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March 16, 2007

Elizabeth O'Donnell
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

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COMMISSION

RE: 2005-00095

Dear Ms. O'Donnell:

Enclosed are an original and ten copies each of Dialog Telecommunications, Inc.'s Response to BellSouth's Motion for Rehearing in the above-mentioned case.

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

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:jms
Enc.

cc: Service List

BellSouth does not dispute the Commission's legal determination that a network element is not a service. Nevertheless, BellSouth in its Motion appears to indicate that it will, in fact, *not* pursue a refund until Dialog makes further payments. To justify this position, BellSouth claims that the Commission erred in asserting that Dialog's payment of the tax is current. Even a cursory reading of the Order demonstrates that the amount of alleged tax Dialog "owes," or does not "owe," to BellSouth lacks the slightest relevance to the Commission's decision. The Motion should be denied.

BellSouth's Motion does not meet even the minimum requirements for consideration by the Commission. A motion for rehearing is an opportunity to present new evidence that could not with reasonable diligence have been offered in the former hearing and which, if considered, could have a material impact on the Commission's decision. BellSouth offers no such evidence. BellSouth claims the Commission's Order is "premised on the inaccurate assumption that Dialog has paid sales tax on UNEs." BellSouth is wrong. Nothing in the Commission's Order even hints that the Commission's legal determination had anything to do with whether Dialog had or had not paid BellSouth sales tax. Rather, the Commission noted in passing that, when BellSouth answered Dialog's Complaint, in March 2005, *BellSouth* claimed that Dialog had paid the disputed sales tax. The Commission's brief discussion of the two year history of this case, including payment allegations, was mere dicta.

The issues before the Commission were whether Dialog had properly interpreted the law and whether Dialog had a good faith basis for disputing BellSouth's "tax" charges on network elements. Whether or not Dialog had paid the disputed charges was in no way relevant to the purely legal questions before the Commission. And if Dialog's

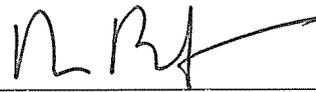
payment history were in any way relevant, BellSouth's motion makes clear that the billing dispute it is now trying to put in play was filed in April 2006; yet BellSouth never raised any issue related to the dispute until *after* the Commission had issued its Order. If Dialog's payment history had been relevant, BellSouth could have (and would have) challenged Dialog long before now.

The Order's recounting of the factual history between the parties is not the basis of the Commission's decision. The basis of the Commission's decision is its strong affirmation of its longstanding reading of telecommunications law with regard to the distinction between "UNEs" and "service." BellSouth offers no legally cognizable reason to avoid its obligation to comply with the Commission's Order. Moreover, an order requiring Dialog to pay disputed amounts to BellSouth would simply erase any incentive BellSouth otherwise has to make an earnest effort to obtain a tax refund. The Motion must be denied.

Respectfully Submitted:

DIALOG TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

It is hereby certified that this 16th day of March, 2007 I have served the within Response on the following by deposit in the U. S. Mail, first class.



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