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BellSouth Telecommunications, Inc.  
150 South Monroe Street  
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RECORDS AND  
REPORTING

February 11, 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 Response to BlueStar Networks Inc.'s Motion for Reconsideration, 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 (BFW)

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

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
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OTH \_\_\_\_\_

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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	)	
of 1996.	)	
<hr/>		Filed: February 11, 2000

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
 RESPONSE TO BLUESTAR NETWORKS, INC.'S  
MOTION FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") hereby requests that BlueStar Networks, Inc.'s (BlueStar) Motion for Reconsideration (the "Motion") be denied.

1. BlueStar's Motion must be denied because it plainly fails to meet the well-settled standard for reconsideration. A sustainable motion for reconsideration must identify a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order. See *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962). It is not appropriate in motion for reconsideration to merely reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959). A motion for reconsideration may not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc. v. Bevis* 294 So. 2d at 317.

2. In its Motion, BlueStar does not raise any new argument, nor does BlueStar produce any new evidence. Instead, BlueStar erroneously asserts that "the

Order overlooks or fails to consider BlueStar's arguments." (Motion at 2). Because this assertion is plainly incorrect, the Motion should be denied.

3. In its Motion, BlueStar raises the same justifications for demanding liquidated damages that it gave in response to BellSouth's Motion to Remove Issue 14 from this Arbitration: that asking for liquidated damages is not the same as asking the Florida Public Service Commission (the "Commission") to award damages; that such a provision allegedly would deter non-performance and anticompetitive behavior; that the Telecommunications Act does not prohibit the inclusion of such a provision; and that BellSouth has discussed voluntarily agreeing to a set of performance guarantees with the FCC.

4. In its order Removing Issue 14 from this Arbitration, Commissioner Jacobs carefully considered each of these arguments before deciding that the issue was inappropriate for Arbitration. Order No. PSC-00-0185-PCO-TP (January 25, 2000) (the "Order") at pp. 2-4. After considering these arguments, Commissioner Jacobs stated that, upon considering each of BlueStar's arguments, he was "not persuaded by BlueStar's attempt to distinguish this case from [the Commission's] prior rulings." Id at 3. Accordingly, Commissioner Jacobs declined to depart from the Commission's prior holdings that the imposition of a liquidated damage provision is not an issue that the Commission may arbitrate. Id. Thus, BlueStar's claim that "the Order did not address the arguments made by BlueStar," Motion at 3, is contradicted of the terms of the Order itself.

For the foregoing reasons, BlueStar's Motion for Reconsideration should be denied.

Respectfully submitted this 11th day of February, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Nancy B. White*

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
U.S. Mail 11th day of February, 2000 to the following:

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