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February 18, 2000
VIA Hand Delivery

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.991838-TP

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of:

- BlueStar Networks, Inc.'s Motion to Strike Testimony and Motion for Sanctions.

Please acknowledge receipt of the above on the extra copies enclosed herein and return them to me. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

AFA	_____
APP	_____
CAF	_____
CMU	_____
CTR	_____
EAG	_____
LEG	_____
MAS	_____
OPC	_____
RRR	_____
SEC	_____
WAW	_____
OTH	_____

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DOCUMENT NUMBER-DATE
02274 FEB 18 2000
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED--FPSC
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IN RE:

Petition For Arbitration of
Bluestar Networks, Inc. With
BellSouth Telecommunications,
Inc. Pursuant To The
Telecommunications Act of 1996

DOCKET NO. 991838-TP

Filed: February 18, 2000

RECORDS AND
REPORTING

BLUESTAR NETWORKS, INC.'S MOTION TO
STRIKE TESTIMONY AND MOTION FOR SANCTIONS

BlueStar Networks, Inc. (BlueStar) hereby files this Motion to Strike Testimony and Motion for Sanctions and states in support thereof the following:

Introduction

Bluestar moves to strike page 6, line 20 through page 12, line 5 of the Rebuttal Testimony of Mr. Alphonso J. Varner. These portions of Mr. Varner's Rebuttal Testimony present new proposals, evidence and rates that should have been raised in his Direct Testimony at the time it was filed or through amendment of that testimony. In certain parts of this Rebuttal Testimony cited above, Mr. Varner claims that an Amendment, dated January 27, 2000, to the Interconnection Agreement between BlueStar and BellSouth Telecommunications, Inc. (BellSouth), dated December 28, 1999, resolves the issues of rates for all unbundled copper loops (UCLs) and the rates for loop conditioning - Issues No. 10c and 10d.¹ In other portions of his Rebuttal Testimony, Mr. Varner also tries to change the previously proposed UCL rates based on a "newly" discovered cost study that has admittedly filed a year ago with the Commission. The Amendment, however, by its express terms, provided a definition for UCLs - Issue 1 - and only sets rates until rates are established in any proceeding, including this proceeding, before the Commission. Moreover, statements and documents

¹ BlueStar has attached a copy of this Amendment as Exhibit 1 to this Motion.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

used by BellSouth to induce BlueStar to execute the Amendment, and documents sent by BellSouth to BlueStar since the Amendment was executed, clearly demonstrate that BellSouth knows that the UCL and loop conditioning rate issues were not and are not resolved. Despite all of this evidence, Mr. Varner disingenuously claims that the rates issues are resolved.

Mr. Varner should also not be allowed to change his previous Direct Testimony about UCL rates. BlueStar accepted those rates in its rebuttal testimony. It will now have no opportunity to rebut Mr. Varners's "new" rates. Since BlueStar and BellSouth both have supported a recurring UCL rate of \$15.81 and a nonrecurring rate of \$113, the Commission does not need to have a hearing on that subject. Mr. Varner's Rebuttal Testimony and BellSouth's conduct can only be viewed as bad faith efforts to mislead the Commission or BlueStar. BlueStar, therefore, seeks costs and fees for the expense of filing this Motion and sanctions against BellSouth.

Background

1. After months of negotiations with BellSouth on the issues of loop length, BlueStar filed its Petition for Arbitration on December 7, 1999.

2. On December 28, 1999, the parties executed an Interconnection Agreement (Agreement) for the states of Florida, Georgia, Kentucky and Tennessee. While the Agreement addresses many issues of importance between the parties, it did not resolve the issues contained in BlueStar's Petition. One of the issues in the Petition was the definition of UCLs to include lengths greater than 18,000 feet.

3. At the Issue Identification Conference held on January 10, 2000, BellSouth agreed that it would provide UCLs greater than 18,000 feet. In fact, it agreed that Issue 1 - UCL definition - was resolved. The parties did not indicate that they had resolved Issues 10c or 10d - UCL and loop conditioning rates.

4. BlueStar began signing up a number of customers for its DSL services who it turned out could only be served by UCLs longer than 18,000 feet. BlueStar requested long UCLs for these customers, but BellSouth repeatedly refused to provision these orders. BellSouth insisted that BlueStar execute an amendment to the Agreement (Exhibit 1) addressing the long UCLs before it would provision these loops. BlueStar began losing customers because it could not obtain these UCLs.

5. Even though BellSouth agreed that Issue 1 was resolved, it still refused to provide any UCLs over 18,000 feet to BlueStar until BlueStar executed an amendment to confirm the terms and conditions of the loops. BlueStar requested language for an amendment. BellSouth sent language, which BlueStar revised. BlueStar made clear to BellSouth that it did not find the proposed rates for UCLs or loop conditioning acceptable. BellSouth understood this. In an email dated January 11, 2000, from Susan Arrington, BellSouth's Manager - Interconnection Services/Pricing, to Norton Cutler, BlueStar's General Counsel (Exhibit 2), Ms. Arrington described the Amendment as addressing the status of Issue 1, the UCL definition:

BellSouth's Proposed Contract Language (Issue 1)

Amendment proposed to BlueStar with revised UCL definition language. BlueStar to review and provide comments.

Consistent with the Issues Identification Conference, nowhere in her email does she mention Issue 10 - UCL and loop conditioning rates.

6. On January 25, 2000, Mr. Varner filed his direct testimony in this proceeding. In his testimony, he proposed rates for UCLs that were virtually identical to the rates that BlueStar's expert witness had proposed in his direct testimony of the same date. BlueStar, therefore, was under the impression that the parties had effectively resolved the UCL rate issue - Issue 10c.

7. By January 26, 2000, BlueStar still had not received a final version of the Amendment. Mr. Cutler indicated in an email to Ms. Arrington that same day that BlueStar was signing and faxing a proposed copy of the UCL Amendment, even though it lacked BlueStar's name, because BlueStar was in a desperate situation. As Mr. Cutler stated,

It is imperative that we process this asap because BellSouth is cancelling increasing numbers of orders for length. BlueStar has been requesting a copy of the amendment with BlueStar's name for almost two weeks and patience is wearing thin. BellSouth's refusal to honor these orders without an amendment that BellSouth has refused to supply borders on bad faith. (Exhibit 3)²

Citing BellSouth's testimony of January 25, 2000, Mr. Cutler also noted that the "there is very little between our positions." When Mr. Cutler finally received a revised Amendment, he signed it.

8. Late in the afternoon of February 1, 2000, Mr. Phillip Carver, BellSouth's General Attorney, indicated for the first time, during a telephone call and a letter that BellSouth believed that the rate chart attached to the Amendment resolved Issues 10c and 10d in this proceeding and consequently that BellSouth would not produce the requested UCL cost study. BlueStar informed Mr. Carver that it did not consider these issues resolved. The next day, BlueStar met with BellSouth, explained its view of the Amendment, and showed BellSouth Mr. Varner's testimony proposing rates of \$113. During ensuing discussions, the parties discussed a compromise rate and agreed that the rates in Amendment did not resolve the issues. Indeed, BellSouth relented and produced a UCL study. This action supported BlueStar's belief that BellSouth agreed that the UCL and loop conditioning rates were not resolved. At no time during that meeting did BellSouth claim that the Amendment was binding on these issues.

² In her response, Ms. Arrington denied that BellSouth was acting in bad faith and indicated that she would send a revised Amendment.

9. A week of discussions and proposals concerning the compromise rate followed with BellSouth ultimately refusing to agree. Again, there was no indication of BellSouth's position that the Amendment contained a binding price. To the contrary, BellSouth made clear that Issues 10c and 10d were not resolved in this proceeding in a letter from Ms. Arrington to Mr. Cutler dated February 4, 2000. As Ms. Arrington stated,

With respect to Issue 10, please confirm for me if Issue 10a and 10b relative to the rates for ADSL and HDSL are still an issue in BlueStar'[s] arbitration. Since we did not discuss these rates in our meeting on Wednesday, February 2, BellSouth believes 10a and 10b to be resolved. If this is not correct, please let me know. I will have a proposal for BlueStar on the UCL and Loop Conditioning rates on Monday, February 7, 2000. (Exhibit 4)

In the attachment to this letter, which contained "Agreed to Language," BellSouth described Issue 1 as follows:

The Amendment dated January 27, 2000, between BellSouth Telecommunications, Inc. and BlueStar Networks, Inc. resolves this issue.

BellSouth listed a number of other issues; it never mentioned Issue 10. BlueStar also sent BellSouth a letter dated February 2, 2000 setting forth its position on the Amendment.

10. As late as February 11, 2000, Ms. Arrington sent Mr. Cutler an email stating that the "remaining outstanding issues are: 3, 4, 10, 15 and 16[.]" (Exhibit 5) The attached proposed stipulation was even clearer:

1. Pursuant to the attached Amendment dated February __, 2000 between the Parties, the Parties have resolved Issues 5, 6a, 7, 9, and only in Florida, 10a and 10b.

....

2. All other issues not resolved by the Parties remain pending in this proceeding.

11. On February 11, 2000, BlueStar received a copy of a letter from BellSouth's General Counsel in Kentucky, which indicated that the he had filed the January 27, 2000 Amendment with the Kentucky Public Service Commission. Contrary to BellSouth's representations to BlueStar in its correspondence, BellSouth apparently is again asserting that the Amendment resolves the UCL and loop conditioning rate issues in its various arbitration proceedings with BlueStar.

Argument

I. Mr. Varner's Rebuttal Testimony Intentionally Ignores the Plain Meaning of the Amendment and Conflicts with BellSouth's Own Statements that Issues 10c and 10d Remain in this Proceeding.

12. In his direct testimony, Mr. Varner indicated that the appropriate rates for 2-wire ADSL and HDSL-compatible loops and UCLs up to 18,000 feet were those contained in Exhibit AV-1 attached to his testimony. BlueStar agrees. However, in his rebuttal testimony, Mr. Varner completely abandons these rates. Instead, he repeatedly claims that the rates for UCLs and loop conditioning - Issues 10c and 10d - are no longer at issue in the proceeding because the BellSouth and BlueStar agreed to rates in the January 27, 2000 Amendment.

13. Both BellSouth and Mr. Varner knew that these statements are entirely false. The Amendment expressly states that the "Parties agree that the prices reflected herein shall be 'trued-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." The language makes no mention of removing the UCL and loop conditioning rates issues from this proceeding. Nor does the Amendment purport to prevent this Commission from setting a different interim rate pending the outcome of the final Florida cost docket. To the contrary, the

Amendment specifies that the rates are subject to change in any "proceeding involving BellSouth" – no limitations.

14. Mr. Varner also fails to mention (or explain away) all of the correspondence from BellSouth that clearly indicates that BellSouth does not consider Issues 10c and 10d resolved in this proceeding. As discussed above, BellSouth on at least two occasions since the Amendment was signed has stated in writing that Issues 10c and 10d are still at issue in this proceeding. In fact, other than BlueStar believes Mr. Carver's phone call in which he threatened not to produce the UCL cost study, BellSouth has not asserted that these issues were resolved. Of course, BellSouth nonetheless produced undermining even that momentary assertion. Moreover, BlueStar has never stated or even hinted that it considered Issues 10c or 10d resolved in this proceeding. Thus, despite all this evidence, Mr. Varner has the audacity to claim that these issues are resolved. BlueStar is left with only one conclusion: Either BellSouth has been misleading BlueStar with its correspondence and in its negotiations or BellSouth is misleading the Commission. In either case, BellSouth's conduct evinces bad faith.

II. The Commission Should Strike All of Mr. Varner's Rebuttal Testimony that Argues for or Introduces Proposed Rates Different than Those Presented in His Direct Testimony.

15. In Mr. Varner's Direct Testimony, he proposed interim rates, subject to true up, for UCLs up to 18,000 feet based on BellSouth's 2-wire ADSL and HDSL loop rates that had previously been approved by the Commission in other proceedings.³ The rates proposed by Mr. Varner were very close to the rates proposed by BlueStar's witness, Mr. Michael Starkey, in his testimony. Consequently, through Mr. Starkey's Rebuttal Testimony, BlueStar accepted Mr. Varner's proposal.

³ Mr. Varner did not propose any rates or provide any evidence in his Direct Testimony related to UCLs longer than 18,000 feet or loop conditioning.

16. Mr. Varner, however, has now completely changed his tune. In his Rebuttal Testimony, he revokes his early Direct Testimony concerning UCL rates and instead argues, for the first time, that the appropriate rates are either the rates contained in the Amendment discussed above or, in the alternative, rates contained in a BellSouth cost study that it had filed in two previous arbitrations before this Commission. According to Mr. Varner, BellSouth discovered that this cost study existed after he filed his Direct Testimony.

A. It Is Well-Established Law and Practice that a Party Cannot Introduce Evidence or Present a New Argument for the First Time on Reply.

17. Mr. Varner's Rebuttal Testimony on his new rate proposals should be struck from the record of this proceeding. Under normal practice and procedure, and consistent with well-established law, Mr. Varner's Rebuttal Testimony on the UCL rates should be limited to two topics: providing more evidence and arguments to support his earlier proposal and rebutting any testimony by Mr. Starkey on this topic. At least half of his Rebuttal Testimony, however, had nothing to do with either of these topics. Instead, as noted, Mr. Varner proposes two entirely new bases for setting UCL and loop conditioning rates – the January 27, 2000 Amendment and a late-discovered UCL cost study. New evidence and new proposals are not properly the subject of rebuttal testimony.

18. The Florida courts have recognized that new matters and evidence should not be raised in rebuttal testimony, unless in response to a new matter raised by the other party in a case. For example, in Driscoll v. Morris, 114 So.2d 314, 315-16 (Fl. 3rd DCA 1959), the court stated

Generally speaking, rebuttal testimony which is offered by the plaintiff is directed to new matter brought out by evidence of the defendant and does not consist of testimony which should have properly been submitted by the plaintiff in his case-in-chief. It is not the purpose of rebuttal testimony to add additional facts to those submitted by the plaintiff in his case-in-chief unless such additional facts are required by the new matter developed by the defendant.⁴

⁴ Accord Lockwood v. Baptist Regional Health Services, Inc., 541 So. 2d 731 (Fl. 1st DCA 1989).

Here, BlueStar did not raise any matter or evidence in its direct testimony that would have called for or allowed Mr. Varner to introduce either the rates in the Amendment or the rates contained in the late-discovered UCL cost study.

19. Moreover, courts prohibit raising new issues on rebuttal or in reply briefs because the other party to a proceeding would not have an adequate opportunity for written response. As a Florida appeals court noted, "without strict adherence to [Florida Rule of Appellate Procedure 9,210(d), which provides that a reply brief 'shall contain argument in response and rebuttal to argument presented in the answer brief'], the appellees are left unable to respond in writing to new issues presented by appellants, and the filing deadline imposed on the appellants for their initial brief is rendered meaningless." Snyder v. Volkswagen of America, Inc., 574, So.2d 1161, 1161-62 (Fl. 4th DCA 1991). Here, BlueStar does not have a meaningful opportunity to respond in writing to Mr. Varner's Rebuttal Testimony before the hearing. In addition, the purpose of BellSouth filing direct testimony was rendered meaningless if it can add new issues and evidence at such a late date.

B. If BellSouth Wanted To Introduce New Rate Proposals and Evidence, It Should Have Amended Mr. Varner's Direct Testimony Earlier in the Proceeding.

20. As an initial matter, BlueStar is utterly perplexed about Mr. Varner's claim that "upon filing my direct testimony, it was discovered that BellSouth had indeed filed a cost study for the UCL in the e.spire and ICI arbitration proceedings (Docket Nos. 981642-TP and 981745-TP) in February, 1999" (p. 8, lines 7-10). First, BlueStar requested this study on January 5, 2000 (Production Request No. 8). Presumably, BellSouth should have been looking for the UCL cost study since then. Second, in BellSouth's Objections to BlueStar's First Request for Production of Documents and First Set of Interrogatories, filed January 18, 2000, BellSouth objected to producing any documents responsive to Production Request No. 8 because this request "call[s] for the production of documents that are not relevant and that are proprietary." This objection was filed one week before

Mr. Varner's Direct Testimony was filed. If BellSouth did not believe a UCL cost study existed, why did it file an objection to producing it? Third, on January 25, the same day as Mr. Varner's Direct Testimony was filed in this proceeding, BellSouth filed its Responses and Objections to BlueStar's First Request for Production of Documents. In response to Production Request No. 8, BellSouth stated the following: "BellSouth objects for the reasons set forth in its objections filed January 18, 2000." By contrast, in response to other Production Requests, such as No. 17, BellSouth stated that "it has no responsive documents." If BellSouth believed that no UCL study existed on the same day as it filed Mr. Varner's Direct Testimony, should not the accurate response have been that BellSouth has "no responsive documents" rather than objecting?

21. Regardless, even if BellSouth first discovered the existence of the UCL cost study after Mr. Varner filed, it had ample opportunity to introduce the allegedly late-discovered UCL cost study, by amending his Direct Testimony, long before the filing of Mr. Varner's Rebuttal Testimony.⁵ The same is true of the Amendment executed on January 27, 2000. This would have given BlueStar an opportunity to address these new rate proposals and arguments in its rebuttal testimony. BlueStar, by contrast, amended the Direct Testimony of Carty Hassett on February 7, 2000, when BlueStar discovered an error. BellSouth, however, did not follow normal procedures and instead ambushed BlueStar on rebuttal so that BlueStar would not have any meaningful opportunity to respond.

For these reasons, the Commission should strike all of Mr. Varner's Rebuttal Testimony from page 6, line 20 through page 12, line 5.

III. BellSouth Should Be Sanctioned for Its Bad Faith Conduct.

⁵ It is unclear when BellSouth claims to have first discovered the UCL study. At latest, BellSouth knew of its existence on February 1 - two weeks before Mr. Varner's Rebuttal Testimony - because that is when BellSouth's attorney told BlueStar that he would not produce the study for reviewing because he believed that Issue 10c was resolved by the Amendment.

22. BellSouth's efforts to mislead the Commission or BlueStar should not be condoned by the Commission. Section 251(c)(1) imposes an obligation on the incumbent local exchange carrier to negotiate in good faith. That obligation does not end when an arbitration begins. Section 252(b)(5) states that the

refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

BellSouth's bad faith conduct, specifically its filing of Mr. Varner's rebuttal testimony, has caused BlueStar to incur expenses in preparing this Motion to Strike. The Commission should order BellSouth to reimburse BlueStar for these costs. Moreover, the Commission should use its fullest authority to sanction BellSouth for its bad faith conduct. Such conduct offends both the federal statute and the Commission's rules and procedures.

WHEREFORE, Mr. Varner's testimony should be stricken and sanctions imposed as noted above.



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Attorneys for BlueStar Networks,
Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BlueStar Networks, Inc.s' Motion to Strike Testimony and Motion for Sanctions has been furnished by (*) hand delivery or U.S. Mail this 18th day of February, 2000 to the following:

(*) Donna Clemons
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

(*) Nancy White
Phil Carver (also by fax)
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32399-0850


Vicki Gordon Kaufman

EXHIBIT 1

FEB 16 2000

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

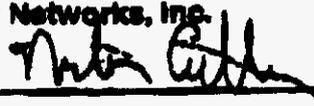
Pursuant to this Agreement, (the "Amendment"), Bluestar Networks, Inc. ("Bluestar"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to individually as a "Party" and collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties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

WHEREAS, BellSouth and Bluestar entered into an Interconnection Agreement on December 28, 1999 and;

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 Interconnection Agreement entered into between Bluestar and BellSouth is hereby amended to delete Sections 2.1.2, 2.1.3 - 2.1.3.7 of Attachment 2 in its entirety and replace it with new Section 2.1.2 of Attachment 2 which is attached hereto as Exhibit A.
2. This Amendment shall have an effective date of January 27, 2000.
3. All of the other provisions of the Agreement, dated December 28, 1999, shall remain in full force and effect.
4. Either or both of the Parties may 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 be executed by their respective duly authorized representatives on the date indicated below.

Bluestar Networks, Inc.
By: 
Name: Norton Cutler
Title: General Counsel
Date: 1-27-2000

BellSouth Telecommunications, Inc.
By: 
Name: Jerry Hendrix
Title: Senior Director
Date: 1/27/00

EXHIBIT A

2.1.2 Technical Requirements

- 2.1.2.1 BellSouth will offer loops capable of supporting telecommunications services such as: POTS, Centrex, basic rate ISDN, analog PBX, voice grade private line, 2 and 4 wire xDSL, and digital data (up to 64 kb/s). Additional services may include digital PBXs, primary rate ISDN, Nx 64 kb/s, and DS1/DS3 and SONET private lines.
- 2.1.2.2 **Digital Subscriber Line ("xDSL") Capable Loops.** XDSL capable loops describe loops that may support various technologies and services. The "x" in xDSL is a placeholder for the various types of digital subscriber line services. An xDSL loop is a plain twisted pair copper loop. BellSouth will offer xDSL capable loops according to industry standards for CSA design loops (ADSL/HDSL) and resistance design loops (UCL). To the extent that these loops exist within the BellSouth network at a particular location, they will be provisioned without intervening devices, including but not limited to load coils, repeaters (unless so requested by Bluestar), or digital access main lines ("DAMLs"). These loops may contain bridged tap in accordance with the respective industry standards (CSA design loops may have up to 2,500 feet total (all bridged taps) and up to 2,000 feet for a single bridged tap; resistance design loops may have up to 6,000 ft). At Bluestar's request, BellSouth will provide Bluestar with xDSL loops other than those listed above, so long as Bluestar is willing to pay the loop conditioning costs needed to remove the above listed equipment and/or bridge taps from the loops. Any copper loop longer than 18kft requested by Bluestar through the loop conditioning process will be ordered, billed, and inventoried as UCLs. Loop conditioning costs will be charged in addition to the loop itself on any of the loops described in this section 2.1.2.2, Bluestar may provide any service that it chooses so long as such service is in compliance with FCC regulations and BellSouth's TR73600.
- 2.1.2.3 The loop will support the transmission, signaling, performance and interface requirements of the services described in 2.1.2.1 above. The foregoing sentence notwithstanding, in instances where BellSouth provides Bluestar with an xDSL loop that is over 12,000 feet in length, BellSouth will not be expected to maintain and repair the loop to the standards specified in the TR73600 and other standards referenced in this Agreement; provided, however, that for all loops (xDSL or otherwise) ordered by Bluestar, BellSouth agrees to maintain electrical continuity and to provide balance relative to tip and ring.

- 2.1.2.4 In instances where Bluestar requests BellSouth to provide Bluestar with an xDSL loop to a particular end-user premises and (i) there is no such facility (including without limitation spare copper) available, and (ii) there is a loop available that would meet the definition of an xDSL loop if it were conditioned consistent with the FCC's rules promulgated pursuant to the UNE Remand Order, FCC 99-238 (adopted Sept. 15, 1999) (i.e., FCC Rule 51.319(s)(3)) (hereinafter "Conditioning Rules"), BellSouth shall offer such loop to Bluestar and shall offer to condition such loop consistent with the Conditioning Rules. In those cases where Bluestar requests that BellSouth remove equipment from a loop longer than 18kft, and this equipment is required to provide normal voice services, Bluestar agrees to pay a re-conditioning charge in order to bring the loop back up to its original specifications.
- 2.1.2.5 The Parties agree that such conditioning charges shall be interim and subject to true-up (up or down), pending the determination by the relevant Commission of conditioning charges. The Parties further agree that, if and when a Commission (in a final order not stayed) orders or otherwise adopts conditioning charges, they shall amend this Agreement to reflect said charges. If the Parties are unable to reach agreement on such an amendment, either Party may petition the appropriate Commission for relief pursuant to the dispute resolution procedures described in the General Terms and Conditions - Part A of this Agreement.
- 2.1.2.6 In those cases where Bluestar has requested that BellSouth remove equipment from the BellSouth loop, BellSouth will not be expected to maintain and repair the loop to the standards specified for that loop type in the TR73600 and other standards referenced in this Agreement.
- 2.1.2.7 In addition, Bluestar recognizes that there may be instances where a loop modified pursuant to this subsection 2.1.2.5 may be subjected to normal network configuration changes that may cause the circuit characteristics to be changed and may create an outage of the service that Bluestar has placed on the loop (e.g., a copper voice loop is modified by the removal of load coils so that Bluestar may attempt to provide xDSL service. BellSouth's records may still reflect that the loop is a voice circuit. BellSouth performs a network efficiency job and rolls the loop to a DLC. The original voice loop would not have been impacted by this move but the xDSL loop will likely not support xDSL service). If this occurs, BellSouth will work cooperatively with Bluestar to restore the circuit to its previous xDSL capable status as quickly as possible.

2.1.2.8 The following rates, as subject to true-up, will apply:

1-Wire Unbundled Copper Loop (18kft or less)									
	AL*	FL	GA*	KY*	LA	MS*	NC	SC*	TN**
Recurring	\$15.11	\$18.00	\$13.05	\$11.89	\$21.00	\$14.83	\$19.00	\$20.81	\$18.00
Non-Recurring									
Non-Recurring 1st	\$514.21	\$340.00	\$359.00	\$713.50	\$340.00	\$504.82	\$450.00	\$600.61	\$450.00
Non-Recurring Add'l	\$464.58	\$300.00	\$325.15	\$609.44	\$300.00	\$456.24	\$390.00	\$507.33	\$325.00
Manual Svc Ord - 1st	\$47.00	\$47.00	\$18.94	\$47.00	\$18.14	\$25.52	\$47.00	\$25.52	
Manual Svc Ord - Adl	\$21.00	\$21.00	\$8.42	\$21.00	\$8.06	\$11.34	\$21.00	\$47.00	
Manual Svc Ord - Dia	\$17.77			\$17.77	\$11.41	\$16.06		\$21.00	
Order Coordination	\$16.00	\$16.00	\$34.22	NA	\$32.77	\$45.27	\$16.00	\$45.43	\$45.00
Disconnect 1st					\$72.54	\$105.86			
Disconnect Addl					\$39.42	\$57.25			

*Same as ADSL loop rate

** ADSL rates not yet set

Loop Conditioning									
<i>Remove Equip < 18ft</i>									
First Install	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485
Addl Install	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25
<i>Remove Equip > 18ft</i>									
First Install	\$775	\$775	\$775	\$775	\$775	\$775	\$775	\$775	\$775
Addl Install	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25
First Disconnect	\$775	\$775	\$775	\$775	\$775	\$775	\$775	\$775	\$775
Addl Disconnect	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25
<i>Remove Bridge Tap all</i>									
First Install	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485
Addl Install	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20

The UCL Rates listed above may be used for UCLs longer than 18kft until we are able to perform a cost study on long UCLs (18kft).

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

All the rates listed above would be subject to true-up once final cost numbers are determined.

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.

EXHIBIT 2

Subject: bellsouth's proposed language to bluestar
Date: Tue, 11 Jan 2000 06:56:52 -0600
From: Susan.M.Arrington@bridge.bellsouth.com
To: norton.cutler@bluestar.net

Norton,

I'm sorry Ive have a lot of trouble sending you this language.

Susan

 PROPLANG.DOC	Name: PROPLANG.DOC Type: Microsoft Word Document (application/msword) Encoding: base64
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BlueStar Networks, Inc.

BellSouth's Proposed Contract Language (Issue 1)

Amendment proposed to BlueStar with revised UCL definition language. BlueStar to review and provide comments.

BellSouth's Proposed Contract Language: (Issue 5)

BellSouth is currently developing and will make available to BlueStar as an interim process until the loop qualification interface is available, a process whereby xDSL loop orders that are rejected by BellSouth will be automatically converted to orders for UCLs without requiring BlueStar to resubmit the order. This interim process is expected to be available to BlueStar by the end of January 2000.

BellSouth's Proposed Contract Language: (Issue 8)

Attachment 2

2.1.7 Where facilities are available, BellSouth will install loops within a 5-7 business day interval. For orders of 14 or more loops, the installation will be handled on a project basis and the intervals will be set by the BellSouth project manager for that order. Some loops require a Service Inquiry (SI) to determine if facilities are available prior to issuing the order. **BellSouth will use best efforts to respond to the service inquiry within 3-5 business day period.** The interval for SI process is separate from the installation interval. For expedite requests by BlueStar, expedite charges will apply for intervals less than 5 days. The charges outlined in BellSouth's FCC #1 Tariff, Section 5.1.1 will apply. If BlueStar cancels an order for network elements and other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC #1 Tariff, Section. 5.4.

BellSouth's Proposed Language (Issue 7)

BellSouth will provide BlueStar with access to the same loop qualification information that is available to BellSouth for its retail customers, in accordance with the FCC's UNE Remand Order within the timeframe provided for by that Order. The Order requires ILECs to provide access to this information to CLECs within 120 days after the Order is published in the Federal Registry.

EXHIBIT 3

Subject: UCL Amendment And Further Negotiations

Date: Wed, 26 Jan 2000 15:50:07 -0600

From: Norton Cutler <norton.cutler@bluestar.net>

**To: BellSouth <susan.m.arrington@bridge.bellsouth.com>,
Cary Hassett <cary.hassett@bluestar.net>,
BellSouth <Michael.D.Wilburn@bridge.bellsouth.com>**

I am faxing you a signed copy of the proposed UCL amendment now, but we will need to conform it to type in Bluestar's name. It is imperative that we process this asap because BellSouth is cancelling increasing numbers of orders for length. Bluestar has been requesting a copy of the amendment with Bluestar's name for almost two weeks and patience is wearing thin. BellSouth's refusal to honor these orders without an amendment that BellSouth has refused to supply borders on bad faith.

We also need to have a meeting on the remaining issues ASAP. Bluestar has requested that the Tennessee Commission conduct the mediation that it suggested. The answer to the arbitration and the testimony filed on 1/25 in Florida prove that there is very little between our positions. Refusing to meet to narrow this gap again borders on bad faith.

Bluestar is ready to resolve all the issues let's not wait any longer to try.

EXHIBIT 4

© BELL SOUTH

Be N so. Abs

BellSouth Interconnection Services

675 West Peachtree Street, NW
Room 34S91
Atlanta, Georgia 30375

Susan Arrington
404-927-7513
Fax #: 404-529-7839

February 4, 2000

Mr. Norton Cutler
BlueStar Networks, Inc.
401 Church Street
24th Floor
Nashville, TN 37219

Dear Norton:

This letter will confirm the tentative agreement that we reached during our meeting on Wednesday, February 2, 2000, on the remaining arbitration issues. It is my understanding that we have resolved Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13. Issue 14 has been resolved for the state of Florida and Issue 15 is resolved for the state of Georgia.

To date, the parties have agreed to language and/or alternative solutions for Issues 1, 2, 5, 6 b,c,d and e, 7, 8 11, 12 and 13. I am working on revised language for Issues 3, 4, 6a, and 9, some of which is attached hereto.

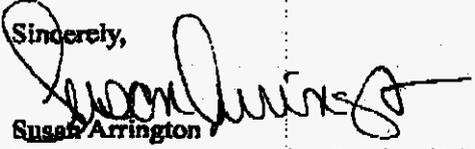
With respect to Issue 10, please confirm for me if Issue 10a and 10b relative to the rates for ADSL and HDSL are still an issue in BlueStar's arbitration. Since we did not discuss these rates in our meeting on Wednesday, February 2, BellSouth believes 10a and 10b to be resolved. If this is not correct, please let me know. I will have a proposal for BlueStar on the UCL and Loop Conditioning rates on Monday, February 7, 2000.

Attached hereto is the agreed upon language and additional proposed language. If BlueStar agrees with the attached language, an amendment will be prepared to incorporate the agreed upon language into BlueStar's agreements, once a Stipulation is filed with the appropriate regulatory authority to remove the agreed upon issues from arbitration.

The attached riser cable language is a new proposal from BellSouth. I understand that BlueStar would like to include language that allows BlueStar to connect its own cross-connect. I will confirm on Monday that this language can be included in the proposed language. I am also waiting on the riser cable rates, which I will forward to BlueStar as soon as they are available.

If you have any questions, please call me at (404) 927-7513.

Sincerely,


Susan Arrington
Manager - Interconnection Services/Pricing

**Agreed to Language between
BlueStar Networks, Inc. and BellSouth Telecommunications, Inc.**

Issue 1: The Amendment dated January 27, 2000, between BellSouth Telecommunications, Inc. and BlueStar Networks, Inc. resolves this issue.

Issue 2: BlueStar believes this issue is being adequately addressed via the Cooperative Line Sharing negotiations between BellSouth and a group of CLECs.

Issue 3: BellSouth to proposes the following language to resolve this issue:

BellSouth shall provide BlueStar with non-discriminatory access to the loop qualification information that is available to BellSouth, so that BlueStar can make an independent judgment about whether the loop is capable of supporting the advanced services equipment that BlueStar intends to install. Loop qualification information is defined as information, such as the composition of the loop material, including but not limited to: fiber optics or copper, the existence, location and type of any electronic and other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

BellSouth shall make such information available to BlueStar within 120 days after the FCC's UNE Remand Order is published in the Federal Register.

Issue 4: Same as Issue 3.

Issue 5: BellSouth proposed the following language, which resolves this issue:

BellSouth is currently developing and will make available to BlueStar as an interim process until the loop qualification interface is available, a process whereby xDSL loop orders that are rejected by BellSouth will be automatically converted to orders for UCLs without requiring BlueStar to resubmit the order. This interim

process is expected to be available to BlueStar by the end of January 2000.

Issue 6a Same as Issue 3.

Issue 6b BellSouth's proposed timeframe by which such interface would
Issue 6c be available was acceptable to BlueStar. Interfaces for xDSL
Issue 6e will be available between March 2000 and May 2000.
Issue 6f

Issue 7 BellSouth proposed the following language that resolves this issue:

2.1.7 Where facilities are available, BellSouth will install loops within a 5-7 business day interval. For orders of 14 or more loops, the installation will be handled on a project basis and the intervals will be set by the BellSouth project manager for that order. Some loops require a Service Inquiry (SI) to determine if facilities are available prior to issuing the order. **BellSouth will use best efforts to respond to the service inquiry within 3-5 business day period.** The interval for SI process is separate from the installation interval. For expedite requests by BlueStar, expedite charges will apply for intervals less than 5 days. The charges outlined in BellSouth's FCC #1 Tariff, Section 5.1.1 will apply. If BlueStar cancels an order for network elements and other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC #1 Tariff, Section. 5.4.

Issue 8 The Amendment language proposed for Issue 1 resolves this issue.

Issue 9 This issue may be resolved pending BlueStar's review of BellSouth's Operational Understanding agreement.

Issue 11 BlueStar believes that this issue will be addressed via the Cooperative Line Sharing negotiations between BellSouth and a group of CLECs.

Issue 12 This issue has been resolved by the Parties. BlueStar agreed to BellSouth's language.

Issue 13 This issue has been resolved. BlueStar has accepted BellSouth's proposed Performance Measurements.

Issue 16 BellSouth proposes the following language to BlueStar:

- 2.6.1** Where facilities permit and subject to applicable and effective FCC rules and orders, BellSouth shall offer access to its Unbundled Sub Loop (USL), Unbundled Subloop Concentration (USLC) System and Unbundled Network Terminating Wire (UNTW) elements. BellSouth shall provide nondiscriminatory access, in accordance with 51.311 and section 251 © (3) of the Act, to the subloop, on an unbundled basis and pursuant to the following terms and conditions and the rates approved by the Commission and set forth in this Attachment. Until such time as rates for Sub Loop elements have been approved by the Commission, CLEC-1 shall pay to BellSouth interim cost-based rates established by BellSouth, such rates to be subject to true-up in accordance with Section 17.3 of this Attachment.
- 2.6.2** Subloop components include but are not limited to the following:
- 2.6.2.1** Unbundled Sub-Loop Distribution;
- 2.6.2.2** Unbundled Sub-Loop Concentration/Multiplexing Functionality; and
- 2.6.2.3** Feeder.Unbundled Network Terminating Wire; and
- 2.6.2.4** Unbundled Sub-Loop Feeder.
- 2.6.3** Unbundled Sub-Loop (distribution facilities)
- 2.6.3.1** Definition
- 2.6.3.2** Subject to applicable and effective FCC rules and orders, the unbundled sub-loop distribution facility is dedicated transmission facility that Bellsouth provides from a customer's point of demarcation to a BellSouth cross-connect device. The BellSouth cross-connect device may be located within a remote terminal (RT), or a stand-alone cross-box in the field or in the equipment room of a building. There are two offerings available for Unbundled Sub-Loops (USL):
- 2.6.3.3** Unbundled Sub-Loop Distribution (USL-D) will include the sub-loop facility from the cross-box in the field up to and including the point of demarcation.
- 2.6.3.4** BellSouth will also provide sub-loop interconnection to the intrabuilding network cable (INC) (riser cable). INC is the distribution facility inside a subscriber's building or between buildings on one customer's same premises (continuous property

not separated by a public street or road). USL-INC (riser cable) will include the facility from the cross-connect device in the building equipment room up to an including the point of demarcation.

2.6.4. Requirements for Unbundled Sub-Loops Distribution Facilities

2.6.4.1 Unbundled Sub-Loop distribution facilities were originally built as part of the entire voice grade loop from the BellSouth central office to the customer network interface. Therefore, the Unbundled Sub-Loop may have load coils which are necessary for transmission of voice grade services. The Unbundled Sub-Loops will be provided in accordance with technical reference TR73600.

2.6.4.2 USL distribution facilities shall support functions associated with provisioning, maintenance and testing of the Unbundled Sub-Loop. In a scenario that involves connection at a BellSouth cross-box located in the field, CLEC-1 would be required to deliver a cable to the BellSouth remote terminal or cross-box to provide continuity to CLEC-1's feeder facilities. This cable will be connected, by a BellSouth technician, to a cross-connect panel within the BellSouth RT/cross-box. CLEC-1's cable pairs can then be connected to BellSouth's USL within the BellSouth cross-box by the BellSouth technician. In a scenario that requires connection in a building equipment room, BellSouth will install a cross connect panel on which access to the requested sub-loops will be connected. The CLEC's cable pairs can then be connected to the Unbundled Sub-Loop pairs on this cross-connect panel by the BellSouth technician.

2.6.4.3 BellSouth will provide Unbundled Sub-Loops where possible. Through the firm order Service Inquiry (SI) process, BellSouth will determine if it is feasible to place the required facilities where CLEC-1 has requested access to Unbundled Sub-Loops. If existing capacity is sufficient to meet the CLEC demand, then BellSouth will perform the set-up work as described in the next section 2.6.4.4. If any work must be done to modify existing BellSouth facilities or add new facilities (other than adding the cross-connect panel in a building equipment room as noted in 2.6.4.2) to accommodate CLEC-1's request for Unbundled Sub-Loops, BellSouth will use its Special Construction (SC) process to determine the additional costs required to provision the Unbundled Sub-Loops. CLEC-1 will then have the option of paying the one-time SC charge to modify the facilities to meet CLEC-1's request.

2.6.4.4 During the initial set-up in a BellSouth cross-connect box in the field, the BellSouth technician will perform the necessary work to

splice the CLEC's cable into the cross-connect box. For the set-up inside a building equipment room, BellSouth will perform the necessary work to install the cross-connect panel that will be used to provide access to the requested USLs. Once the set-up is complete, the CLEC requested sub-loop pairs would be provisioned through the service order process based on the submission of a LSR to the LCSC.

2.6.5 Interface Requirements

2.6.5.1 Unbundled Sub-Loop shall be equal to or better than each of the applicable interface requirements set forth in the following technical reference:

2.6.5.1.1 Telcordia (formerly BellCore) TR-NWT-000049, "Generic Requirements for Outdoor Telephone Network Interface Devices," Issued December 1, 1994;

EXHIBIT 5

Michael Bressman

From: Susan.M.Arrington@bridge.bellsouth.com
Sent: Friday, February 11, 2000 1:01 PM
To: norton.cutler@bluestar.net
Cc: Stephen.Klimacek@BellSouth.COM
Subject: BellSouth's Proposed Stipulation



BellSouth's.txt



STP.DOC

BellSouth's

Norton,

Attached is BellSouth's proposed Stipulation and Amendment. Please note that with respect to Issue 5, this interim process is not yet available, but is being developed. I do not have a set date that I can commit to at this time.

I believe that the attached documents propose to settle Issues 5, 6a, 7 and 9 in addition to the issues 2 and 11 that will be addressed through the line share negotiations and the other issues that have previously been resolved, 1, 6b,c,d, and e, 8, 12 and 13.

The remaining outstanding issues are: 3, 4, 10, 15 and 16 as well as 14 in all states except Florida.

Call me if you have any questions.

Susan

DRAFT of 2/11/00**STIPULATION**

THIS STIPULATION between BellSouth Telecommunications, Inc. ("BellSouth") and BlueStar Networks, Inc. ("BlueStar") is entered into and effective this ___th day of February, 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 Florida Public Service Commission, the Georgia Public Service Commission, the Kentucky Public Service Commission, and the Tennessee Regulatory Authority, (collectively, the "Commissions");

WHEREAS, Issues¹ 1, 6(b,c,d, and e), 8, 12, and 13 had previously been resolved by the Parties;

WHEREAS, Issue 14 was removed from the Florida arbitration by an order of the Florida Public Service Commission's staff dated January 25, 2000, which is the subject of a Motion for Reconsideration filed February 4, 2000;

WHEREAS, BlueStar is participating in BellSouth's cooperative line sharing negotiations along with a number of other CLECs that will work in a cooperative effort to determine the rates, terms and conditions for line sharing including, conducting a line sharing trial.

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

WHEREAS, the Parties have reached a resolution on many of the issues.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Pursuant to the attached Amendment dated February __, 2000 between the Parties, the Parties have resolved Issues 5, 6a, 7, 9, and only in Florida, 10a and 10b.
2. As a result of the cooperative line sharing negotiations, BlueStar believes that Issues 2 and 11 of the arbitration proceeding will be addressed during the cooperative negotiations and therefore agrees to remove these issues from this proceeding.
3. All other issues not resolved by the Parties remain pending in this proceeding, provided however, that with respect to Issue 14, BlueStar reserves all legal rights to seek review or appeal of the Florida Public Service Commission's Order.

¹ The form and numbering of the issues contained in this Stipulation correspond with the form and numbering of the "Tentative List of Issues" attached as Appendix A to the Order of the Florida Public Service Commission, Docket No. 991838-TP (January 21, 2000).

DRAFT of 2/11/00

4. Either or both of the Parties shall submit this Stipulation to the Commissions.

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: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

DRAFT of 2/11/00

**AMENDMENT TO THE
AGREEMENT BETWEEN
BLUESTAR NETWORKS, INC.
AND BELL SOUTH TELECOMMUNICATIONS, INC.
DATED DECEMBER 28, 1999
(Florida, Georgia, Kentucky and 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").

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 Interconnection Agreement entered into between the Parties is hereby amended to delete Sections 2.1.7 of Attachment 2 in its entirety and replace it with new Section 2.1.7 of Attachment 2 as follows:

2.1.7 Where facilities are available, BellSouth will install loops within a 5-7 business day interval. For orders of 14 or more loops, the installation will be handled on a project basis and the intervals will be set by the BellSouth project manager for that order. Some loops require a Service Inquiry (SI) to determine if facilities are available prior to issuing the order. BellSouth will use best efforts to respond to the service inquiry within a 3-5 business day period. The interval for SI process is separate from the installation interval. For expedite requests by BlueStar, expedite charges will apply for intervals less than 5 days. The charges outlined in BellSouth's FCC #1 Tariff, Section 5.1.1 will apply. If BlueStar cancels an order for network elements and other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC #1 Tariff, Section. 5.4.

2. The Interconnection Agreement entered into between the Parties is hereby amended to delete Section ____ in its entirety and replace it with new Section ____ as follows:

DRAFT of 2/11/00

BellSouth shall provide BlueStar with non-discriminatory access to the loop qualification information that is available to BellSouth, so that BlueStar can make an independent judgment about whether the loop is capable of supporting the advanced services equipment that BlueStar intends to install. Loop qualification information is defined as information, such as the composition of the loop material, including but not limited to: fiber optics or copper, the existence, location and type of any electronic and other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

BellSouth shall make such information available to BlueStar in accordance with the FCC's UNE Remand Order. BellSouth is developing an electronic interface to its Facility Assignment Control System ("LFACs") with a targeted date of third quarter 2000 for implementation. Electronic access to BellSouth's Loop Qualification System (LQS) is also available.

3. The Interconnection Agreement entered into between the Parties is hereby amended to delete Section ____ in its entirety and replace it with new Section ____ as follows:

Pursuant to the Appendix A of the document entitled, "Operational Understanding between BellSouth Maintenance Centers and CLEC Maintenance Centers for Local Services", BlueStar may request escalations for repair services.

4. The Interconnection Agreement entered into between the Parties is hereby amended to include a new Section ____ as follows:

BellSouth is currently developing and will make available to BlueStar as an interim process until the loop qualification interface is available, a process whereby xDSL loop orders that are rejected by BellSouth will be automatically converted to orders for UCLs without requiring BlueStar to resubmit the order.