



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

November 15, 2004

RECEIVED

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**PUBLIC SERVICE
COMMISSION**

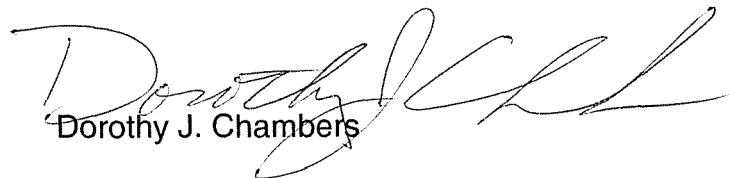
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Adoption of Interconnection Agreement Between BellSouth
Telecommunications, Inc. and Cinergy Communications Company by
Dialog Telecommunications, Inc.
KPSC 2004-00369

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10)
copies of Response of BellSouth to Dialog's Reply to BellSouth's Motion to Dismiss.

Sincerely,


Dorothy J. Chambers

Enclosure

cc: Parties of Record

557954

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION OF INTERCONNECTION)
AGREEMENT BETWEEN BELL SOUTH) CASE NO. 2004-00369
TELECOMMUNICATIONS, INC. AND)
CINERGY COMMUNICATIONS COMPANY)
BY DIALOG TELECOMMUNICATIONS, INC.)

**RESPONSE OF BELL SOUTH TO DIALOG'S REPLY
TO BELL SOUTH'S MOTION TO DISMISS**

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, hereby responds to the Reply filed by Dialog Telecommunications, Inc. ("Dialog") to BellSouth's Motion to Dismiss. In its Motion to Dismiss, BellSouth explained why Dialog's attempt to adopt the interconnection agreement between BellSouth and Cinergy Communications Company ("Cinergy ICA") is impermissible under applicable law, namely the FCC's *Interim Rules Order*,¹ the FCC's adoption rule,² and Kentucky's Broadband Parity Act, KRS 278.546. In its Reply, Dialog attempts to create the impression that BellSouth has not been responsive during negotiations in order to allow BellSouth to use the *Interim Rules Order* to prevent adoption of the Cinergy ICA. Such assertions cannot be squared with the uncontroverted facts.

¹ Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179, (rel. August 20, 2004) ("*Interim Rules Order*").

² See Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 04-164 (rel. July 13, 2004) ("*Adoption Order*") (replacing "pick-and-choose" rule with an "all-or-nothing rule" that requires a requesting carrier to adopt an interconnection agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement."). The FCC's "all-or-nothing" rule is set forth at 47 CFR 51.809.

**DIALOG FAILED TO REQUEST ADOPTION
PRIOR TO EFFECTIVE DATE OF *INTERIM RULES ORDER*.**

Dialog's Reply omits much of the history of the parties' negotiations leading up to Dialog's adoption request filed with the Commission on September 20, 2004. Such omissions may create the incorrect impression that Dialog's situation is dire or somehow inequitable. As the facts set forth below demonstrate, such is not the case.

Dialog's interconnection agreement expires on November 22, 2004. *Approximately six months prior to the agreement's expiration date*, on May 26, 2004, BellSouth attempted to start negotiations towards a new interconnection agreement by advising Dialog of the agreement's expiration date (and other important dates), and the need for the parties to commence good-faith negotiations for a new interconnection agreement compliant with Section 251 of the Telecommunications Act of 1996 (the "Act"). BellSouth's May 26th letter requested Dialog to review BellSouth's proposed interconnection agreement on BellSouth's website.³ In addition, one month later, on June 25, 2004, BellSouth provided Dialog with the proposed interconnection agreement;⁴ reiterated its request to commence negotiations; and reminded Dialog that, in the absence of successful negotiations, the time frame for either party to request arbitration, i.e. the "arbitration window", opens on October 8, 2004 and closes on November 2, 2004.⁵

One week later, on July 1, 2004, BellSouth plainly and unequivocally advised Dialog that the parties needed to use BellSouth's standard interconnection agreement as a starting point for negotiations and rejected Dialog's request to begin negotiations based

³ Letter from Lynn Allen-Flood (BellSouth) to Patrick Eudy and Jim Bellina (Dialog), dated May 26, 2004, sent via e-mail and certified mail and attached hereto as Exhibit "A".

⁴ E-mail from Flood to Eudy and Bellina, dated June 25, 2004, forwarding the proposed interconnection agreement is attached hereto as Exhibit "B". (The proposed interconnection agreement is not attached here.)

⁵ Letter from Flood to Eudy and Bellina, dated May 26, 2004, sent via e-mail and certified mail, and attached hereto as Exhibit "C".

on Dialog's existing agreement which was almost three years old.⁶ BellSouth's July 1st response should have come as no surprise to Dialog given the fact that at least two recent changes in the law had substantially impacted the parties' rights and obligations under the existing interconnection agreement, i.e. the FCC's *Triennial Review Order* and the D.C. Circuit's vacatur of some of the unbundling rules set forth in the *Triennial Review Order* ("USTA I").⁷ A few weeks later, on July 28, 2004, BellSouth again advised Dialog that the parties needed to commence negotiations and identify issues.⁸ Again, Dialog failed to respond to BellSouth's request to commence negotiations. One month later, on August 25, 2004, BellSouth sent yet another request, this time BellSouth's fifth request since May 26, 2004, requesting Dialog to commence negotiations and emphasizing the need to identify issues immediately.⁹ Despite having not only reasonable, but ample opportunities to do so, Dialog failed to file a request at the Commission to adopt the Cinergy ICA prior to the effective date of the *Interim Rules Order*.

**THE INTERIM RULES ORDER APPLIES TO DIALOG'S
ADOPTION REQUEST PER COMMISSION PRECEDENT.**

As discussed in BellSouth's Motion to Dismiss, the FCC's interim rules preclude Dialog from adopting "frozen elements".¹⁰ The Cinergy ICA contains frozen elements,¹¹ a fact Dialog appears to concede in its Reply -- "Dialog already has access to the network

⁶ E-mail from Flood to Eudy and Bellina, dated July 1, 2004, and attached hereto as Exhibit "D".

⁷ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, *et al.*, FCC 03-36, (rel. August 21, 2003) ("Triennial Review Order"), *affirmed in part and reversed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II").

⁸ Letter from Flood to Eudy and Bellina, dated July 28, 2004, sent via e-mail and certified mail, and attached hereto as Exhibit "E".

⁹ Letter from Flood to Eudy and Bellina, dated August 25, 2004, sent via e-mail and certified mail, and attached hereto as Exhibit "F".

¹⁰ *Interim Rules Order* at ¶ 22 (holding that "competitive LECs **may not opt** into the contract provisions "frozen" in place by this interim approach." [Emphasis added.]).

¹¹ The Cinergy ICA dated 3/20/03 contains frozen elements such as Mass Market Switching in Section 4.1 of Attachment 2.

elements that make up the UNE Platform – adopting the CCC [Cinergy] agreement adds no [frozen] element needed by Dialog that does not exist in the current agreement.”¹² Under the FCC’s “all-or-nothing rule”, Dialog may only adopt an interconnection agreement *in its entirety* pursuant to Section 252(i) of the Act. Allowing the adoption of the Cinergy ICA *in its entirety* would necessarily include the adoption of “frozen elements” which is expressly prohibited by the *Interim Rules Order*.

In its Reply, Dialog attempts to avoid application of the *Interim Rules Order* by asserting that Dialog’s adoption request preceded the effective date of the *Interim Rules Order*. The *Interim Rules Order* was released on August 20, 2004, and became effective on September 13, 2004. As an initial matter, Dialog filed its adoption request with the Commission on September 20, 2004, seven days *after* the effective date of the *Interim Rules Order*. As discussed below, although Dialog requested adoption from BellSouth on September 2, 2004, Dialog knew on that same day that adopting the Cinergy ICA “as is” would only be permitted if the Cinergy ICA was compliant with applicable law and also that it was unlikely that the Cinergy ICA complied with applicable law. Thus, on September 2, 2004, eleven days before the effective date of the *Interim Rules Order*, Dialog knew that BellSouth would not permit the adoption of the Cinergy ICA “as is”. Again, Dialog had ample opportunity to seek relief from the Commission prior to September 13, 2004, but did not do so.

Additionally, Dialog’s adoption request came almost **two weeks after** the release of the *Interim Rules Order*. In a strikingly similar context regarding the effective date of FCC’s Rules and Orders, this Commission recently has ruled that the FCC’s *Adoption Order* was effective upon release: “The Commission also finds that, had SouthEast filed

¹² Dialog Reply, pp. 5-6.

its adoption notice after July 13, 2004, *the release date of the FCC's new interpretation*, it would be rejected. Adoption notices filed after July 13, 2004 must follow the FCC's new rules."¹³ The *Interim Rules Order* was released prior to Dialog's adoption request. The Commission's precedent requires Dialog's adoption request be denied pursuant to the *Interim Rules Order*.

THE DOCTRINE OF ESTOPPEL IS NOT APPLICABLE HERE.

Apparently realizing that its legal position is unsustainable, Dialog contends that BellSouth indicated that the Cinergy ICA could be adopted by Dialog and, therefore, BellSouth should be estopped from now asserting that such agreement cannot be adopted.¹⁴ Not surprisingly, Dialog cites no authority for its estoppel position. Estoppel "means that a party is prevented by his own acts from claiming a right to [the] detriment of [an]other party who was entitled to rely on such conduct and has acted accordingly."¹⁵ Nothing of the sort happened here.

In response to Dialog's request to adopt the Cinergy ICA -- a request made at 5:30 pm on Thursday, September 2nd -- BellSouth immediately advised Dialog that "*any adoption must be compliant with applicable law*" and in all likelihood an adoption would require at least one new attachment.¹⁶ In the same message, the BellSouth representative advised Dialog that she would be on vacation through September 13, 2004.¹⁷ Importantly, from an estoppel claim standpoint, Dialog immediately acknowledged that it understood BellSouth's position and the fact that the matter would remain open for some

¹³ Order, *In the Matter of: Adoption of Interconnection Agreement Provisions Between BellSouth Telecommunications, Inc. and Cinergy Communications Company by SouthEast Telephone, Inc.* Case No. 2004-00235, dated September 29, 2004, at p.3 (emphasis added).

¹⁴ Dialog Reply, at p.8.

¹⁵ *Black's Law Dictionary*, Sixth Edition (1991), p. 551.

¹⁶ E-mail from Flood to Bellina, dated September 2, 2004, and attached hereto as Exhibit "G".

¹⁷ *Id.*

additional time period – “*I appreciate your position on this, but there is nothing that I’ve seen in the rules or our current interconnection agreement to support these restrictions. As with all things this is going to take longer to complete than we’d like, so I implore you finalize your concerns and provide them with all possible speed. Enjoy your vacation.*”¹⁸

Immediately upon her return from vacation, the BellSouth representative advised Dialog that the *Interim Rules Order* prevented adoption of the Cinergy ICA. In short, the facts demonstrate that BellSouth consistently advised Dialog that any new interconnection agreement (or adopted agreement) must comply with applicable law and that Dialog was immediately advised that the Cinergy ICA probably did not comply with applicable law. Moreover, the facts demonstrate that Dialog immediately understood BellSouth’s position.

A claim of estoppel also requires a showing of reasonable reliance. The *Interim Rules Order* was released on August 20, 2004. Five days later, BellSouth advised Dialog that the *Interim Rules Order* may impact negotiations.¹⁹ The *Interim Rules Order* was a direct result of the much publicized *USTA II* decision and its release had been widely anticipated in the industry. Accordingly, and regardless of any statements made by BellSouth (and there were no misrepresentations or misleading acts), it was unreasonable for Dialog to believe that after the release of the *Interim Rules Order* and notice of the same, that Dialog could adopt an interconnection agreement, like the Cinergy ICA, that contains “frozen” elements.

¹⁸ *Id.*

¹⁹ E-mail from Flood to Bellina, dated August 25, 2004, and attached hereto as Exhibit “H”.

**THE ADOPTION REQUEST FAILED TO
COMPLY WITH APPLICABLE FCC RULES OR
THE PARTIES' INTERCONNECTION AGREEMENT.**

Setting aside the fact that the *Interim Rules Order* precludes adoption of the Cinergy ICA, Dialog's assertion that its adoption request is permitted under its current interconnection agreement and under FCC Rule 51.809(c) because there are more than six months remaining on the Cinergy ICA²⁰ also demonstrates a misunderstanding of both the parties' agreement and the applicable FCC rule. FCC Rule 51.809(c) provides that BellSouth is obligated to make interconnection agreements available for adoption "for a reasonable period of time after the approved agreement is available for public inspection." (emphasis added). The reasonable period of time to adopt the Cinergy ICA expired over a year ago. Specifically, the Cinergy ICA predates the FCC's *Triennial Review Order*, *USTA II*, and the *Interim Rules Order*. As a result, the Cinergy ICA is not compliant with applicable law, and thus it is patently unreasonable, and contrary to the *Interim Rules Order*,²¹ to permit Dialog to adopt an interconnection agreement that is non-compliant with applicable law.

Dialog's adoption request was also impermissible under the parties' interconnection agreement which provides in relevant part that "BellSouth shall make available, pursuant to 47 U.S.C. § 252 and the FCC rule and regulations regarding such availability . . . any other agreement filed and approved pursuant to 47 U.S.C. § 252, provided a minimum of six months remains on the term of such agreement."²² The parties' interconnection agreement permits adoption, provided the adoption request

²⁰ Dialog Reply, at p.9.

²¹ *Interim Rule Order* at ¶ 23 ("Most significantly, the interim approach forecloses the implementation and propagation of the vacated rules.").

²² Dialog ICA, General Terms and Conditions, Section 13.

complies with applicable law and FCC rules, and provided there are at least six months remaining on the interconnection agreement that a party wishes to adopt. As previously noted, adoption of the Cinergy ICA is not permitted by applicable law and FCC rules. Thus, adoption is not permitted under the parties' interconnection agreement.

**BELLSOUTH WILL CONTINUE TO HONOR THE TERMS
OF THE PARTIES' INTERCONNECTION AGREEMENT.**

BellSouth will continue to honor the terms of the parties' interconnection agreement, will continue to provide all "frozen elements" in accordance with the *Interim Rules Order*, and will take the necessary and appropriate steps to incorporate the FCC's final unbundling rules into the parties' interconnection agreement. Despite a full awareness of the changes in applicable law, Dialog: (i) chose not to engage in any meaningful negotiations; (ii) insisted on either negotiating from, or attempting to adopt, interconnection agreements that are non-compliant with applicable law; and (iii) failed to exercise its arbitration rights under Section 252 of the Act. Dialog's failures to act cannot be used by Dialog to create entitlement to some "special" rights not available to other CLECs. This Commission should dismiss Dialog's adoption request and allow the parties to continue negotiations. Regardless of whether such negotiations are productive, BellSouth will continue to abide by its contractual obligations; will continue to abide by the *Interim Rules Order*; and will take the necessary and appropriate steps to incorporate the FCC's final unbundling rules into the parties' interconnection agreement.

As an example of BellSouth's commitment to abide by the terms of the parties' interconnection agreement, on October 1, 2004, BellSouth provided

Dialog with a proposed change-of-law amendment to incorporate the relevant provisions of the *Interim Rules Order*.²³ Finally, if a new interconnection agreement is not agreed upon before the expiration of the current interconnection agreement, BellSouth will continue to provide services to Dialog “pursuant to the terms, conditions and rates set forth in BellSouth’s then current standard interconnection agreement.”²⁴ In such case, Dialog’s stated goal for attempting to adopt the Cinergy ICA – “to bridge the brief time gap between expiration of Dialog’s existing ICA and the implementation of new FCC rules”²⁵ -- is not a legitimate issue.

Clearly, the Cinergy ICA cannot be adopted based on federal law. As BellSouth noted in its Motion to Dismiss, the Cinergy ICA not only is contrary to federal law, but also, with the enactment of the 2004 Kentucky Broadband Parity Act, KRS 278.5462, the Cinergy ICA now is contrary to Kentucky law. Dialog’s inflammatory and inaccurate claims regarding BellSouth’s broadband policies are neither substantiated nor relevant to the present case.²⁶

CONCLUSION

For the reasons set forth herein and in BellSouth’s Motion to Dismiss, the Commission should decline Dialog’s request for special treatment that is contrary to

²³ Letter from Flood to Eudy and Bellina, dated October 1, 2004, sent via e-mail and certified mail, and attached hereto as Exhibit “I”.

²⁴ Dialog ICA, General Terms and Conditions, Section 2.4.

²⁵ Dialog Reply, at p.6

²⁶ Dialog concedes it does not even have an interest in DSL transport. *See*, Dialog’s November 8 Reply at p. 10. Thus, Dialog’s discussion of this issue apparently is included gratuitously.

existing law and contrary to the parties' interconnection agreement. Accordingly,
Dialog's Notice of Intent to Adopt should be dismissed.

Respectfully submitted, this 15th day of November 2004.



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

R. DOUGLAS LACKEY
ROBERT A. CULPEPPER
Suite 4300, BellSouth Center
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0841

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

556579

BellSouth Interconnection Services

675 W. Peachtree Street N.E.
Room 34S91
Atlanta, Georgia 30375

Lynn Allen-Flood
404-927-1376
Fax: (404) 529-7839

Sent via Electronic Mail and Certified Mail

May 26, 2004

Patrick L. Eudy
Chairman
Dialog Telecommunications, Inc.
1927 Pinewood Circle
Charlotte, NC 28211

Jim Bellina
President and CEO
Dialog Telecommunications, Inc.
2219 Bonnie Butler Way
Charlotte, NC 28270

Re: Request that Dialog Telecommunications, Inc. (Dialog) engage in negotiations with BellSouth Telecommunications, Inc. (BellSouth) pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 and General Terms and Conditions of the Interconnection Agreement between Dialog and BellSouth

Dear Pat and Jim:

Effective November 23, 2001, BellSouth and Dialog entered into an Interconnection Agreement. The expiration date for this Agreement is November 22, 2004.

BellSouth is hereby requesting that Dialog commence good-faith negotiations with BellSouth to enter into a new agreement in compliance with Section 251(c)(1) of the Communications Act of 1934, as amended ("Act").

In an effort to move the negotiation process along, a copy of the BellSouth Standard Interconnection Agreement and Market Based Rate Agreement will be forwarded to you via email. In the meantime, you may view these Standard Agreements at the following addresses on BellSouth's website :

http://interconnection.bellsouth.com/become_a_clec/docs/ics_agreement.pdf
http://interconnection.bellsouth.com/become_a_clec/docs/draft_mbr_agreement.pdf

Once you have had an opportunity to review the proposed agreements, please let me know what questions or proposed language Dialog has with regard to the proposed Agreements via redlined tracking. If need be, we will begin scheduling meetings between the companies to address issues raised.

Our timeline is as follows:

- All issues should be identified by July 25, 2004
- Execute follow-on agreements by September 25, 2004 (to be effective on November 23, 2004)
- Arbitration window opens October 8 and closes November 2, 2004

BellSouth Interconnection Services

BellSouth looks forward to working with Dialog. Should you have questions regarding this letter, please do not hesitate to call me.

Sincerely,

Lynn Allen-Flood
Manager-Interconnection Services

BellSouth Interconnection Services

675 W. Peachtree Street N.E.
Room 34S91
Atlanta, Georgia 30375

Lynn Allen-Flood
404-927-1376
Fax: (404) 529-7839

Sent via Electronic Mail and Certified Mail

June 25, 2004

Patrick L. Eudy
Chairman
Dialog Telecommunications, Inc.
1927 Pinewood Circle
Charlotte, NC 28211

Jim Bellina
President and CEO
Dialog Telecommunications, Inc.
2219 Bonnie Butler Way
Charlotte, NC 28270

Re: 30 Day Reminder - Request that Dialog Telecommunications, Inc. (Dialog) engage in negotiations with BellSouth Telecommunications, Inc. (BellSouth) pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 and General Terms and Conditions of the Interconnection Agreement between Dialog and BellSouth

Dear Pat and Jim:

Effective November 23, 2001, BellSouth and Dialog entered into an Interconnection Agreement. The expiration date for this Agreement is November 22, 2004. Pursuant to the General Terms and Conditions of the existing Interconnection Agreement between Dialog and BellSouth, BellSouth notified you on May 26, 2004 that it wished to commence negotiations of the Subsequent Agreement, as defined in the existing Interconnection Agreement.

We have an obligation under the Telecommunications Act to comply with the terms of the existing Interconnection Agreement between the parties, which specifies the process for negotiation of the Subsequent Agreement. Based on the start of negotiations, the arbitration window will open October 8, 2004 and close November 2, 2004. Issues need to be identified by July 25, 2004. Unless the parties arbitrate issues, we should plan to have a signed follow-on agreement by September 25, 2004. At of today, we are 30 days into the negotiation window.

BellSouth looks forward to working with Dialog. Should you have questions regarding this, please do not hesitate to call me.

Sincerely,

Lynn Allen-Flood
Manager-Interconnection Services

BellSouth Interconnection Services

675 W. Peachtree Street N.E.
Room 34S91
Atlanta, Georgia 30375

Lynn Allen-Flood
404-927-1376
Fax: (404) 529-7839

Sent via Electronic Mail and Certified Mail

May 26, 2004

Patrick L. Eudy
Chairman
Dialog Telecommunications, Inc.
1927 Pinewood Circle
Charlotte, NC 28211

Jim Bellina
President and CEO
Dialog Telecommunications, Inc.
2219 Bonnie Butler Way
Charlotte, NC 28270

Re: Request that Dialog Telecommunications, Inc. (Dialog) engage in negotiations with BellSouth Telecommunications, Inc. (BellSouth) pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 and General Terms and Conditions of the Interconnection Agreement between Dialog and BellSouth

Dear Pat and Jim:

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BellSouth is hereby requesting that Dialog commence good-faith negotiations with BellSouth to enter into a new agreement in compliance with Section 251(c)(1) of the Communications Act of 1934, as amended ("Act").

In an effort to move the negotiation process along, a copy of the BellSouth Standard Interconnection Agreement and Market Based Rate Agreement will be forwarded to you via email. In the meantime, you may view these Standard Agreements at the following addresses on BellSouth's website :

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http://interconnection.bellsouth.com/become_a_clec/docs/draft_mbr_agreement.pdf

Once you have had an opportunity to review the proposed agreements, please let me know what questions or proposed language Dialog has with regard to the proposed Agreements via redlined tracking. If need be, we will begin scheduling meetings between the companies to address issues raised.

Our timeline is as follows:

- All issues should be identified by July 25, 2004
- Execute follow-on agreements by September 25, 2004 (to be effective on November 23, 2004)
- Arbitration window opens October 8 and closes November 2, 2004

BellSouth Interconnection Services

BellSouth looks forward to working with Dialog. Should you have questions regarding this letter, please do not hesitate to call me.

Sincerely,

Lynn Allen-Flood
Manager-Interconnection Services

Exhibit D

From: Allen-Flood, Lynn
Sent: Thursday, July 01, 2004 9:15 PM
To: 'Jim Bellina'; 'pat@calldialog.com'
Cc: Allen-Flood, Lynn
Subject: RE: Proposed Interconnection Agreement

Jim,

The current agreement between Dialog and BST is 3 years old. As stated previously, BellSouth is not agreeable to starting negotiations from a 3 year old document. I have provided Dialog with BellSouth's proposed agreement as a starting point.

Have you considered adopting an existing agreement? If Dialog is interested in that, peruse the website at <http://cpr.bellsouth.com/index7.htm> An adopted agreement has to have at least 6 months before expiration, from the time the adoption is effective.

If you would like to discuss this further, give me a call.

Lynn Allen-Flood
Interconnection Services
BellSouth Telecommunications, Inc.
404-927-1376

-----Original Message-----

From: Jim Bellina [mailto:jim@calldialog.com]
Sent: Monday, June 28, 2004 2:26 PM
To: Allen-Flood, Lynn; pat@calldialog.com
Subject: RE: Proposed Interconnection Agreement

I'm sorry Lynn, but it is only reasonable to negotiate from our existing agreement for reasons stated earlier. I am prepared to review the changes that you propose, but not to try to identify each of the changes that have been made through BST's internal templating process.

If this approach is unacceptable to BST, then please let me know how you suggest that we proceed.

Jim Bellina
Dialog Telecommunications
704-887-1343

From: Allen-Flood, Lynn [mailto:Lynn.Allen-Flood@BellSouth.com]
Sent: Friday, June 25, 2004 4:31 PM
To: pat@calldialog.com; jim@calldialog.com
Cc: Allen-Flood, Lynn

11/15/2004

Subject: Proposed Interconnection Agreement
Importance: High

Jim and Pat,

Attached is the proposed Interconnection Agreement for negotiations. I will be providing an update to Attachment 2 (Network Elements) and a Market Based Rate Agreement in the next couple of weeks.

Thanks

Lynn Allen-Flood
Interconnection Services
BellSouth Telecommunications, Inc.
404-927-1376

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers.
113

BellSouth Interconnection Services

675 W. Peachtree Street N.E.
Room 34S91
Atlanta, Georgia 30375

Lynn Allen-Flood
404-927-1376
Fax: (404) 529-7839

Sent via Electronic Mail and Certified Mail

July 28, 2004

Patrick L. Eudy
Chairman
Dialog Telecommunications, Inc.
1927 Pinewood Circle
Charlotte, NC 28211

Jim Bellina
President and CEO
Dialog Telecommunications, Inc.
2219 Bonnie Butler Way
Charlotte, NC 28270

Re: 60 Day Reminder - Request that Dialog Telecommunications, Inc. (Dialog) engage in negotiations with BellSouth Telecommunications, Inc. (BellSouth) pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 and General Terms and Conditions of the Interconnection Agreement between Dialog and BellSouth

Dear Pat and Jim:

Effective November 23, 2001, BellSouth and Dialog entered into an Interconnection Agreement. The expiration date for this Agreement is November 22, 2004. Pursuant to the General Terms and Conditions of the existing Interconnection Agreement between Dialog and BellSouth, BellSouth notified you on May 26, 2004 that it wished to commence negotiations of the Subsequent Agreement, as defined in the existing Interconnection Agreement. Receiving no response, on June 25, 2004, BellSouth notified you again that the parties were now 30 days into the negotiation window.

We have an obligation under the Telecommunications Act to comply with the terms of the existing Interconnection Agreement between the parties, which specifies the process for negotiation of the Subsequent Agreement. Based on the start of negotiations, the arbitration window will open October 8, 2004 and close November 2, 2004. Issues need to be identified immediately. Unless the parties arbitrate issues, we should plan to have a signed follow-on agreement by September 25, 2004. At of July 25, we are 60 days into the negotiation window and BellSouth has not received a response.

Should you have questions regarding this, please do not hesitate to call me.

Sincerely,

Lynn Allen-Flood
Manager-Interconnection Services

Exhibit F

From: Allen-Flood, Lynn
Sent: Wednesday, August 25, 2004 8:10 PM
To: 'pat@calldialog.com'; 'jim@calldialog.com'
Cc: Allen-Flood, Lynn
Subject: 90 Day Notice/Negotiations for Follow-On Agreement

Jim and Pat,

Attached is the 90 day reminder concerning negotiations for a follow-on agreement. I realize that when the 8/20 FCC Order becomes effective, some of this may change, however, I have no information to provide you as yet. At this point in time, I would think that Dialog is ok with all other sections of the ICA, except Att 2 (Att 2 is on BellSouth's website). **If not, please** make sure you identify those issues immediately.

Thanks,

Lynn Allen-Flood
Interconnection Services
BellSouth Telecommunications, Inc.
404-927-1376

Exhibit G

From: Allen-Flood, Lynn
Sent: Thursday, September 02, 2004 5:52 PM
To: 'Jim Bellina'
Cc: Allen-Flood, Lynn
Subject: RE: adopting Cinergy

Jim,

I can pull together this adoption for you but, because I haven't checked on this particular agreement, please keep in mind the following:

- the adopted agreement has to have at least 6 months before expiration
- any adoption has to be compliant with current law, thus, if Cinergy does not have current language in the UNE attachment (probably Att 2) reflecting the 3/2/04 Court Ruling, that attachment would be replaced to reflect BellSouth's current Att 2 (on BellSouth's website).
- there may be an isp compensation arrangement that would be specific to Cinergy. If that is the case, that particular attachment (probably Att 3) would also be replaced.
- any agreement or adoption would be effective 30 days from the date of last signature. This provides time for the rates to be added to the rate file before the effective date.

I'll be on vacation tomorrow and most of next week but will target to send you the proposed adoption the week following.

Thanks

-----Original Message-----

From: Jim Bellina [mailto:jim@calldialog.com]
Sent: Thursday, September 02, 2004 5:30 PM
To: Allen-Flood, Lynn
Subject: adopting Cinergy

Pursuant to 47 USC § 252, the related rules and regulations of the FCC, and § 13 of our current interconnection agreement, Dialog Telecommunication elects to adopt in its entirety the interconnection agreement of BellSouth Telecommunications Inc. and Cinergy Communications Company for the state of Kentucky dated March 20, 2003 as amended August 22, 2003 and further amended April 30, 2004. This adoption to be effective no later than 10/1/04.

Thanks for your assistance, and if we don't speak again have a great weekend.

Jim

BellSouth Interconnection Services

675 W. Peachtree Street N.E.
Room 34S91
Atlanta, Georgia 30375

Lynn Allen-Flood
404-927-1376
Fax: (404) 529-7839

Sent via Electronic Mail

August 25, 2004

Patrick L. Eudy
Chairman
Dialog Telecommunications, Inc.
1927 Pinewood Circle
Charlotte, NC 28211

Jim Bellina
President and CEO
Dialog Telecommunications, Inc.
2219 Bonnie Butler Way
Charlotte, NC 28270

Re: 90 Day Reminder - Request that Dialog Telecommunications, Inc. (Dialog) engage in negotiations with BellSouth Telecommunications, Inc. (BellSouth) pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 and General Terms and Conditions of the Interconnection Agreement between Dialog and BellSouth

Dear Pat and Jim:

Effective November 23, 2001, BellSouth and Dialog entered into an Interconnection Agreement. The expiration date for this Agreement is November 22, 2004. Pursuant to the General Terms and Conditions of the existing Interconnection Agreement between Dialog and BellSouth, BellSouth notified you on May 26, 2004 that it wished to commence negotiations of the Subsequent Agreement, as defined in the existing Interconnection Agreement. Receiving no response, on June 25, 2004, BellSouth notified you again that the parties were now 30 days into the negotiation window. On July 28, BellSouth notified you that we were 60 days into the negotiation window.

We have an obligation under the Telecommunications Act to comply with the terms of the existing Interconnection Agreement between the parties, which specifies the process for negotiation of the Subsequent Agreement. Based on the start of negotiations, the arbitration window will open October 8, 2004 and close November 2, 2004. Issues need to be identified immediately. Unless the parties arbitrate issues, we should plan to have a signed follow-on agreement by September 25, 2004. At of August 24, we are 90 days into the negotiation window leaving little time to finalize negotiations.

Should you have questions regarding this, please do not hesitate to call me.

Sincerely,

Lynn Allen-Flood
Manager-Interconnection Services

Exhibit I

From: Allen-Flood, Lynn
Sent: Friday, October 01, 2004 5:30 PM
To: 'pat@calldialog.com'; 'jim@calldialog.com'
Cc: Allen-Flood, Lynn
Subject: Dialog/Modification of Agreement/Interim Order Amendment
Importance: High



BellSouth Interconnection Services

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

Lynn Allen Flood
(404) 927-1376
Fax: (404) 529-7839

Sent via Certified Mail and by Electronic Mail

October 1, 2004

Patrick L. Eudy
Chairman
Dialog Telecommunications, Inc.
1927 Pinewood Circle
Charlotte, NC 28211

Jim Bellina
President and CEO
Dialog Telecommunications, Inc.
2219 Bonnie Butler Way
Charlotte, NC 28270

Dear Pat and Jim:

On August 20, 2004, the Federal Communication Commission (FCC) released its Order and Notice of Proposed Rulemaking (Order) in Docket 04-313. In its Order, the FCC, among other things, adopted interim transition requirements with respect to mass-market switching, high capacity dedicated transport, high capacity loops and dark fiber. The Order, effective September 13, 2004, does not reinstate those elements as UNEs, but provides access to those elements for existing CLECs on a temporary basis and during a transition period while the FCC crafts permanent UNE rules. Thus, as long as they are in effect, these interim rules currently govern BellSouth's obligation to provide these services.

BellSouth's proposed Amendment maintains mass market switching, high capacity loops, dedicated transport, and dark fiber from Dialog Telecommunications, Inc.'s Interconnection Agreement as it existed on June 15, 2004, for the period of six (6) months following the effective date of the Order and incorporates a subsequent transition period specified in the Order.

If you agree to BellSouth's proposal please print one full original Amendment and a duplicate signature page. The full original will become your file copy of the Amendment. Execute both original signature pages and return only those pages to my attention. These will be executed on behalf of BellSouth and I will return one fully executed original signature page to you for inclusion in your files. BellSouth will file the signed Amendment with the appropriate state commission(s). Alternatively, if you would like to discuss the amendment, please provide any concerns your company may have for BellSouth to review. BellSouth is ready to negotiate the proposed amendment in good faith.

BellSouth intends to pursue its legal, equitable and/or regulatory rights to ensure that the existing Interconnection Agreement between the parties is modified, reformed or amended in an expeditious manner to reflect the FCC's Order. By doing so, BellSouth is not expressing agreement with the Order, which is presently being challenged in court, and BellSouth reserves the right to modify this Amendment depending upon the outcome of this challenge.

Should you have any questions, please feel free to contact me.

Sincerely,

Original Signed

Lynn Allen-Flood
Manager - Interconnection Services

Attachment

**Amendment to the Agreement
Between
Dialog Telecommunications, Inc.
and
BellSouth Telecommunications, Inc.
Dated November 23, 2001**

Pursuant to this Amendment (the "Amendment"), Dialog Telecommunications, Inc. ("Dialog") and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties dated November 23, 2001 ("Agreement") to be effective thirty (30) days after the date of the last signature executing the Amendment ("Effective Date").

WHEREAS, BellSouth and Dialog entered into the Agreement on November 23, 2001, and;

WHEREAS, BellSouth and Dialog are amending the Agreement to incorporate language regarding access to Network Elements pursuant to the Order and Notice of Proposed Rulemaking, WC Docket No. 04-313, released August 20, 2004 and effective September 13, 2004 ("Interim Order");

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 Parties agree to add the following language to Section 1 of Attachment 2 as new Sections 1.7 through 1.17:

1.7 Until the earlier of (1) March 12, 2005 or (2) the effective date of the final unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in the Interim Order ("Interim Period"), BellSouth shall continue providing unbundled access to Mass Market Switching (as defined herein), DS1, or equivalent, and higher capacity Loops, including dark fiber Loops (collectively "Enterprise Market Loops"), and DS1, or equivalent, and higher capacity dedicated transport, including dark fiber transport (collectively "High Capacity Transport") under the rates, terms and conditions set forth herein except to the extent that they are or have been superseded by:

1.7.1 voluntarily negotiated agreements;

- 1.7.2 an intervening FCC order affecting specific unbundling obligations (*e.g.*, an order addressing a pending petition for reconsideration) (“Intervening Order”); or,
- 1.7.3 (with respect to rates only) a Commission order raising the rates for such network elements.
- 1.8 For purposes of this Agreement, Mass Market Switching shall be defined as unbundled access to local switching except when Dialog: (1) serves an End User with four (4) or more voice-grade (DS0) equivalents or lines served by BellSouth in Zone 1 of one of the following MSAs: Atlanta, GA; Miami, FL; Orlando, FL; Ft. Lauderdale, FL; Charlotte-Gastonia-Rock Hill, NC; Greensboro-Winston Salem-High Point, NC; Nashville, TN; and New Orleans, LA; or (2) serves an End User with a DS1 or higher capacity service or Loop in any service area covered by this Agreement. Notwithstanding anything to the contrary herein, local switching other than Mass Market Switching will not be provided hereunder.
- 1.9 For purposes of this Agreement “Transition Period” is defined as the six (6) month period following the Interim Period, or such other time period as may be specified by the FCC in an effective order adopted pursuant to the Notice of Proposed Rulemaking in the Interim Order (“Final FCC Unbundling Rules”). In the absence of an effective FCC ruling that Mass Market Switching, High Capacity Transport, and/or Enterprise Market Loops, or any subset of such network elements, must be unbundled pursuant to section 251(c)(3) in any particular case, the following terms and conditions shall apply to such elements or subset thereof:
- 1.9.1 During the Transition Period, BellSouth shall only be required to provide Mass Market Switching to Dialog in combination with shared (common) transport and Loops (*i.e.*, as a component of the “UNE platform”). The applicable rate shall be the higher of (1) the rate at which Dialog leased that combination of elements on June 15, 2004 plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and March 12, 2005, for this combination of elements plus one dollar.
- 1.9.2 During the Transition Period, BellSouth shall only be required to provide High Capacity Transport and/or Enterprise Market Loops to Dialog at a rate equal to the higher of (1) 115% of the rate Dialog paid for that element on

June 15, 2004, or (2) 115% of the rate the state public utility commission establishes, if any, between June 16, 2004, and March 12, 2005, for that element.

- 1.10 During the Transition Period, to the extent BellSouth provides Mass Market Switching, High Capacity Transport and/or Enterprise Market Loops, or any subset thereof, pursuant to Sections 1.9.1-1.9.2 above, BellSouth shall only provide such elements to Dialog for the embedded customer base, as it existed on the last day of the Interim Period, and Dialog may not add new End Users or customers or place any new orders for such elements during the Transition Period.
- 1.11 In the event that the Final FCC Unbundling Rules set forth any modification as to the length of the Transition Period or the rates, terms and conditions applicable during the Transition Period to Mass Market Switching, Enterprise Market Loops and/or High Capacity Transport, or any subset thereof, such modifications shall be deemed incorporated into this Agreement by reference without further modification by the Parties, and such modified rates, terms and conditions shall apply to the Transition Period rather than those set forth herein.
- 1.12 Upon request, BellSouth shall convert an unbundled Network Element or Combination to an equivalent wholesale service or group of wholesale services. Such conversions shall be subject to the nonrecurring switch-as-is rates for conversion as set forth in Exhibit A of this Attachment.
- 1.12.1 Any changes from an unbundled Network Element or Combination that requires physical rearrangement will not be considered a conversion for purposes of this Agreement.
- 1.13 At the conclusion of the Transition Period, in the absence of an effective FCC ruling that Mass Market Switching, Enterprise Market Loops and/or High Capacity Transport, or any subset thereof (individually or collectively referred to herein as the "Eliminated Elements") are subject to unbundling, such Eliminated Elements shall be subject to the following provisions.
- 1.13.1 Upon the end of the Transition Period Dialog must transition Eliminated Elements to either Resale, tariffed services, or services offered pursuant to a separate agreement negotiated between the Parties (collectively "Comparable Services") or

must disconnect such Eliminated Elements, pursuant to Sections 1.13.1.1 – 1.13.1.4 below.

- 1.13.1.1 Eliminated Elements including Mass Market Switching Function (“Switching Eliminated Elements”). In the event that Dialog has not entered into a separate agreement for the provision of Mass Market Switching or services that include Mass Market Switching, Dialog will submit orders to either disconnect Switching Eliminated Elements or convert such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period. If Dialog submits orders to transition such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period, applicable recurring and nonrecurring charges shall apply as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in Attachment 1 of this Agreement. If Dialog fails to submit orders within thirty (30) days of the last day of the Transition Period, BellSouth shall transition such Switching Eliminated Elements to Resale, and Dialog shall pay the applicable nonrecurring and recurring charges as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in Attachment 1 of this Agreement. In such case, Dialog shall reimburse BellSouth for labor incurred in identifying the lines that must be converted and processing such conversions. If no equivalent Resale service exists, then BellSouth may disconnect such Switching Eliminated Elements if Dialog does not submit such orders within thirty (30) days of the last day of the Transition Period. In all cases, until Switching Eliminated Elements have been converted to Comparable Services or disconnected, the applicable recurring and nonrecurring rates for Switching Eliminated Elements during the Transition Period shall apply as set forth in this Agreement. Applicable nonrecurring disconnect charges may apply for disconnection of service or conversion to Comparable Services.
- 1.13.1.2 Other Eliminated Elements. Upon the end of the Transition Period, Dialog must transition the Eliminated Elements other than Switching Eliminated Elements (“Other Eliminated Elements”) to Comparable Services. Unless the Parties agree otherwise, Other Eliminated Elements shall be handled in accordance with sections 1.13.1.3 - 1.13.1.4 below.
- 1.13.1.3 Dialog will identify and submit orders to either disconnect Other Eliminated Elements or transition them to Comparable

Services within thirty (30) days of the last day of the Transition Period. Rates, terms and conditions for Comparable Services shall apply per the applicable tariff for such Comparable Services as of the date the order is completed. Where Dialog requests to transition a minimum of fifteen (15) circuits per state, Dialog may submit orders via a spreadsheet process and such orders will be project managed. In all other cases, Dialog must submit such orders pursuant to the local service request/access service request (LSR/ASR) process, dependent on the Comparable Service elected. For such transitions, the non-recurring and recurring charges shall be those set forth in BellSouth's FCC#1 tariff, or as otherwise agreed in a separately negotiated agreement. Until such time as the Other Eliminated Elements are transitioned to such Comparable Services, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in this Agreement.

1.13.1.4 If Dialog fails to identify and submit orders for any Other Eliminated Elements within thirty (30) days of the last day of the Transition Period, BellSouth may transition such Other Eliminated Elements to Comparable Services. The rates, terms and conditions for such Comparable Services shall apply as of the date following the end of the Transition Period. If no Comparable Services exist, then BellSouth may disconnect such Other Eliminated Elements if Dialog does not submit such orders within thirty (30) days of the last day of the Transition Period. In such case Dialog shall reimburse BellSouth for labor incurred in identifying such Other Eliminated Elements and processing such orders and Dialog shall pay the applicable disconnect charges set forth in this Agreement. Until such time as the Other Eliminated Elements are disconnected pursuant to this Agreement, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in this Agreement.

1.14 To the extent the FCC issues an effective Intervening Order that alters the rates, terms and conditions for any Network Element or Other Service, including but not limited to Mass Market Switching, Enterprise Market Loops and High Capacity Transport, the Parties agree that such Intervening Order shall supersede those rates, terms and conditions set

forth in this Agreement for the affected Network Element(s) or Other Service(s).

- 1.15 Notwithstanding anything to the contrary in this Agreement, in the event that the Interim Rules are vacated by a court of competent jurisdiction, Dialog shall immediately transition Mass Market Switching, Enterprise Market Loops and High Capacity Transport pursuant to Section 1.13.1.1 through 1.13.1.4 above, applied from the effective date of such vacatur, without regard to the Interim Period or Transition Period.
- 1.16 Notwithstanding anything to the contrary in this Agreement, upon the Effective Date of the Final FCC Unbundling Rules, to the extent any rates, terms or requirements set forth in such Final FCC Unbundling Rules are in conflict with, in addition to or otherwise different from the rates, terms and requirements set forth in this Agreement, the Final FCC Unbundling Rules rates, terms and requirements shall supercede the rates, terms and requirements set forth in this Agreement without further modification of this Agreement by the Parties.
- 1.17 In the event that any Network Element, other than those already addressed above, is no longer required to be offered by BellSouth pursuant to Section 251 of the Act, Dialog shall immediately transition such elements pursuant to Section 1.13.1.1 through 1.13.1.4 above, applied from the effective date of the order eliminating such obligation.
2. All of the other provisions of the Agreement dated November 23, 2001 shall remain unchanged and in full force and effect.
3. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties have executed this Amendment the day and year written below.

BellSouth Telecommunications, Inc.

Dialog Telecommunications, Inc.

By: _____

By: _____

Name: Kristen Rowe _____

Name: _____

Title: Director _____

Title: _____

Date: _____

Date: _____

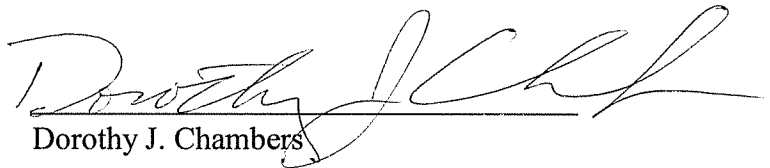
CERTIFICATE OF SERVICE

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 15th day of November, 2004.

Hon. Douglas F. Brent
Stoll, Keenon & Park, LLP
2650 AEGON Center
400 West Market Street
Louisville, KY 40202

Robert A. Bye
Corporate Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

Jim Belina
President & CEO
Dialog Telecommunications, Inc.
756 Tyvola Road
Suite 100
Charlotte, NC 28217


Dorothy J. Chambers