

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

March 17, 2005

RECEIVED

MAR 17 2005

PUBLIC SERVICE
COMMISSION

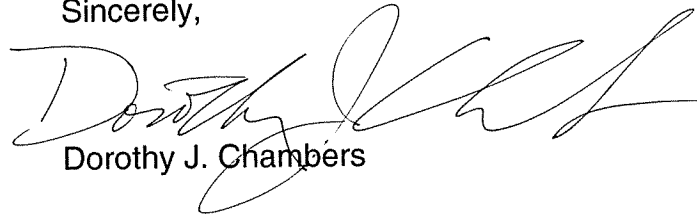
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

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

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Response to Dialog Telecommunications, Inc.'s Complaint.

Sincerely,


Dorothy J. Chambers

Enclosures

cc: Parties of Record

577447

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 17 2005

In the Matter of:

PUBLIC SERVICE
COMMISSION

DIALOG TELECOMMUNICATIONS, INC.)
)
COMPLAINANT)
)
v.)
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)
DEFENDANT)

CASE NO. 2005-00095

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO DIALOG TELECOMMUNICATIONS, INC.'S COMPLAINT**

BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel, hereby files its response to complaint ("Complaint") filed on or about March 2, 2005, by Dialog Telecommunications, Inc. ("Dialog"). As explained below, BellSouth has accurately billed Dialog for services and unbundled network elements ("UNEs") provided under the parties' interconnection agreement ("ICA"), including assessing appropriate late payment charges ("LPCs"). Further, BellSouth properly suspended, in accordance with the ICA, Dialog's access to the preordering/ordering electronic interface known as the Local Exchange Negotiation System ("LENS") because of Dialog's failure to pay amounts past due that were not subject to any open billing dispute.¹ Accordingly, the Complaint should be dismissed by

¹ Exhibit 3 to Dialog's Complaint is a copy of correspondence from BellSouth to Dialog dated February 17, 2005. The relevant portion of the correspondence plainly states that "it is our position that BellSouth has no obligation to file a refund claim on Dialog's behalf because your company has not paid the disputed Kentucky sales tax for which a refund would be sought." The correspondence concludes by stating that "[f]rom a tax perspective we consider the matter closed. I would refer you to BellSouth's customer care organization to continue discussions about the ongoing status of your account."

the Kentucky Public Service Commission (“Commission”) and Dialog should be ordered to immediately pay all past due amounts, including LPCs, that are owed BellSouth.

SUMMARY POSITION

In its Complaint, Dialog asserts that BellSouth has breached the parties’ ICA in two respects.² First, Dialog claims that BellSouth has improperly billed the Unbundled Tandem Switching rate element. Second, Dialog contends that BellSouth has failed to “cooperate” with Dialog in seeking a sales tax refund from the Sales & Use Tax Section of the Revenue Cabinet of the Commonwealth of Kentucky (“Revenue Cabinet”) for Kentucky sales tax billed to Dialog with respect to UNEs provided by BellSouth.

Regarding the first claim, what Dialog failed to mention in its Complaint is that *because Dialog has steadfastly refused to sign an ICA amendment to add the appropriate switching rate element to its ICA (Melded Tandem Switching rate element), Dialog continues to be billed the switching rate element contained in its ICA (Unbundled Tandem Switching rate element). Further, BellSouth did not suspend LENS access based on Dialog’s failure to pay Tandem Switching charges.*³

Regarding the second claim, what Dialog failed to mention in its Complaint is that prior to March 2, 2005, *because Dialog had refused to pay any sales tax on UNEs, Dialog was not entitled to any sales tax refund.*⁴ However, Dialog has now paid the so-called “disputed” Kentucky sales tax. Accordingly, *BellSouth is now ready, willing, and*

² Dialog asserts a third claim for improperly billed LPCs. (Complaint, ¶ 24) The LPC claim arises out of billing associated with the first two claims. As explained herein, because the first two claims lack merit, all associated LPCs were properly billed and thus Dialog’s LPC claim also lacks merit and must fail.

³ As of March 10, 2005, Dialog has disputed \$172,789.58 in Tandem Switching charges. The bulk of these charges are associated with Kentucky. (\$163,891.66). As explained in the following footnote, the amount Dialog paid on March 2, 2005, to restore LENS access *did not include any payment on the \$172,789.58 in “disputed” Tandem Switching charges.*

⁴ BellSouth has remitted to the Commonwealth of Kentucky the sales tax that Dialog had previously refused to pay. On March 2, 2005, Dialog paid BellSouth \$373,977.20. BellSouth allocated this payment towards the undisputed past due balance over ninety (90) days old on Dialog’s Kentucky account.

able to file a refund request on behalf of Dialog, or assign to Dialog any and all tax refund rights that BellSouth may have regarding this matter.

SPECIFIC RESPONSE

Any allegation of the Complaint that is not specifically admitted is denied. Responding to the specific allegations of the Complaint, BellSouth alleges and states as follows:

1. BellSouth lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, can neither admit nor deny such allegations at this time.

2. BellSouth admits the allegations set forth in Paragraph 2 of the Complaint.

3. Responding to the allegations set forth in Paragraph 3 of the Complaint regarding the billing of Tandem Switching, BellSouth admits only that BellSouth determined, in 2003, that Unbundled Tandem Switching charges were being applied to all interoffice calls that originate from a UNE-P CLEC customer and terminate to a customer of BellSouth, an Independent Telephone Company (“ICO”), or a facilities-based CLEC. Following such determination, BellSouth studied the use of the tandem switch for such call types and derived a percentage of tandem use that, when multiplied by the Unbundled Tandem Switching rate, results in a Melded Tandem Switching rate that represents the applicable charge for tandem switching for these types of calls. Thereafter, BellSouth notified all CLECs of the Tandem Switching billing issue, and offered a proposed ICA amendment to all CLECs (including Dialog) to rectify the situation (see Exhibit 1 to Dialog Complaint). As of March 9, 2005, approximately 75% of the UNE-P

CLECs operating in Kentucky have executed an appropriate contractual agreement and thus are being billed the Melded Tandem Switching rate element.

In addition to denying all allegations contained in Paragraph 3 of the Complaint regarding the billing of sales tax on UNEs, BellSouth affirmatively states that with the exception of the “vendor’s compensation” that it is permitted to retain pursuant to KRS 139.570, BellSouth derives no benefit from billing, collecting, and remitting Kentucky sales tax to the Revenue Cabinet. To the contrary, BellSouth has been harmed to the extent that it paid sales tax owed by Dialog while Dialog refused to pay such sales tax to BellSouth. Further, BellSouth affirmatively states that it had no obligation to file a sales tax refund claim *unless and until Dialog actually paid the disputed sales tax.* .

4. Responding to the allegations set forth in Paragraph 4 of the Complaint, BellSouth denies any breach of the ICA, including but not limited to any alleged breach of the ICA provision(s) related to suspension of access to ordering systems for non-payment. BellSouth admits only that access to LENS was temporarily suspended for non-payment on February 24, 2005, and immediately resumed on the same day when Dialog agreed to pay an undisputed portion to the total amount past due (\$373,977.20) by February 28, 2005. *See* footnotes 3 and 4 for specifics. Because of Dialog’s failure to make the agreed upon payment on February 28, 2005, BellSouth suspended LENS access on March 1, 2005. LENS access was restored on March 2, 2005, when BellSouth received the agreed upon payment.

5. BellSouth denies the allegations set forth in Paragraph 5 of the Complaint.

6. Responding to the allegations set forth in Paragraph 6 of the Complaint, BellSouth denies that it improperly suspended LENS access and admits only that, setting

aside disputed Tandem Switching charges that Dialog refuses to pay, Dialog owes current charges in excess of \$374,000.

7. BellSouth denies the allegations set forth in Paragraph 7 of the Complaint, and affirmatively states that BellSouth has cooperated with Dialog regarding its sales tax issue; and, on several occasions, has provided Dialog with an explanation of the Revenue Cabinet's position that telecommunications services are not eligible for a resale exemption from Kentucky sales tax. Attached as Exhibit 1 to this Response is an e-mail thread between the parties that demonstrates BellSouth's good faith cooperation, which includes the text of the relevant Revenue Cabinet regulation (regulation section 103; KAR 28:140).

8. Responding to the allegations set forth in Paragraph 8 of the Complaint, BellSouth denies any breach of the parties' ICA, denies taking any coercive collections tactics, and therefore denies that Dialog is entitled to the relief requested in Paragraph 8 of the Complaint.

9. Responding to the allegations set forth in Paragraph 9 of the Complaint, the cited authority [47 U.S.C. § 252(e) and 47 C.F.R. § 51.809] and ICA contractual provision [General Terms & Conditions, § 10] speak for themselves and require no response from BellSouth. Notwithstanding the foregoing, BellSouth denies that the cited authority has any relevance to the issues raised in Dialog's Complaint.

10. BellSouth admits the allegations set forth in Paragraph 10 of the Complaint, and clarifies that the ICA has been amended from time to time.

11. Responding to the allegations set forth in Paragraph 11, and setting aside self-effectuating provisions of FCC orders, BellSouth admits only that the rates, terms,

and conditions contained in the ICA, as it may be amended from time to time, are applicable to the services and UNEs that BellSouth provides Dialog.

12. Responding to the allegations set forth in Paragraph 12 of the Complaint, BellSouth admits only that on or about February 7, 2005, BellSouth notified Dialog that past due charges in the amount of \$529,969.19 were owed on account (502) Q95-2181 and should be paid by February 22, 2005, or “requests for additional service will be refused.” A copy BellSouth’s notification is attached hereto as Exhibit 2. BellSouth denies any breach of the ICA, and affirmatively states that the ICA permits BellSouth to suspend access to ordering systems because of non-payment of amounts not subject to any billing dispute.

13. Responding to the allegations set forth in Paragraph 13 of the Complaint, the letter attached as Exhibit 1 to Dialog’s Complaint speaks for itself and requires no response from BellSouth. As for the remaining allegations set forth in Paragraph 13, BellSouth admits only that as of March 10, 2005, Dialog has failed to pay at least \$163,891.66 in Kentucky-related Tandem Switching charges.

14. To the extent that the allegations set forth in Paragraph 14 of the Complaint are directed towards BellSouth, such allegations are denied. Further responding to the allegations set forth in Paragraph 14 of the Complaint, BellSouth denies that the Commission has jurisdiction to order BellSouth to pursue a tax refund on Dialog’s behalf.

15. To the extent that the allegations set forth in Paragraph 15 of the Complaint are directed towards BellSouth, such allegations are denied. Further responding to the allegations set forth in Paragraph 15 of the Complaint, BellSouth

repeats that, with the exception of the statutorily prescribed vendor's compensation, it gains no benefit or advantage from billing, collecting, and remitting Kentucky sales tax to the Revenue Cabinet. To the contrary, BellSouth was harmed during the period of time that it paid sales tax owed by Dialog while Dialog refused to pay such sales tax to BellSouth. BellSouth denies all remaining and/or inconsistent allegations contained in Paragraph 15.

16. To the extent that the allegations set forth in Paragraph 16 of the Complaint are directed towards BellSouth, such allegations are denied. BellSouth does not have sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 16.

17. To the extent that the allegations set forth in Paragraph 17 of the Complaint are directed towards BellSouth, such allegations are denied. BellSouth does not have sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 17.

18. To the extent that the allegations set forth in Paragraph 18 of the Complaint are directed towards BellSouth, such allegations are denied. BellSouth does not have sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 18.

19. To the extent that the allegations set forth in Paragraph 19 of the Complaint are directed towards BellSouth, such allegations are denied. Further, responding to the allegations set forth in Paragraph 19 of the Complaint, the Order attached as Exhibit 2 to the Complaint speaks for itself and requires no response from BellSouth. Notwithstanding the foregoing, the Court Order (Exhibit 2 to Dialog's

Complaint) required Dialog to “make a formal written demand to BellSouth to file a refund claim on its behalf.” To state the obvious, a Dialog “refund” sales tax claim cannot arise unless and until Dialog pays the “disputed” sales tax. Now that Dialog has paid such tax, BellSouth stands ready, willing, and able to file such a claim on Dialog’s behalf or assign to Dialog any and all refunds rights that BellSouth may have regarding this matter.

20. Responding to the allegations set forth in Paragraph 20 of the Complaint, the correspondence attached as Exhibit 3 to the Complaint speaks for itself and requires no response from BellSouth. To the extent that the remaining allegations set forth in Paragraph 20 of the Complaint are directed towards BellSouth, such allegations are denied.

21. The allegations set forth in Paragraph 21 of the Complaint appear to summarize Dialog’s legal opinion regarding its sales tax issue and require no response from BellSouth. BellSouth reiterates, however, that it had no obligation to file a sales tax refund claim with respect to tax billed to Dialog unless and until Dialog actually paid the disputed sales tax.

22. Responding to the allegations set forth in Paragraph 22 of the Complaint, the cited ICA contractual provision [General Terms & Conditions, § 11.5] speaks for itself and requires no response from BellSouth. Notwithstanding the forgoing, BellSouth affirmatively states that it has fully cooperated with Dialog’s UNE sales tax issue.

23. Responding to the allegations set forth in Paragraph 23 of the Complaint, BellSouth denies any breach of the ICA and reiterates that now that Dialog has finally paid the disputed sales tax, BellSouth stands ready, willing, and able to file such a claim

on Dialog's behalf or assign to Dialog any and all refunds rights that BellSouth may have.

24. Responding to the allegations set forth in Paragraph 24 of the Complaint, BellSouth denies any breach of the ICA and denies that it has improperly billed LPCs.

25. Responding to Dialog's "PRAYER FOR EXPEDITED RELIEF", BellSouth denies that Dialog is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

26. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

27. Count II (Collection of Sales Tax on UNEs) should be dismissed as moot because Dialog finally paid the disputed sales tax and BellSouth has offered to file a sales tax refund on Dialog's behalf.

THIRD AFFIRMATIVE DEFENSE

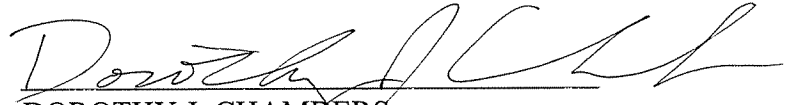
28. By refusing to execute an appropriate ICA amendment, Dialog has failed to mitigate the damages (if any) arising out of BellSouth's billing for Tandem Switching.

WHEREFORE, BellSouth respectfully requests that the Commission enter an Order:

(1) Denying all relief requested by Dialog in its Complaint and dismissing such Complaint with prejudice; and

(2) Granting such further relief as the Commission deems appropriate.

Respectfully submitted,



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Louisville, KY 40232
(502)582-8219
dorothy.chambers@bellsouth.com

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

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

575908

From: Jim Bellina [mailto:Jim@calldialog.com]
Sent: Monday, January 24, 2005 9:39 AM
To: Chapman, Ken
Cc: Mangina, Leisa G; Adams, Linda D; 'Patrick L. Eudy'; john.selent@dinslaw.com
Subject: RE: Kentucky Resale Exemption

Sorry Ken, I am apparently failing to make myself clear. Let me try one more time.

BellSouth has billed Dialog for sales taxes based on it's understanding of the various laws and revenue statutes.

Dialog has disputed the amounts billed based on it's understanding of the same laws and revenue statutes.

The revenue cabinet has expressly stated that it has not ruled on this issue (notwithstanding copies of letters that you have kindly provided).

The court does not want Dialog to ask BST for a refund (we've effectively done that through the dispute process), and nobody wants BST to file a refund request ON BEHALF OF Dialog (there is no basis for such a request as Dialog isn't remitting these amounts to the revenue cabinet). What we want is for you to file for a refund of the amounts that BST has incorrectly remitted to the revenue cabinet.

Assume for a moment that we take the revenue cabinet back to court and win. In that case BST would apply a credit to our account (and to every other UNE-P carrier account) for all KY sales taxes ever billed, and will presumably file a refund request with the revenue cabinet. Because of the revenue cabinets own rules denying us standing to request a refund (that's the administrative remedy that the court would like to see exhausted) the only way to proceed without challenging the revenue cabinets rules on standing in court is to work backward by having BST request the refund. If the revenue cabinet denies your request for a refund, we can then take that back to court and proceed with our case. It seems odd to me, but apparently anyone can challenge a revenue cabinet ruling but only the remitting can request a refund and get a ruling.

The court prefers that you request the refund for BST so that we all avoid the issue of challenging the revenue cabinets rules on standing. The court doesn't care that we are withholding payment for items billed by BST because it is not relevant to the issue raised by the revenue cabinet; I will however make this clear to the court in our next filing if you think it would help.

Finally, when you say that "no taxes have been paid" do you mean that BST has not paid the revenue cabinet for the sales taxes that you have billed Dialog and that we have disputed and withheld payment for? I had assumed that you'd paid the taxes, if not it makes things much more complex on our side, please confirm one way or the other; perhaps I'm the one that has been misunderstanding the current situation.

Thanks again for you efforts.
Jim

From: Chapman, Ken [mailto:Ken.Chapman@bellsouth.com]
Sent: Friday, January 21, 2005 3:08 PM
To: Jim Bellina
Cc: Mangina, Leisa G; Adams, Linda D; Patrick L. Eudy; john.selent@dinslaw.com
Subject: RE: Kentucky Resale Exemption

Jim:

As I read the court documents, the ruling (to ask us for a refund) was based on the court's belief that you had not yet exhausted all the administrative remedies available.

Asking us for a refund was a logical conclusion under the assumption that the taxes we had billed had been paid to us. Absent any evidence to the contrary, the court acted in a logical manner.

However, I believe the court would have reached a different conclusion if it had known that the sales taxes on our invoices had not been remitted to us.

We cannot initiate a request for refund on your behalf with the Department of Revenue because no taxes have been paid.

We cannot grant a resale exemption to your company prospectively (or credit the prior taxes billed) because of the statutes and the Department's ruling on the availability of a resale exemption for telecom services.

For the reasons stated above, we must refuse your request for a refund.

Please call if you would like to discuss this matter further.

Sincerely,

Ken Chapman
Tax Manager – State & Local Taxes
BellSouth Corporation
Phone: (404) 249-3624
Ipager: k_chapman@imcingular.com

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

From: Jim Bellina [mailto:jim@calldialog.com]

Sent: Wednesday, January 05, 2005 1:17 PM

To: Chapman, Ken

Cc: Mangina, Leisa G; Adams, Linda D; 'Patrick L. Eudy'; john.selent@dinslaw.com

Subject: RE: Kentucky Resale Exemption

I'm confused, I may have confused you.

Dialog has not paid the sales taxes listed on BellSouth's invoices because these taxes are improperly being assessed by BellSouth. Dialog has however remitted the sales taxes collected from our customers to the state. We do not dispute the validity of the sales taxes that Dialog collects from our end-users and remits directly to the state.

This is at the core of the issue, that Dialog is both paying sales tax to purchase network elements and Dialog's customers are paying sales tax for their telecommunications service. Sorry if I haven't been clear about that in past correspondence.

Jim

From: Chapman, Ken [mailto:Ken.Chapman@bellsouth.com]
Sent: Wednesday, January 05, 2005 11:55 AM
To: Jim Bellina
Cc: Mangina, Leisa G; Adams, Linda D; Patrick L. Eudy; john.selent@dinslaw.com
Subject: RE: Kentucky Resale Exemption

The information I have is that your company has not paid the Kentucky state sales taxes billed to your account.

BellSouth has already remitted the taxes to the state.

If my information is correct, we cannot ask for a refund on your behalf for taxes that you have not paid.

Ken Chapman
Tax Manager – State & Local Taxes
BellSouth Corporation
Phone: (404) 249-3624
Ipager: k_chapman@imcingular.com

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

From: Jim Bellina [mailto:jim@calldialog.com]
Sent: Monday, December 20, 2004 11:16 AM
To: Chapman, Ken
Cc: Mangina, Leisa G; Adams, Linda D; 'Patrick L. Eudy'; john.selent@dinslaw.com
Subject: RE: Kentucky Resale Exemption

Ken, as you know, Dialog challenged the Revenue Cabinets private letter ruling, and rather than defending their position they backed away from it and hid behind their regulations that deny us standing. Rather than ruling on the cabinets motion to dismiss based on those regulations the court hoped to avoid the issue by asking that we encourage BST to file the claim so that the revenue cabinet could evaluate it.

We have provided to you the basis for the refund request, and in light of these arguments I think it is clear that the statute and regulations are ambiguous. If you disagree I'd like to hear your evaluation of our arguments.

You claim that BellSouth has experience with the revenue cabinet on this issue, but I think that is incorrect. I believe that you have experience related to sales tax for access charges, and perhaps for resale of service, but not for UNE-P. You said that you were looking for evidence of the revenue cabinet's past rulings on this issue; I doubt that you'll find anything because the cabinet has indicated that they haven't ruled on this, but if you have will you please let me know?

What is clear is that BST has filed a refund request at the request of at least one client in the past, and in that case the language was less ambiguous than it is in ours. It seems to us that BellSouth is incorrectly charging Dialog taxes specifically to obtain a competitive advantage; our customers are effectively double taxed while BellSouth's are not and that BellSouth's reading of the statute and regulation is colored by their desire to maintain this competitive advantage.

The way to resolve this is to get a ruling on our arguments, and as you know, the process for getting such a ruling starts with a refund request which only BellSouth has standing to file.

Once again I ask that you file the refund request.

Jim Bellina

From: Chapman, Ken [mailto:Ken.Chapman@bellsouth.com]
Sent: Wednesday, December 15, 2004 12:14 PM
To: Jim Bellina
Cc: Mangina, Leisa G; Adams, Linda D
Subject: RE: Kentucky Resale Exemption

BellSouth has a legal responsibility to collect and to remit to the state all sales taxes that are due by law. Because the wording of the statute and the regulation cited below is in our reading unambiguous, BellSouth cannot proceed with a refund request for which we believe there is no basis in the law or regulations. As we have stated before, we believe our direct experience with the Department of Revenue also justifies this position.

Your company may want to apply for a refund and a private letter ruling directly from the Department of Revenue. I am sure the Department of Revenue would fairly evaluate your company's facts and circumstances to determine if your company is entitled to a refund of taxes based on a claim of resale exemption under Kentucky law.

Sincerely,

Ken Chapman
Tax Manager – State & Local Taxes
BellSouth Corporation
Phone: (404) 249-3624
Ipager: k_chapman@imcingular.com

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

From: Jim Bellina [mailto:jim@calldialog.com]
Sent: Monday, November 22, 2004 4:40 PM
To: Chapman, Ken
Cc: Mangina, Leisa G; Adams, Linda D; holly.wallace@dinslaw.com; john.selent@dinslaw.com; 'Patrick L. Eudy'; Wilbanks, Paul
Subject: RE: Kentucky Resale Exemption

Ken, I have reviewed your comments and appreciate your experience in this area, but you have provided no new information and I still do not find your presentation persuasive for reasons that have also already been presented.

From the document that you attached it is clear that you've taken issues to the revenue cabinet for clients in the past. Attached is a copy of the letter that we send in February 2004 where we made "one last

request" that BellSouth file with the revenue cabinet for a refund of these amounts as we were directed by the Franklin Circuit Court. Is your response, below, a refusal to work with us to do so?

Jim Bellina

From: Chapman, Ken [mailto:Ken.Chapman@BellSouth.com]

Sent: Wednesday, November 10, 2004 4:21 PM

To: jim@calldialog.com

Cc: Mangina, Leisa G; Adams, Linda D

Subject: Kentucky Resale Exemption

BellSouth's position for not offering resale exemption in Kentucky is based primarily on Kentucky Regulation Reg.103 KAR 28:140 cited below:

Section 1. Switch Communications service providers are the consumers of all tangible personal property and services, including access services, used to provide communications services to their own customers. Purchasers of access services shall not claim the access services purchased are exempt as being for resale.

Section 2. **Communications service providers that purchase communications services from facilities-based carriers to resell to their own customer base shall not claim the communications services purchased are exempt as being transactions for resale (emphasis added).**

Section 3. All receipts from the sale of communications services are subject to Kentucky tax unless otherwise exempted by the sales tax law. **The sale of communications services is not eligible for the resale exemption (emphasis added).**

Section 4. Application. (1) Retailers of communications services shall collect sales tax on the sale of intrastate access services and all other intrastate communications charges billed on or after June 1, 2000 as provided by KRS 139.100.

(2) Retailers of communications services shall collect sales tax on the sale of intrastate access services and other communications charges billed on or after January 1, 2001 as provided by KRS 139.100.

(Effective January 8, 1975; amended July 10, 2001.)

Our direct experience with Revenue Cabinet also confirms this. We have had joint petitions for refunds rejected for this very reason. Please refer to the attachment to this email for an example of the Revenue Cabinet's position.

<<KY Revenue Cabinet Letter.pdf>>

We have also had inquiries from customers wishing to pay the Kentucky sales tax directly to the Department of Revenue. To our knowledge there is no special or limited direct pay permit available for taxes on telecommunications services. However, the customer could submit a Form 51A112, Application for Direct Pay Authorization, along with their rationale why a direct pay permit is warranted. It would then be up to the Kentucky Department of Revenue to decide if such a permit was appropriate based on the customer's facts and circumstances. Form 51A112 is available from the Department of Revenue website at <http://revenue.state.ky.us/>.

Ken Chapman
Tax Manager -- State & Local Taxes
BellSouth Corporation
Phone: (404) 249-3624
Ipager: k_chapman@imcingular.com

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. 117

COMMONWEALTH OF KENTUCKY
REVENUE CABINET
Sales & Use Tax Section
P.O. Box 181
FRANKFORT KY 40602
Telephone: 502-564-5170 FAX: 502-564-2041

March 25, 2003

SUSAN SMITH CREEL,
BELL SOUTH TELECOMMUNICATIONS INC
1155 PEACHTREE ST
SUITE 16H
ATLANTA GA 30309

Dear Ms. Creel:

The Revenue Cabinet's Sales Tax Section has received your refund request in the amount of \$1,000.00 submitted on behalf of BellSouth Telecommunications Inc. The refund is for sales tax remitted by BellSouth Telecommunications on the purchase of telecommunication services by BellSouth Telecommunications claiming sales for resale exemption. Based on the information submitted in your correspondence, the Cabinet must at this time deny your request.

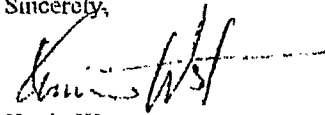
Retailers of telephonic and telegraphic communications and services are the consumers of all tangible personal property and services, including access services, used to provide telephonic and telegraphic communications and services to their customers. Purchasers of access services shall not claim the access services purchased are for resale. In addition, it is the Cabinet's position that the Federal Telecommunications Act of 1996 does not specifically prohibit the state from taxing the telecommunication services at issue. Because the Act states that certain items are to be purchased on a wholesale basis for resale does not prohibit the taxation of the transaction. Kentucky has no sales tax exemption or exclusion for the resale of telephonic or telecommunication services.

For these reasons, the Cabinet must at this time deny your request.

Should you disagree with the Cabinet's position, a written protest, stating reasons must be filed with the Cabinet within forty-five days from the date of this letter. In accordance with KRS 131.110, protest must be accompanied by a supporting statement identifying the specific adjustments being protested and setting forth the grounds upon which the protest is made. Correspondence should be submitted to: Kentucky Revenue Cabinet, Sales and Use Tax Section, Division of Compliance and Taxpayer Assistance, PO Box 181, Frankfort, KY 40601.

If you have questions regarding this correspondence, you may contact the undersigned at (502) 564-5170, ext. 4129.

Sincerely,



Kevin West
Section Supervisor
Sales and Use Tax Section



MESSAGE CONFIRMATION

02/11/2005 10:15

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
02/11	00'50"	17045252129	CALLING	004	OK 0000

02/11/2005 10:14

NO.598 0001

To: John Bellini Fax: 704 525-2129
From: Jose Mangoni Date: 2/11/05
Re: your your information Pages: 4 including cover
cc: notice sent to Dialog for post due

Urgent For Review Please Comment Please Reply Please Recycle





PLEASE SEE THE FOLLOWING
PAGE FOR IMPORTANT INFORMATION
ABOUT YOUR SERVICE

DIALOG SMALL
BILLING CONTACT
756 TYVOLA RD
SUITE 100
CHARLOTTE, NC 28217



February 7, 2005

DIALOG SMALL
BILLING CONTACT
756 TYVOLA RD
SUITE 100
CHARLOTTE, NC 28217

PLEASE REMIT PAYMENT TO:
BellSouth Payment Remittance Office
P.O. Box 105373
Atlanta, Georgia 30348-5373

OVERNIGHT MAIL:
BellSouth Payment Remittance Office
250 Williams Street
Suite 5020 West
Atlanta, Georgia 30348-5373

TO: BILLING CONTACT

Our records indicate that as of February 7, 2005 we have not received payment of \$541,341.54. A breakdown of the past due charges is as follows:

(502) Q95-2181	\$529,969.19	
(704) Q95-2181		\$11,372.35

If this amount is not received by February 22, 2005, requests for additional service will be refused.

Your end users' service will be interrupted unless payment is received by March 9, 2005.

If your end users' service is interrupted for non-payment a restoral fee will apply for each end user account upon restoral of service. This may be the only written notification you receive. In addition, further notice may not be given before discontinuing service if a check is dishonored.



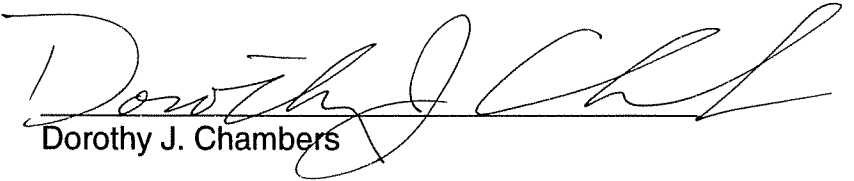
If you have paid your bill since this notice was prepared, please accept our thanks and disregard this notice.

If you have any questions, please call 1-800-823-2455.

Account Representative

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 17th day of March 2005.


Dorothy J. Chambers

SERVICE LIST – PSC 2005-00095

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

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