Commission is: Does the VSEEM model or plan addressing performance standards and liquidated damages become effective upon issuance of this Order (BlueStar's position) or does this model or plan become effective upon the date that BellSouth receives § 271 approval pursuant to the Act (BellSouth's position)? The Commission finds that the VSEEM model/plan will be effective upon approval to BellSouth of § 271 authority in any of its jurisdictions or on the first anniversary date of this Order.

The Commission has examined closely the positions and arguments of the Parties. In addition, the Commission is monitoring this issue as it develops in other

jurisdictions. The substance of interconnection agreements all but mirror the § 271 mandates of the Act. It is the intention of the Commission that BellSouth submit a proposed model or plan to completely address the issue of performance measures and liquidated damages that is in the nature of the VSEEM proposed model or plan, but is a hybrid model or plan that reflects a more serious examination of the issue and more effective in its results.

## ISSUE 15

### ALTERNATIVE DISPUTE RESOLUTIONS

BlueStar's initial position on the issue of alternative dispute resolutions ("ADR") was that disputes arising under the interconnection agreement should be handled in private arbitration with a permanent arbitrator agreed on by the Parties and serving under the auspices of the American Arbitration Association. The proceeding should be handled in an expedited manner with the Parties reserving the right to appeal the arbitration decision to the Commission. BellSouth's initial position on the issue was simply "no." BellSouth has found by experience that ADR provisions in interconnection agreements are unworkable. BellSouth's position is that the current complaint process before the Commission is sufficient for resolution of disputes.

Again, through diligent good faith negotiations, this issue is partially resolved by the Parties' agreement to establish an inter-company board consisting of one person (and an alternate, if necessary) from each company. If a dispute arises, the two designated persons will immediately address the dispute and attempt to resolve it within 2 days.

It is at this point the Parties part ways. BellSouth's position at this stage is that either party can seek relief from the Commission by way of filing a petition or complaint under the current methods for relief and resolution of the dispute. BlueStar proposes a new procedure before the Commission in the resolution of disputes regarding interconnection agreements. BlueStar proposes that within 5 days of the filing of a complaint, a preliminary hearing shall be conducted before a hearing officer who essentially grants immediate relief if necessary.

The Commission finds that several problems arise with BlueStar's proposal. They are statutory authority, promulgation of applicable regulations, utility discrimination, and staffing and personnel if such a procedure could be established. The Commission finds that BlueStar's expedited procedure is not currently feasible.

Based upon the evidence of record, and the Commission being otherwise sufficiently advised, IT IS HEREBY ORDERED that:

1. Case Nos. 99-498 and 98-587 are consolidated.
2. Upon the approval to BellSouth of § 271 authority in any jurisdiction in which BellSouth operates or 1 year from the date of this Order, the most current VSEEM model shall govern the performance measures and liquidated damages provisions of the interconnection agreement unless the Commission directs otherwise.
3. BlueStar's proposal for expedited Commission procedures to resolve disputes involving this interconnection agreement is denied. Disputes regarding the interconnection agreement shall be resolved through the procedures set forth in KRS 278.260 and Administrative Regulation 807 KAR 5:001.

4. Within 10 days of the date of this Order, BellSouth shall file with the Commission a true and complete copy of the agreement as amended and arbitrated herein in Microsoft® Word 97 format on 3.5-inch high-density diskette.

Done at Frankfort, Kentucky, this 7<sup>th</sup> day of July, 2000.

By the Commission

ATTEST:

  
Executive Director