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General Counsel/Kentucky

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March 5, 2007

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

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PUBLIC SERVICE
COMMISSION

Re: Dialog Telecommunications, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
KPSC 2005-00095

Dear Ms. O'Donnell:

Enclosed for filing in the above-referenced matter are the original and ten (10) copies of BellSouth's Motion for Rehearing and/or Reconsideration.

Sincerely,

Mary K. Keyer

cc: Parties of Record

669848

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|------------------------------------|---|---------------------|
| DIALOG TELECOMMUNICATIONS, INC. |) | |
| |) | |
| v. |) | CASE NO. 2005-00095 |
| |) | |
| BELLSOUTH TELECOMMUNICATIONS, INC. |) | |

MOTION FOR REHEARING AND/OR RECONSIDERATION

Pursuant to KRS § 278.400, BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("AT&T Kentucky")¹, respectfully requests that the Kentucky Public Service Commission ("Commission") reconsider one material aspect of its order dated February 8, 2007 ("*Order*").² In its *Order*, the Commission noted that Dialog Telecommunications, Inc. ("Dialog") had paid sales tax on unbundled network elements ("UNEs") purchased from AT&T Kentucky.³ Subsequent to the Commission's *Order*, AT&T Kentucky has determined that Dialog withheld payments of subsequent invoices for an amount equivalent to the sales tax, thereby rendering this statement inaccurate. Specifically, Dialog has failed to pay over \$530,000 in an attempt to avoid paying sales tax on UNEs purchased by Dialog. As demonstrated below, through unauthorized and inappropriate "self-help" - specifically, by not paying substantial portions of certain bills for services rendered - Dialog has effectively avoided paying sales tax on UNEs for the period of

¹ Due to the merger between BellSouth Corporation and AT&T, Inc., in December 2006, BellSouth Telecommunications, Inc., is now doing business in the Commonwealth of Kentucky as AT&T Kentucky and will be referred to herein as "AT&T Kentucky" rather than "BellSouth."

² Under KRS 278.400, an application for rehearing is due 20 days after service of a Commission order. The Commission's *Order* was issued on February 8, 2007. The 20th day after service was Saturday, March 3. This Motion is filed the first business day after March 3 and is timely filed.

³ *Order* at 3.

time of March 2002 through December 2005.⁴ Accordingly, rehearing and/or reconsideration is necessary so that the Commission can correct this error of fact and issue an *Order* that reflects the true situation – that is, Dialog has withheld payment of the tax in question and must pay the tax amount immediately to AT&T Kentucky.⁵ Upon such payment, AT&T Kentucky remains ready, willing, and able to pursue a refund of such amount as set forth in the *Order* and in accordance with the Parties' interconnection agreement.

STANDARD FOR REHEARING

KRS § 278.400 allows any party to apply for rehearing with respect to “any of the matters” determined by the Commission. The primary purpose of rehearing is for the Commission to consider its order in light of clarification of the facts used by the Commission to reach its decisions. See *Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2000-120 (Feb. 26, 2001). The Commission, in construing KRS § 278.400, has determined that “the administrative agency retains full authority to reconsider or modify its order during the time it retains control over any question under submission to it.” *Kentucky Power Company*, Case No. 7489 (Jun. 27, 1980). Further, the Commission has determined that it can reconsider an order based upon evidence adduced at the initial hearing or new evidence presented at rehearing. See *Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2000-120 (Feb. 26,

⁴ Effective January 1, 2006, the Kentucky sales tax law was amended to exempt from tax communications services sold to a communications service provider for resale or for incorporation into a communications service for sale, including the sale of unbundled network elements. KRS 139.195(4)(b)(7)(d). Therefore, Dialog's claim is moot for periods after December 2005.

⁵ If it is Dialog's position that it has paid the sales tax at issue in this case, then Dialog's services should be discontinued for failure to pay since Dialog has withheld over \$530,000 in what it claimed in the dispute process were charges for prior taxes paid. See Roger Edmonds Affidavit, attached hereto as Exhibit 1, and E-mail from Jim Bellina to Leisa Mangina dated February 13, 2007, attached hereto as Exhibit 2.

2001). AT&T Kentucky requests that the Commission invoke its authority under KRS § 278.400 and grant rehearing so that it can correct an error of fact identified herein.

ARGUMENT

Almost two years ago, Dialog filed a complaint with the Commission wherein it asserted for purposes relevant here, that AT&T Kentucky had breached the Parties' interconnection agreement by attempting to collect and remit sales tax on Dialog's purchase of UNEs from AT&T Kentucky. As noted in AT&T Kentucky's Amended Response to Dialog's Complaint, Dialog in March 2005, made a payment in the amount of \$373,977.20, that AT&T Kentucky applied in such part as to satisfy the amount of unpaid taxes.⁶ In December 2005, AT&T Kentucky moved to dismiss Dialog's tax claim based on the fact that AT&T Kentucky was (and remains) willing to pursue a refund of sales taxes on UNEs that Dialog had actually paid. In May 2006, Dialog filed a letter with the Commission wherein it opposed AT&T Kentucky's motion. In such letter, Dialog affirmatively asserted that:

[W]hile waiting for the Commission to decide the narrow question of law raised in Count II of Dialog's complaint [the tax on UNEs issue], Dialog in good faith continued to honor BellSouth's erroneous invoices for "sales tax" on network elements. In addition, *as it always has*, Dialog has continued to pay Kentucky sales taxes on its sales of communications services to its thousands of Kentucky customers. In other words, Dialog has been doubly burdened with "tax" obligations while awaiting action on the complaint.

Letter of Douglas F. Brent to Beth O'Donnell, Executive Director of the Kentucky Public Service Commission, dated May 5, 2006, at 2 (emphasis in original). Mr. Brent's letter is attached hereto as Exhibit 3.

⁶ See AT&T Kentucky Amended Response, p. 3, fn. 4.

In short, Dialog represented to the Commission in **May 2006** that it had continued to pay the tax in question and had been “doubly burdened” by: (i) being forced to pay sales tax on UNEs to AT&T Kentucky and (ii) collecting and remitting sales tax to the Kentucky Department of Revenue on services Dialog provided to its own customers. This representation was false and remains false.

On April 27, 2006, prior to Dialog's May 5, 2006, representation to this Commission that Dialog had been paying the tax in question, Dialog submitted a billing dispute to AT&T Kentucky associated with this same sales tax on UNEs. (Edmonds Affid., ¶ 7) The disputed tax amount as asserted by Dialog on April 27, 2006, was \$538,202.10. (Edmonds Affid., ¶ 7) The disputed tax amount approximates the sales tax on UNEs that AT&T Kentucky had billed Dialog for the purchase of UNEs from the time period of March 2002 through December 2005. (Edmonds Affid., ¶ 7) In addition to disputing such taxes, Dialog was engaged in a “self-help” effort to “recoup” all sales tax previously paid by refusing to pay substantial portions of bills for services rendered. (Edmonds Affid., ¶ 9) Specifically, Dialog “short paid” three invoices for UNE-P services issued March 25, April 25, and May 25, 2006, respectively, in the total amount of \$440,533.65. (Edmonds Affid., ¶ 7) Coupled with other amounts identified by Dialog as being associated with the sales tax dispute that Dialog refused to pay, the total amount Dialog owes exceeds \$530,000. (Edmonds Affid., ¶ 8) Indeed, following issuance of the Commission's *Order*, Dialog confirmed via e-mail that it had short paid certain invoices and thus was not looking for (and was not entitled to) any tax refund. See Bellina E-mail (Exh. 2) (Bellina confirmed Dialog was “short paying the invoices for the

money [Dialog] had to pay on the taxes when BellSouth stopped the provisioning due to the past due balance.”).

The Commission’s *Order* is premised on the inaccurate assumption that Dialog has paid sales tax on UNEs.⁷ Of course, the Commission’s assumption was reasonable given the fact that Dialog had initially paid the tax then disputed those payments with AT&T Kentucky and made the false representation that it was indeed paying the tax in question.⁸ Quite to the contrary, however, Dialog has not paid any sales tax on UNEs because it withheld amounts equivalent to the previously paid sales tax amount for legitimate charges on subsequent UNE invoices. See Edmonds Affid. (Exh. 1). In fact, in February 2007, Dialog admitted that it had not paid such taxes and thus was not seeking a refund. See Bellina E-mail (Exh. 3) (“...we’re not looking for a refund, just to withhold the disputed amounts as has always been permitted under the ICA.”).

Mr. Bellina’s statement regarding what is permitted under the ICA is misplaced. Section 11.4.3 of the ICA is clear that the “providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party.” Section 11.4.4 further provides that “[i]n the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, ..., the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.” By withholding payment of charges on invoices for which there are no disputed charges in order to recover amounts for taxes paid in the past, Dialog is not

⁷ *Order* at 3 (“since Dialog has now paid the disputed sales tax, BellSouth says it has offered to file a sales tax refund on Dialog’s behalf.”)

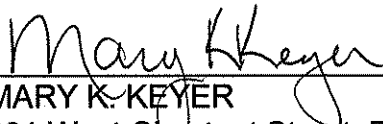
⁸ See Exh. 2, p. 2.

only violating the ICA, but is subjecting itself to having its services discontinued for non-payment. Dialog should either pay the amount of taxes owed or expect its services to be discontinued for non-payment of legitimate charges for services rendered by AT&T Kentucky.

CONCLUSION

Based on the forgoing, the Commission should issue an order correcting the error of fact contained in its prior *Order*. Specifically, the Commission should issue an order that recognizes that Dialog has failed to pay the tax in question. Further, the Commission should order Dialog to pay such amount immediately. Upon such payment, AT&T Kentucky will seek a refund as previously ordered by the Commission in accordance with the Parties' interconnection agreement.

Respectfully submitted,



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601 West Chestnut Street, Room 407
P.O. Box 32410
Louisville, KY 40232
(502) 582-8219

Robert A. Culpepper
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375
(404) 335-0841

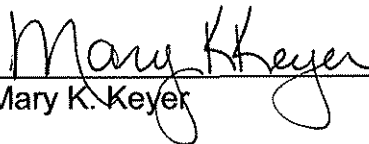
Counsel for AT&T Kentucky

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 5th day of March, 2007.

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

Douglas F. Brent
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
Douglas.Brent@skofirm.com



Mary K. Keyer

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| DIALOG TELECOMMUNICATIONS, INC. |) | |
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| v. |) | CASE NO. 2005-00095 |
| |) | |
| BELLSOUTH TELECOMMUNICATIONS, INC. |) | |

AFFIDAVIT OF RODGER EDMONDS

1. My name is Rodger Edmonds. The following statements are made under oath and are based on personal knowledge.

2. I am currently employed by BellSouth Telecommunications, Inc., d/b/a AT&T Southeast ("AT&T Southeast") as a staff manager in the Wholesale Customer Care department. My business address is 600 N 19th Street, Birmingham, Alabama. My responsibilities include collection of amounts owed by competitive local exchange carriers ("CLECs"), such as Dialog Telecommunications, Inc. ("Dialog"). In my capacity as staff manager, I support the daily business operations of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"). I have been in my current position since June 2003.

3. In my role as staff manager, I direct and work closely with the service representatives and center managers who review CLEC disputes relating to CLEC bills. Thus, I am familiar with Dialog and Dialog's disputes relating to the services it purchases from AT&T Kentucky.

4. Dialog filed its first dispute relating to the inclusion of sales tax on its unbundled network element (“UNE”) bill in October 2002. Dialog disputed an amount which corresponded to the amount of sales tax listed on Dialog’s September 2002 UNE bill. Dialog withheld payment of the disputed amount.

5. From the October 2002 dispute through the beginning of February 2005, Dialog continued to submit disputes and withhold payment relating to its sales tax dispute on a sporadic basis. By the beginning of February 2005, Dialog had accumulated a substantial past due balance of \$529,269.19 based, in part on its refusal to pay sales tax on UNEs.

6. On February 7, 2005, AT&T Kentucky sent Dialog a suspension notification letter notifying Dialog that it had an undisputed balance due of \$529,969.19. In accordance with the suspension notification letter, AT&T Kentucky temporarily suspended Dialog’s access to LENS for non-payment on February 24, 2005. After notifying and suspending LENS due to Dialog’s nonpayment of its unpaid balance in February 2005, Dialog paid a portion of the outstanding balance to restore its access to LENS. The amount Dialog paid did not include amounts associated with other disputes.

7. Approximately one year later on April 27, 2006, Dialog submitted another dispute relating to its sales tax obligations. The April 2006 disputed amount totaled \$538,202.12 for taxes on invoices from March 2002 through December 2005. In connection with its April 2006 sales tax dispute, starting with its March 2006 invoice, Dialog began “short paying” its UNE invoices for the next three months (March, April and May 2006 invoices). By the end of May 2006, Dialog had withheld payment to

AT&T Kentucky for a total of \$440,533.65. This amount exceeded the amount of taxes billed on those invoices.

8. In the course of settling other outstanding disputes, Dialog failed to pay \$97,668.45 which Dialog identified as being associated with the sales tax dispute. Adding the \$97,668.45 to the \$440,533.65 withheld during March, April and May of 2006, Dialog has failed to pay AT&T Kentucky \$538,202.10.

9. In conclusion, Dialog has withheld payment in the total amount of \$538,202.10 for legitimate undisputed charges on various different invoices for products or services Dialog received from AT&T Kentucky. By doing so, Dialog has exercised "self-help" by withholding payment of these legitimate charges in an amount that approximates the amount of sales tax that Dialog claims it should not have been charged.

[Signature Continues on Following Page]

[Continued from Previous Page]

This concludes my affidavit.

This 2nd day of March, 2007.

Rodger Edmonds
Rodger Edmonds

Sworn to and subscribed before me this 2nd day of March, 2007.

Mark H. Joseph
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 19, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

attachment 5 021507.txt

From: Jim Bellina [jim@calldialog.com]
Sent: Tuesday, February 13, 2007 8:19 AM
To: Mangina, Leisa G
Cc: Edmonds, Rodger
Subject: RE: Posting of the \$244k wire.

Your first sentence is correct, but no we're not looking for a refund, just to withhold the disputed amounts as has always been permitted under the ICA.

Jim

> -----Original Message-----

> From: Mangina, Leisa G [mailto:Leisa.Mangina@BellSouth.com]
> Sent: Monday, February 12, 2007 6:11 PM
> To: jim@calldialog.com
> Cc: Edmonds, Rodger
> Subject: RE: Posting of the \$244k wire.

> So what your doing is short paying the invoices for the money you had
> to pay on the taxes when BellSouth stopped the provisioning due to the
> past due balance. So really you are wanting a refund for the payment
> made.

> Leisa Mangina
> AT&T Credit and Collections- Southeast The new AT&T, now joined with
> BellSouth
> (205) 244-6716

> -----Original Message-----

> From: Jim Bellina [mailto:jim@calldialog.com]
> Sent: Monday, February 12, 2007 2:57 PM
> To: Mangina, Leisa G
> Cc: Edmonds, Rodger
> Subject: RE: Posting of the \$244k wire.

> Haven't looked at the spreadsheet yet, but the credits you've listed
> below are from 2006 invoices. That was a different issue, one that has
> actually been resolved!

> In 2005, effective 1/1/2006, the legislature changed the language for
> sales tax on telecommunications. While we don't believe that the
> change simply clarified the existing situation, BellSouth legal/tax
> folks read it as a change. We fought over this for a couple months,
> but in the end we submitted a KY resale certificate and you issued
> credits for the amount on the 2006 invoices.

> If you look at my spreadsheets you'll see that we are no longer
> disputing any of the taxes billed in 2006.

> Jim

> -----Original Message-----

>> From: Mangina, Leisa G [mailto:Leisa.Mangina@BellSouth.com]
>> Sent: Monday, February 12, 2007 3:20 PM
>> To: Jim Bellina
>> Cc: Rodger.Edmonds@BellSouth.com
>> Subject: Posting of the \$244k wire.

>>
>>

attachment 5 021507.txt

> > Jim,
> > <<Dialog wire \$244K.xls>>
> > Here the spreadsheet back with how we posted the \$244K wire.
> > Also, I am including the invoices that we were discussing
> with Rodger
> > on the conference call the taxes on 502 Q95-2181 where
> \$48,792.30 had
> > already been credited. These are the credits on the
> following invoices
> >
> > \$9,108.69 06115 invoice
> > \$8,458.72 06084 invoice
> > \$15,425.84 06056 invoice
> > \$15,799.05 06025 invoice
> >
> > Leisa Mangina
> > AT&T Credit and Collections- southeast The new AT&T, now
> joined with
> > Bellsouth
> > (205) 244-6716
> >
> >
> > *****
> >
> > The information transmitted is intended only for the person
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May 5, 2006

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Frankfort, Kentucky 40602

**Re: Case No. 2005-00095 -- Dialog Telecommunications, Inc. v. BellSouth
Reply to BellSouth's Response to Dialog's Cross Motion for Summary
Judgment on Count II**

Dear Ms. O'Donnell:

This is in reply to BellSouth's response to Dialog's Cross Motion for Summary Judgment, in which BellSouth claims Dialog "has no interest in resolving any tax issue" and is engaged in "scheme to evade taxes." These statements are clearly nonsense. But resort to fallacy has pervaded BellSouth's advocacy in the matter. Finding no good way to get around the clear legal distinctions between § 251(c)(3) network elements and § 251(c)(4) telecommunications services, and unable to explain away BellSouth's own statutory construction arguments before the FCC which contradict its position here¹, BellSouth instead attacks Dialog's motivation for bringing this dispute to the one state agency with authority over intercarrier disputes.

The Commission need only review the background of this dispute, outlined in paragraphs 15 – 20 of Dialog's amended complaint, to understand that Dialog acted with ample good faith in bringing this complaint to the Commission only after BellSouth brushed off Franklin Circuit Judge Roger Crittenden's February 2004 order that Dialog request BellSouth to seek a refund of taxes BellSouth had presumably paid on network elements. As explained in the amended complaint, BellSouth refused to seek a refund, using the flimsy excuse that Dialog had not paid the disputed amounts to BellSouth. Coerced into paying those amounts, Dialog filed a complaint with the Commission more than a year ago.² Three months ago Dialog filed a cross motion for

¹ See pp. 8-9 and Exhibit 2 to Dialog's Cross Motion for Summary Judgment.

² Dialog's formal complaint was filed in March 2005 and was amended in July 2005 after staff brought the parties together for an informal conference.

summary judgment and advised the Commission it waives its right to a hearing on Count II of the complaint, which concerns BellSouth's erroneous demand for "sales tax" on non-taxable network elements.

During this time and while waiting for the Commission to decide the narrow question of law raised in Count II of Dialog's complaint, Dialog in good faith continued to honor BellSouth's erroneous invoices for "sales tax" on network elements. In addition, *as it always has*, Dialog has continued to pay Kentucky sales taxes on its sales of communications services to its thousands of Kentucky customers. In other words, Dialog has been doubly burdened with "tax" obligations while awaiting action on the complaint.

Now, more than a year later, not only has BellSouth taken no further action to correct its mistake, BellSouth now claims that by filing its complaint at the Commission Dialog is making a "blatant" attempt to "contradict and undermine" a sister administrative agency's "prior tax ruling." BellSouth Reply, p. 5. Dialog is doing no such thing. As explained in the cross motion for summary judgment, the question before the Commission is one of utility law. The Commission has authority to rule on the complaint.

Worse still, in its attempt to buffalo the Commission BellSouth has now conflated a Department of Revenue ("DOR") staff letter to Dialog's former counsel into a "ruling." It could not possibly be. As Dialog explained in its complaint, the DOR has taken the position that Dialog lacks standing to even ask for a ruling. *See* Dialog amended complaint at par. 17. The DOR contends, in fact, that the staff letter is not subject to judicial review. BellSouth is aware of this. The only "scheme" playing out here it is BellSouth's ploy to confound the Commission into making no decision at all.

The relief requested by Dialog in Count II of its complaint is simple – Dialog asks that the Commission determine that, as a matter of law, "network elements" are distinct from "service." The Commission need only review the Telecommunications Act and its prior orders³ to make such a determination. All of these things are outlined in Dialog's motion and in the handouts provided during the informal conference. Dialog has not asked the Commission to usurp the authority of any other state agency in Kentucky, and BellSouth is wrong to suggest otherwise. The Commission should disregard BellSouth's advice to carelessly accept as determinative an incomplete, inaccurate view of federal telecommunications law offered informally nearly three years ago by a tax policy staff member at the Department of Revenue. That cannot possibly be the right approach here.

³ *E.g.*, Case No. 96-482, *In the matter of Interconnection Agreement Negotiations between AT&T Communications of the South Central States and BellSouth Telecommunications, Inc.* (February 6, 1997), p. 22 (rejecting BellSouth's argument that a purchase of elements to "create a service" pursuant to Section 251(c)(3) must be priced at the rate for "purchase of service for resale" under Section 251(c)(4)).

BellSouth's offer to file a refund request "on behalf of Dialog" is as insincere as its claim that Dialog "dropped its refund request [to BellSouth]." BellSouth Reply, p. 3. BellSouth distorts the discussion which took place at the informal conference called by the Commission staff. During that conference, in response to questions from Mr. Tipton and Ms Winn about what Dialog wanted from BellSouth, Dialog made clear that any decision to seek a refund was BellSouth's alone. Undersigned counsel then wrote to the Commission on July 18, 2005, addressing that very issue by explaining that any refund application would necessarily be on behalf of BellSouth, the taxpayer, not Dialog. Dialog then amended its complaint to address any lingering confusion. Obviously, Dialog has not amended its complaint to "drop" a refund request from *BellSouth*. But it is BellSouth that must make the refund request from the *DOR*, and the request must be made on BellSouth's behalf.

BellSouth's refusal to proceed with a refund request on its own is easily explained. BellSouth has no incentive at all to correct the DOR's misunderstanding of the difference between UNEs and services. An honest effort to correct that misconception could lead to a determination that BellSouth should not have collected sales tax on UNEs. If such determination were to trigger a refund, BellSouth would be obliged to return the money to all CLECs which leased UNEs, not just to Dialog. BellSouth has no interest in assisting its competitors in this way. BellSouth would prefer to keep this issue forever trapped in the vacuum it helped create when it filed a half-hearted "sale for resale" exemption request with the DOR in March, 2003⁴ which blurred the distinction between network elements and telecommunications services. Having contributed to DOR's confusion, BellSouth benefits by preserving the status quo.

Dialog is not asking the Commission to comment on, let alone undermine, informal opinions from another agency. At the same time, the fact that an informal opinion exists at all is no reason for the Commission not to act on Dialog's complaint now. While the final determination of the applicability of sales tax to network elements will not be made by this Commission, the Commission is certainly qualified to consider the definitions in the Kentucky tax statutes, the language in the Telecom Act, and the conduct of the parties in this case and to determine if there is a valid outstanding dispute about these charges. On this the record is quite clear.

The Commission's reaffirmation that access to network elements under §251(c)(3) is not the same thing as "resale" under § 251(c)(4) would provide the foundation for BellSouth to file a refund claim at the DOR, *if that is what BellSouth chooses to do*. All Dialog asks is that the Commission make such a determination now and rule that Dialog has raised a *bona fide* billing dispute.

⁴ In a July 1, 2005 letter to the Commission BellSouth claimed to have filed that request "on behalf" of an unnamed BellSouth customer.

Ms. Beth O'Donnell

May 5, 2006

Page 4

The burden resulting from BellSouth's billing error has forced Dialog to pay over to BellSouth hundreds of thousands of dollars which would otherwise have been used in support of Dialog's voice and broadband network facilities build-out in rural Western Kentucky. Further delay only helps BellSouth as the prospect of rural competition continues to dim. Dialog respectfully requests that the Commission promptly rule on Dialog's Cross Motion for Summary Judgment, granting all the relief requested therein and, with respect to Count II, in the amended complaint.

If you have questions, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. Brent', with a long horizontal stroke extending to the right.

Douglas F. Brent

Cc: Ms. Cheryl Winn