



STOLL · KEENON · OGDEN  
PLLC

2650 AEGON Center  
400 West Market Street  
Louisville, KY 40202-3377  
(502) 568-9100  
Fax: (502) 568-5700  
[www.skofirm.com](http://www.skofirm.com)

DOUGLAS F. BRENT  
502-568-5734  
[douglas.brent@skofirm.com](mailto:douglas.brent@skofirm.com)

**BY HAND DELIVERY**

March 3, 2006

Elizabeth O' Donnell, Esquire  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

**RECEIVED**  
MAR - 3 2006  
PUBLIC SERVICE  
COMMISSION

Case No. 2006-00099

Dear Ms. O'Donnell:

Enclosed are an original and ten copies of Dialog Telecommunications Inc.'s Petition for Arbitration with BellSouth Telecommunications, Inc. We are delivering a copy of this filing to BellSouth. Please indicate receipt of this filing by placing your file stamp on the extra copy and return to me via the enclosed self-addressed, stamped envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

  
Douglas F. Brent

**RECEIVED**

**COMMONWEALTH OF KENTUCKY**

MAR 03 2006

**BEFORE THE PUBLIC SERVICE COMMISSION**

**PUBLIC SERVICE  
COMMISSION**

Petition of: )  
Dialog Telecommunications for )  
Arbitration of Certain Terms and ) Case No. 2006-00 099  
Conditions of Proposed Agreement with )  
BellSouth Telecommunications, Inc. ) Filed March 3, 2006  
Concerning Interconnection Under The )  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

**PETITION OF DIALOG TELECOMMUNICATIONS  
FOR ARBITRATION WITH BELLSOUTH  
UNDER THE TELECOMMUNICATIONS ACT OF 1996**

Dialog Telecommunications, Inc. ("Dialog") hereby petitions the Kentucky Public Service Commission ("Commission") to arbitrate, pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act"), certain terms and conditions of a proposed interconnection agreement ("Agreement") between Dialog and BellSouth Telecommunications, Inc. ("BellSouth").

**PARTIES**

1. Dialog's full name and its official business address:

Dialog Telecommunications, Inc.  
756 Tyvola Road  
Suite 100  
Charlotte, NC 28217

Dialog is a North Carolina corporation and is a utility authorized to provide local exchange service and exchange access service in Kentucky. Dialog is a "telecommunications carrier" and "local exchange carrier" under the Act.

2. The names and addresses of Dialog's representatives in this proceeding are as follows:

C. Kent Hatfield  
Douglas F. Brent  
Deborah T. Eversole  
STOLL KEENON OGDEN PLLC  
2650 AEGON Center  
400 West Market Street  
Louisville, Kentucky 40202  
(502) 568-9100

3. BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth is a "Bell Operating Company" as defined by 47 U.S.C. § 153(4) and an "incumbent local exchange carrier" ("ILEC") as defined by 47 U.S.C. § 251(h).

#### **JURISDICTION**

4. The Commission has jurisdiction to resolve the issues raised in this Petition under the Act. This Petition is timely filed.

#### **NEGOTIATIONS**

5. BellSouth currently offers interconnection, network elements and other services to Dialog under an interconnection agreement previously approved by the Commission, which had a three-year term. In Case No. 2004-00369, the parties agreed to continue to operate under the terms of that agreement during negotiations to reach a new agreement. Pursuant to section 252 of the Act, the parties entered into negotiations for the follow-on Agreement that is the subject of this Petition. By agreement, the

negotiation period was extended by Dialog and BellSouth such that the final day for filing this petition is March 3, 2006. Such negotiations have taken place and have dealt with, among other things, general terms and conditions, unbundled network elements, interconnection, collocation, ordering and billing. The parties have been able to resolve most of the issues raised during the negotiations, but a few issues remain unresolved. Those issues identified by Dialog are addressed in the Statement of Unresolved Issues below.

6. Dialog requests that the Commission approve an Agreement between Dialog and BellSouth reflecting agreed upon language to be submitted by the parties and the resolution in this arbitration proceeding of the unresolved issues described below.

#### **STATEMENT OF UNRESOLVED ISSUES**

The unresolved issues between Dialog and BellSouth, as well as Dialog's position as to each unresolved issue, are detailed below. Due to the imminent close of the window for filing for a formal request for arbitration, Dialog is compelled to seek arbitration on several issues that are currently pending and expected to be resolved in other Commission cases. Primarily, this petition incorporates unresolved issues in the Commission's pending "change-of-law" proceeding involving BellSouth, Case No. 2004-00427. Dialog incorporates herein the statement of issues and summary of the positions of BellSouth and CompSouth in Case No. 2004-00427 and adopts the positions of CompSouth in that docket. This petition also incorporates four issues (Nos. 36, 37, 38 and 65) in a pending arbitration proceeding, Case No. 2004-00044, which is on rehearing. Regarding both referenced cases and the issues from those cases referenced herein,

Dialog and BellSouth have agreed in principal that the results of the Commission's decisions in those cases will be incorporated into the Interconnection Agreement that the parties have negotiated to date. In addition, the parties have reached apparent resolution in several areas of disagreement but have not yet reached agreement on contract language to incorporate this apparent resolution for those issues. Dialog expects that the parties will reach agreement on language for those issues. However, in the event that no agreement is reached on language, Dialog reserves the right to amend this petition. Dialog will continue to negotiate with BellSouth to resolve the issues that are presented in this petition for arbitration.

**ISSUE 1      What is the appropriate TELRIC rate for batch or bulk migrations when Dialog requests conversion from a UNE-P loop and port combination to a UNE loop configuration?**

Dialog's Position

The Commission should establish a TELRIC-based rate to be applied when Dialog submits a batch or bulk migration order for the conversion of its existing UNE-P customers' service to service provided through a UNE loop configuration.

The term UNE-P refers to the combination of unbundled network elements consisting of a local loop, local switching, port and shared transport network elements that a CLEC obtains from an ILEC. As the Commission is aware, UNE-P has accounted for the vast majority of competitive activity for consumer and small business local services in Kentucky. With the elimination of unbundled switching as a Section 251 unbundled network element in March 2006, Dialog has been compelled to obtain its own

switch to provide the switching function for service it provides over loops it uses now *and will continue to use to serve existing customers.*

In order for a CLEC to continue to compete in the mass market by making the transition from UNE-P to the use of unbundled loops in conjunction with its own switching, the FCC in its Triennial Review Order, 18 FCC Rcd 16978 (2003) (“*TRO*”), found that there must be “a seamless, low cost batch cut process for switching mass market customers from one carrier to another...” *TRO*, par. 487. The FCC concluded that a batch cut process spreading loop migration costs among a large number of lines would decrease per-line cut-over costs. *Id.* The FCC further found that the batch cut process should “result in efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by line basis.” *Id.*, Par. 489.

In the *TRO*, the FCC delegated its authority and requested that this Commission establish a batch cut process and rates within nine months of the FCC Order. With regard to rates for batch cut conversions, the FCC directed that they should be TELRIC-based rates and that those rates “should reflect the efficiencies associated with batch migration of loops to a competitive LECs switch, either through a reduced per-line rate or through volume discounts.” *TRO*, Par. 489.

Responding to the FCC’s request in the *TRO* that state commissions take certain actions designed to alleviate impairment, on October 2, 2003, this Commission established Case No. 2003-00379 to exercise its delegated authority to determine the existence of impairment in Kentucky and to investigate, among other things, alleviation of this impairment through an appropriate batch cut or bulk migration process and rates to be applied to that process. The Commission established a procedural schedule which set

dates for the filing of direct and rebuttal testimony, a hearing, and post-hearing briefs. The Commission's staff immediately raised the issue of the TELRIC rates that should apply to batch-cut activities, and sent a staff data request to BellSouth and other incumbent providers on October 10, 2003 which, among other things, asked "what are the appropriate TELRIC rates for the batch-cut activities?" See Staff data request 6(e), dated October 10, 2003.

Due to intervening circumstances the Commission never held a hearing and could not complete its impairment inquiry. As the Commission is aware, on March 2, 2004, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision remanding in part and vacating in part the FCC's *TRO* order. *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (2004) ("*USTA II*"). The Court's vacatur created uncertainty as to the role of state commissions in deciding questions related to impairment under the Act. As a result, on April 14, 2004, the Commission issued an order which placed the proceedings in Case No. 2003-000379 in abeyance pending further orders of the Commission. Since the Commission did not conclude the *TRO*-related investigation with a decision and order, the Commission established neither a Batch or Bulk Migration process nor a TELRIC rate to be applied to the conversion of a UNE-P loop and port combination configuration to a UNE loop configuration.

As a result, there are no lawfully established, Commission approved TELRIC-based rates for a batch or bulk migration. The Commission should establish such a rate in this proceeding. Moreover, the Commission must determine if it is reasonable for BellSouth to impose on Dialog a non-recurring charge related to the loop that Dialog currently uses in the UNE-P configuration and will continue to use to serve Dialog's

existing customer base. Dialog's position is that since conversion from UNE-P to UNE-L does not require a new loop or activation of an existing loop, it is unreasonable for BellSouth to impose a non-recurring charge for a loop. Dialog does not dispute application of a non-recurring charge for the cross-connect needed to connect the loop in the existing UNE-P arrangement from its termination point on the Main Distribution Frame to Dialog's collocation space and equipment, and does not dispute that an ordering charge may be appropriate as part of the change. However, when Dialog converts its existing UNE-P base on a batch or bulk migration process to meet the March 11, 2006 deadline the *TRRO* established for conversion, Dialog should not pay a non-recurring charge for the loop and, going forward, should be required to pay only the TELRIC-based monthly recurring charge for the loop it purchases as a network element to connect to its switch.

**ISSUE 2 Should the rate established by the Commission for batch or bulk migrations from UNE-P to UNE-L be applied to Dialog's conversions which were required by the TRRO to be submitted by March 11, 2006?**

Dialog's Position

Yes. After the Commission establishes a TELRIC-based rate for batch or bulk migrations, that rate should be applied to Dialog's bulk migration conversions of its existing UNE-P customer base from UNE-P to UNE-L that are required to be submitted by March 11, 2006. Since the bulk migration of Dialog's existing UNE-P customer base from UNE-P to UNE-L will only occur once and during a specific time frame – between today and March 11, 2006 – the establishment of a lawful, Commission approved TELRIC-based rate to be applied only in the future would be meaningless for Dialog.

Not only must the Commission set the rate, it should determine that BellSouth may not retain any amounts collected in excess of the rate determined by the Commission.

As this Commission is aware, on February 4, 2005, the FCC issued its *TRRO* in response to *USTA II*. In that order, the FCC directed that unbundled local switching as a Section 251 element would not be available after March 11, 2005 and provided BellSouth and the CLECs with a transition period of one year to convert UNE-P lines to either a BellSouth resale service or to order UNE-Loops and move the UNE-P customers to the CLEC's switch. Since Dialog's customer base is in rural western Kentucky in the Owensboro LATA, Dialog decided in February 2005 that conversion from UNE-P to a BellSouth resale service was not economic without a substantial increase to its customers rates. As a result, Dialog made substantial investments in circuit switching equipment and proceeded to negotiate with BellSouth to establish interconnection trunking arrangements to exchange traffic. Those interconnection trunking arrangements are being finalized, and Dialog is in testing with BellSouth to insure sufficient capacity is in place to serve its customers once the conversion from UNE-P to UNE-L is completed. In addition, Dialog is establishing collocation space in the BellSouth central offices where its UNE-P customers' lines presently terminate and has been submitting individual UNE-Loop test orders to ensure that customers will have a seamless transition from BellSouth's switch to the Dialog switch.

Dialog has been negotiating with Bellsouth for months to enter into an interconnection agreement that will permit Dialog to convert UNE-P customers to a UNE-Loop by the March 11, 2006 date specified in the *TRRO*, and permit Dialog to utilize its switch to serve its existing customer base. As a result of those negotiations, the

parties have agreed, or are near agreement, on all issues except the rate to be paid by Dialog on a per line of service basis to connect the loop that is presently used by Dialog's UNE-P customer to the transmission equipment in Dialog's collocation space in that same end office.

In the absence of a lawful, Commission-approved TELRIC-based rate for batch or bulk conversions, BellSouth is attempting to charge Dialog the full non-recurring charge for the continued-use of the loop that currently connects Dialog's UNE-P customer to the central office switch. This is inappropriate in that the costs for the establishment and activation of the loop for Dialog's UNE-P customer have already been recovered by BellSouth. BellSouth's proposed application of the UNE-Loop NRC to a situation where Dialog is migrating a Dialog customer from UNE-P to service via a Dialog switch constitutes double recovery of its costs, is inappropriate, unreasonable, and should not be allowed. BellSouth is attempting to impose a significant financial penalty on carriers attempting to transition from BellSouth switching. The loop NRCs BellSouth is attempting to impose on Dialog range from \$46.66 to \$17.05 for SL1 loops.

**ISSUE 3 (a) How should line conditioning be defined and what should BellSouth's obligations be with respect to line conditioning?**

**ISSUE 3(b) Should the interconnection agreement contain specific provisions limiting the availability of line conditioning to copper loops of 18,000 feet or less?**

**ISSUE 3(c) Under what rates terms and conditions should BellSouth be required to perform line conditioning to remove bridged taps to do so?**

Dialog's Position:

In the Commission's September 25, 2005 Order in Case No. 2004-00044, on Issues 36, 37 and 38, the Commission concluded that line conditioning is a routine network modification and not the creation of a "superior network" as suggested by BellSouth. As a result, the Commission found that BellSouth must provide line conditioning when requested by a CLEC as specified in 47 C.F.R. § 51.319(a). The Commission further found that BellSouth was obligated to remove load coils on loops in excess of 18,000 feet as BellSouth routinely does when provisioning T-1 circuits to its retail customers. As a result, the Commission directed that BellSouth was obligated to remove load coils on loops in excess of 18,000 feet for CLECs and that no additional charge would apply above and beyond the Commission approved TELRIC rates for such loop modifications. Finally, the Commission found that BellSouth was not permitted to assess special construction rates pursuant to its FCC tariff for the removal of bridged taps resulting in combined levels of less than 2,500 feet. The Commission concluded that the removal of bridged taps should be performed at TELRIC rates.

Dialog's position is that the Commission was correct in its findings and conclusions in its September 25, 2005 Order in Case No. 2004-00044 on Issues 36, 37 and 38 and that it should not grant BellSouth's Motion requesting that the Commission reconsider its decision on these issues.

The parties have agreed that Issues 3(a) through 3(c) of this petition are identical to certain issues pending in Case No. 2004-00044, in the arbitration between the Joint CLECs and BellSouth ("Joint CLEC Arbitration"). The parties agree that the final decision by the Commission on such issues in the Joint CLEC Arbitration will resolve Issues 3(a) through 3(c) in Dialog's arbitration with BellSouth.

**ISSUE 4 Should BellSouth be allowed to charge Dialog a Transit Intermediary Charge (TIC) for the transport and termination of local traffic and ISP-bound traffic?**

Dialog's Position:

In the Commission's September 25, 2005 Order in Case No. 2004-00044, in Issue 65, the Commission concluded that BellSouth is required to provide the transit function for third party carriers to indirectly interconnect with each other. The Commission rejected BellSouth's request to impose a TIC additive and further told BellSouth that with respect to the Joint CLECs, the "rates previously charged" should be contained in the new interconnection agreements "until and unless BellSouth can justify the TIC additive." Order at p. 15. Dialog understands the Commission's Order to mean that absent a newly-approved TIC rate, BellSouth may charge only the TELRIC-based rates for the tandem switching and common transport functions utilized by CLECs when BellSouth is the transit provider.

Dialog's discussions with BellSouth, however, have made it apparent that BellSouth believes that the Commission's September 25, 2005 Order on this issue will permit it to charge a TIC additive even without the Commission's approval of the rate. BellSouth interprets the reference to "rates previously charged" as a reference to rates from old interconnection agreements. Accordingly, BellSouth has asserted that the interconnection agreement that Dialog previously opted into contained a TIC rate. Dialog believes this is a misreading of the Order, and that the reference to "rates previously charged" can only be read in the context of the Order to mean rates that BellSouth and the Joint CLECs had agreed are not in dispute with respect to transit

traffic. Regardless, Dialog is and was a UNE-P-based provider. The TIC rate is not “charged” on UNE-P arrangements. Therefore, even if BellSouth’s reading of the Commission’s order were correct, the “rates previously charged” by BellSouth to Dialog could not include the TIC charge in Dialog’s current interconnection agreement.

Dialog’s position is that the Commission was correct in its findings and conclusions in its September 25, 2005 Order in Case No. 2004-00044 on Issue 65 and that it should not grant BellSouth’s Motion requesting that the Commission reconsider its decision on that Issue. In addition, Dialog would request that the Commission clarify that BellSouth may not charge a TIC charge “until and unless BellSouth can justify the TIC additive” in a filing made and approved by the Commission.

The parties have agreed that Issue 4 is identical to an issue pending in Case No. 2004-00044, in the Arbitration between the Joint CLECs and BellSouth (“Joint CLEC Arbitration”). The parties further agree that the final decision by the Commission on this issue will resolve Issue 4 in Dialog’s arbitration with BellSouth.

**ISSUE 5 How should the Commission’s decision in Case No 2004-00427, Petition to Establish a Generic Docket to Consider Amendments to Interconnection Agreements resulting from Changes of Law, be incorporated into the parties’ interconnection agreement?**

Dialog’s Position:

Dialog incorporates the statement of Issues and summary of the positions of CompSouth and adopts the position of CompSouth in Case No. 2004-00427.

As of the date of the filing of this Arbitration petition, the Commission has not issued its decision in Case No. 2004-00427. The parties have agreed to incorporate into their interconnection agreement the decision by the Commission in that matter.

**ISSUE 6 Under what conditions can BellSouth require Dialog to establish direct interconnection trunking to BellSouth's end offices?**

Dialog's Position:

The parties disagree as to when will Dialog be required to establish direct interconnection trunking to a BellSouth End Office. Under the Act, Dialog is permitted to establish a single point of interconnection in the LATA and establish trunking to BellSouth's tandem switching to deliver intraLATA local and toll traffic. In the provisions of the interconnection agreement negotiated and agreed to as of this date, BellSouth and Dialog agree on several ways by which this tandem interconnection trunking will be established.

Dialog and BellSouth have also agreed that Dialog will establish direct end office interconnection trunking to resolve issues of tandem exhaust. In fact, in Dialog's provisioning of interconnection trunking anticipating its move of Dialog's customer base from UNE-P to a UNE-L configuration utilizing Dialog's switch, Dialog has worked with BellSouth and established certain direct end office interconnection trunking to assist BellSouth with the tandem exhaust problem at the BellSouth tandem in Madisonville, Kentucky. Dialog's agreement to establish direct end office interconnection trunking in this instance came about after negotiations between network engineers in the normal course of traffic planning to accommodate anticipated traffic loads.

The issue presented for resolution in this Petition, however, is when BellSouth can force Dialog to establish direct end office interconnection trunking. BellSouth proposed that Dialog be required to establish such trunking when the traffic terminating to such end office exceeds, or is forecasted to exceed, a single DS-1 of traffic per month.

Such a proposal is uneconomic for Dialog. Dialog's proposal is that Dialog be required to establish such trunking when the traffic terminating to such end office exceeds a single DS-3 of traffic per month. BellSouth has agreed to this threshold in an interconnection agreement that it executed in July, 2005 with another CLEC - KMC Data. In addition, Dialog believes its position is consistent with a number of Commission rulings, including most recently the AT&T Broadband dispute with ALLTEL, Case No. 2003-00023, in which the Commission has held that one point of interconnection would be provided per LATA and another point would be established when traffic reaches a DS-3 level.

The competing language proposals on this issue are presented below.

Dialog's Proposed Contract Language for Attachment 3, Paragraph 4.10.4.2.2:

Traffic Volume. To the extent either Party has the capability to measure the amount of traffic between <<customer\_short\_name>>'s switch and a BellSouth End Office and where such traffic consistently exceeds or is forecasted to consistently exceed a single **DS3 of traffic per month**, then the Parties shall install and retain direct end office trunking sufficient to handle such traffic volumes. Either Party will install additional capacity between such points when overflow traffic exceeds or is forecasted to exceed a **single DS3 of traffic per month**. In the case of one-way trunking, additional trunking shall only be required by the Party whose trunking has achieved the preceding usage threshold.

BellSouth's Proposed Contract Language for Attachment 3, Paragraph 4.10.4.2.2:

Traffic Volume. To the extent either Party has the capability to measure the amount of traffic between <<customer\_short\_name>>'s switch and a BellSouth End Office and where such traffic consistently exceeds or is forecasted to consistently exceed a single **DS1 of traffic per month**, then the Parties shall install and retain direct end office trunking sufficient to handle such traffic volumes. Either Party will install additional capacity between such points when overflow traffic exceeds or is forecasted to exceed a **single DS1 of traffic per month**. In the case of one-way trunking,

additional trunking shall only be required by the Party whose trunking has achieved the preceding usage threshold.

For the reasons stated, the Commission should approve Dialog's proposed contract language for Attachment 3, Paragraph 4.10.4.2.2 to be included in the parties interconnection agreement.

**ISSUE 7      Should BellSouth have the ability to modify unilaterally the terms of this agreement based upon changes in "other legal requirements"? (General Terms & Conditions, Section 31.3)**

Dialog recognizes that BellSouth needs to be able to modify processes and procedures which may affect all CLECs in situations that result from changes resulting from the Change Control Process (CCP), revisions to ANSI or Telcordia guidelines or OBF guidelines, or other industry standards, but Dialog does not agree that BellSouth must also retain the broader ability to modify the terms of an agreement with a specific CLEC in the guise of incorporating new standards or industry guidelines as legal requirements.

**REQUEST FOR RELIEF**

WHEREFORE, Dialog respectfully requests that the Commission grant the following relief:

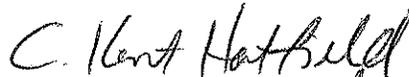
- A. Arbitrate the unresolved issues between Dialog and BellSouth within the timetable specified in the Act;
- B. Issue an order directing the parties to submit an interconnection agreement reflecting any agreed upon language and reflecting the resolution in this arbitration proceeding of the unresolved issues described above;

C. Retain jurisdiction of this arbitration until the parties have submitted, and the Commission has approved, an agreement in accordance with Section 252(e) of the Act;

D. Retain jurisdiction of this arbitration and the parties hereto as necessary to enforce the agreement; and

E. Take such other and further actions as it deems appropriate.

RESPECTFULLY SUBMITTED, this 3<sup>rd</sup> day of March, 2006



---

C. Kent Hatfield  
Douglas F. Brent  
Deborah T. Eversole  
STOLL KEENON OGDEN PLLC  
2650 AEGON Center  
400 West Market Street  
Louisville, Kentucky 40202  
(502) 568-9100

*Attorneys for Dialog Telecommunications*