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March 21, 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 AT&T Kentucky's Reply to Dialog's Response to AT&T Kentucky's Motion for Rehearing.

Sincerely,

*Mary K. Keyer*  
Mary K. Keyer *by CRW*

cc: Parties of Record

671797

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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

**REPLY TO DIALOG’S RESPONSE TO**  
**AT&T KENTUCKY’S MOTION FOR REHEARING**

BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky (“AT&T Kentucky”),<sup>1</sup> herewith submits this reply to the Response of Dialog Telecommunications, Inc. (“Dialog”) to AT&T Kentucky’s Motion for Rehearing and/or Reconsideration. In its Order dated February 8, 2007 (“Order”), the Kentucky Public Service Commission (“Commission”) mistakenly noted that Dialog had paid sales tax on unbundled network elements (“UNEs”) purchased from AT&T Kentucky.<sup>2</sup> Based on the inaccurate assumption that Dialog has paid sales tax on UNEs – a representation that Dialog made to the Commission in May 2006 – the **Commission ordered AT&T to seek a sales tax refund on Dialog’s behalf.**<sup>3</sup>

In its Motion for Rehearing and/or Reconsideration, AT&T Kentucky demonstrated the fact that Dialog had effectively failed to pay the sales tax at issue by engaging in an inappropriate version of “self-help.” That is, by refusing to pay over \$530,000 in bills for services rendered, Dialog has withheld payment of an amount that

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<sup>1</sup> BellSouth Telecommunications, Inc. is now doing business in the Commonwealth of Kentucky as AT&T Kentucky and thus will be referred to herein as “AT&T Kentucky” rather than “BellSouth.”

<sup>2</sup> Order at 3 (noting that “Dialog has now paid [the tax in question] pending resolution of this dispute.”)

<sup>3</sup> Order at 5 (ordering that “BellSouth shall seek a tax refund, as described herein, which may benefit Dialog . . . .”)

approximates the total amount of UNE sales tax that Dialog contends that it should not be obligated to pay.<sup>4</sup>

Incredibly, in its response to AT&T's motion, ***Dialog does not dispute the fact that it has short-paid bills in an amount that exceeds \$530,000.*** More troubling, ***Dialog does not dispute the fact that it represented to the Commission that it had indeed paid the disputed tax amount – a representation that was, at best, inaccurate.***<sup>5</sup> Further, ***Dialog does not dispute the fact that under the parties' interconnection agreement, Dialog has a contractual obligation to pay the disputed tax amount.***<sup>6</sup>

Instead, Dialog makes the nonsensical argument that “[w]hether or not Dialog had paid the disputed charges [i.e. taxes] was in no way relevant” to the Commission’s decision, and that the Commission’s reference that Dialog had paid the tax in question was “mere dicta.”<sup>7</sup> Dialog’s argument is specious and devoid of any merit. Again, based on the representations made that Dialog had paid the tax in question, the Commission ordered AT&T Kentucky to seek a refund of such taxes on Dialog’s behalf.<sup>8</sup> To state the obvious, AT&T Kentucky cannot refund to Dialog amounts Dialog has not paid AT&T Kentucky.<sup>9</sup>

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<sup>4</sup> AT&T Kentucky’s Motion for Rehearing/Reconsideration at pp. 4-5 and Exhibits 1 and 2.

<sup>5</sup> See Exhibit 3 to AT&T Kentucky’s Motion for Rehearing/Reconsideration where Dialog misrepresented to the Commission that it had been paying sales tax to AT&T Kentucky by claiming it “has been doubly burdened with ‘tax’ obligations while awaiting action on the complaint.”

<sup>6</sup> AT&T Kentucky’s Motion for Rehearing/Reconsideration at p. 5 (quoting relevant contract language).

<sup>7</sup> Response of Dialog to BellSouth’s Motion for Rehearing at 2.

<sup>8</sup> *Order* at 6 (“The Commission finds that BellSouth should file the refund request for the application of sales tax on UNEs.”)

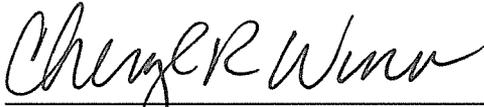
<sup>9</sup> AT&T Kentucky has paid the sales tax that Dialog has refused to pay. As such, it is AT&T Kentucky that is out of pocket in an amount that exceeds \$530,000. Thus, Dialog is simply wrong when it claims that “an order requiring Dialog to pay disputed [tax] amounts to BellSouth would erase any incentive BellSouth otherwise has to make an earnest effort to obtain a tax refund.” Response of Dialog to BellSouth’s Motion for Rehearing at 3.

In any event, Dialog's disingenuous argument proves too much. If, as Dialog contends, the payment by Dialog of the tax in question "is in no way relevant," then Dialog should have no opposition to the Commission issuing an Order that clarifies and corrects the inaccurate statement made in the Commission's original *Order* regarding the payment of taxes. At a minimum, the Commission should be leery of a party that opposes a straightforward attempt to "get the facts straight" in a Commission Order.

### **CONCLUSION**

As stated in AT&T Kentucky's motion for rehearing/reconsideration, the Commission should issue an order that recognizes that Dialog has effectively failed to pay the tax in question. This is particularly appropriate in this case given the fact that Dialog does not dispute that it has withheld payment of over \$530,000 – an amount that approximates the sales tax amount that Dialog contends that it should not be obligated to pay.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE – KPSC 2005-00095**

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 21st day of March, 2007,

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for Mary K. Meyer