



S T O L L · K E E N O N · O G D E N

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November 9, 2007

RECEIVED

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PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: *Dialog Telecommunications, Inc. v. BellSouth Telecommunications Inc.*
Case No. 2005-00095

Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of Dialog Telecommunications, Inc.'s Motion for Reconsideration and Emergency Relief.

Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via the enclosed self-addressed, postage-paid envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

Deborah T. Eversole

DFB:jms

Enc.

cc: Mary Keyer, BellSouth
Cheryl Winn, BellSouth

Dialog respectfully requests the Commission to enter its Order prohibiting BellSouth from acting upon the Notice for the following reasons:

1. The Commission's October 26, 2007 Order did not authorize BellSouth to disconnect Dialog for refusal to pay the disputed amount. The Commission found only that language of the parties' ICA required Dialog to pay the disputed "tax" to trigger BellSouth's obligation to apply for a refund. Pursuant to 807 KAR 5:006, while this billing dispute is pending (and the dispute as to whether a UNE is a "service" and can be taxed as such will remain pending until BellSouth obtains a final decision on the tax issue, regardless of the procedures that must take place prior to BellSouth's filing for the refund), *AT&T cannot terminate Dialog's service.*

2. The Commission based its decision requiring Dialog to pay the disputed amount solely upon the parties' contract. Dialog strongly disagrees with the Commission's reading of the contract, pursuant to which Dialog is obligated to pay if AT&T, without any obligation of good faith or fair dealing to temper its actions, tells it to do so. Dialog strongly disagrees with the Commission's apparent determination that Dialog alone has become financially responsible for obtaining a determination that will benefit all CLECs, despite the Commission's statutory obligation to ensure that utilities act reasonably, and in the public interest. However, even if the Commission's reading of the contract were accurate, it would not trump Kentucky law.

3. The law is incorporated into contracts and governs the parties' relationships. *See, e.g., Grayson Rural Electric Corp. v. City of Vanceburg*, 4 S.W.3d 526, 531 (Ky. 1999); *City of Covington v. Sanitation Dist. No. 1*, 301 S.W.2d 885, 888 (Ky. 1957) ("It is an accepted principle that included in the terms of contracts are the

laws which subsist at the time and place of the making of the contract, and where it is to be performed, as if they were expressly incorporated in its terms.”)

4. 807 KAR 5:006, Section 11 is the law in Kentucky. *Union Light, Heat & Power Co. v. Public Service Comm’n*, 271 S.W.2d 361, 366 (Ky. 1954) (“It is well established that the rules and regulations of an administrative agency duly adopted pursuant to the powers delegated to it have the force and effect of law.”). Pursuant to 807 KAR 5:006, Section 11, AT&T may not terminate Dialog’s service until the billing dispute between them is resolved, as long as Dialog stays current on undisputed amounts. The parties’ dispute as to whether Dialog owes BellSouth alleged taxes on “service,” when Dialog purchased network elements, is not resolved. It can be resolved only by BellSouth.

5. Time is of the essence, as BellSouth’s Notice indicates that termination of Dialog’s service is imminent. More than 15,000 Kentucky customers could be affected. Accordingly, Dialog requests emergency treatment of this Motion.

For the foregoing reasons, Dialog respectfully requests that:

A. The Commission reconsider its decision that Dialog must pay BellSouth the disputed amounts in order to trigger BellSouth’s obligation under the parties’ contract and to all CLECs in Kentucky to obtain a ruling on whether a “service” tax can be imposed on the sale of a UNE; and

B. The Commission enter its Order prohibiting BellSouth from terminating access to operating systems and services to Dialog as threatened in the Notice.

Respectfully Submitted,

DIALOG TELECOMMUNICATIONS, INC.

By: 

C. Kent Hatfield
Douglas F. Brent
Deborah T. Eversole
STOLL, KEENON OGDEN PLLC
Suite 2000, PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
502-333-6000

CERTIFICATE OF SERVICE

It is hereby certified that this 9th day of November, 2007 I have served the foregoing by U.S. Mail, postage prepaid, upon the following:

Mary Keyer
Cheryl Winn
BellSouth Telecommunications
P. O. Box 32410
601 West Chestnut Street, Room 407
Louisville, KY. 40232


Counsel for Dialog Telecommunications

106189.119019/498644.1



AT&T Credit & Collections

600 North 19th Street
22nd Floor
Birmingham, Alabama 35203

November 6, 2007

VIA OVERNIGHT MAIL

Jim Bellina
Dialog Telecommunications, Inc.
756 Tyvola Road, Suite 100
Charlotte, North Carolina 28270

Re: Notice of Suspension of Access to Ordering Systems
And Discontinuance of Service

Dear Mr. Bellina:

As you are aware, the Kentucky Public Service Commission ("Commission") recently ruled that Dialog Telecommunications, Inc. ("Dialog") has a contractual obligation to pay AT&T Kentucky the sales tax on unbundled network elements ("UNEs") that Dialog has refused to pay.¹ The amount of sales tax that Dialog has refused to pay is \$538,202.10. This amount is past due and must be paid to avoid suspension of access to ordering systems and discontinuance of existing service in accordance with the terms of Attachment 7 of the parties' interconnection agreement ("ICA") and any applicable Commission rules and regulations.

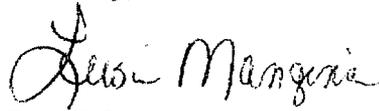
Specifically, if Dialog fails to pay \$538,202.10 by November 21, 2007, or fails to make payment arrangements to pay such amount that are acceptable to AT&T Kentucky by the aforementioned date, then requests for additional service will be denied and access to ordering systems will be suspended. Further, if such amount remains unpaid, Dialog's existing service will be discontinued on December 6, 2007, and thereafter terminated on December 13, 2007.

As previously indicated by our attorneys and tax personnel, upon payment in full of the withheld tax, AT&T Kentucky remains willing to pursue a sales tax refund in accordance with the parties' ICA and the Commission's Orders in Case No. 2005-00095.

¹ *In the Matter of: Dialog Telecommunications, Inc. v. BellSouth Telecommunications, Inc.*, Case No. 2005-00095, Order issued October 26, 2007, at page 5 ("Based on a plain reading of the language of [the parties' interconnection agreement], the Commission finds that Dialog is obligated to pay the UNE sales tax to AT&T Kentucky, since AT&T Kentucky has requested such payments.") and page 6 ("Having reviewed the arguments of the parties, the Commission finds that the March 23 Order compelling Dialog to pay the disputed UNE sales tax prior to having AT&T Kentucky seek a refund before the Department of Revenue was correct as a matter of contractual interpretation.")

If you have any questions, please call 1-800-872-3116.

Sincerely,

A handwritten signature in cursive script that reads "Leisa Mangina". The signature is written in black ink and is positioned above the printed name.

Leisa Mangina
Manager – Credit and Collections
AT&T-Southeast

FedEx Tracking Number: 8634 8014 9259