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July 26, 2006

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PUBLIC SERVICE
COMMISSION

HAND FILED

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

RE: 2006-00099

Dear Ms. O'Donnell:

Enclosed are an original and five copies each of Direct Testimony of Steven E. Turner and Jim Bellina filed on behalf of Dialog Telecommunications in the above captioned case. Mr. Turner's testimony includes references to BellSouth cost information provided to Dialog pursuant to a Protective Agreement. We are filing a single copy of the testimony which includes this information. The six "PUBLIC" copies are redacted.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent /DB

Douglas F. Brent

cc: Service List

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JUL 26 2006

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

Petition of:	)	
Dialog Telecommunications for	)	
Arbitration of Certain Terms and	)	Case No. 2006-00099
Conditions of Proposed Agreement with	)	
BellSouth Telecommunications, Inc.	)	Filed March 3, 2006
Concerning Interconnection Under The	)	
Telecommunications Act of 1996	)	
	)	

DIRECT TESTIMONY OF JIM BELLINA

On Behalf of

DIALOG TELECOMMUNICATIONS INC.

July 26, 2006

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Jim Bellina. I am the President and Chief Executive Officer of Dialog Telecommunications, Inc. My business address is 756 Tyvola Road, Suite 100, Charlotte, NC 28217.

Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR BUSINESS EXPERIENCE.

A. I have eighteen years of experience in the telecommunications industry in a variety of roles and functions, beginning in 1988 with Centel, a holding company for independent ILECs. During my tenure with Centel, at various times I held positions of responsibility in audit, financial and capital planning, product development, customer service, sales, engineering, strategic marketing, and customer relationship management. In 1998, 360 Communications, which was the company that remained after Centel went through a number of mergers and divestitures, merged with ALLTEL. During my tenure with ALLTEL, I was responsible for all aspects of managing customer satisfaction, customer attrition, and revenue enhancement for a base of approximately 10 million customers. In 2000 I joined FairPoint Communications. Initially, I was responsible for the marketing and distribution elements of FairPoint's entry into the web-based application service provider business. After that business was up and running, I was responsible for the development of FairPoint's CLEC customer segmentation and distribution channels In 2001, FairPoint's CLEC operations were successfully sold and Dialog Telecommunications was launched to provide local and long distance services to residential customers in Western Kentucky. Since the inception of Dialog Telecommunications in 2001, I have been responsible for all aspects of Dialog's operations as President and Chief Executive Officer.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to provide the Commission with a brief overview of Dialog's consumer telecommunications business in Kentucky; to explain how the correct resolution by the Commission of the disputed issues in this arbitration is vitally important to Dialog's ability to provide competitive choice to customers in Western Kentucky, and to address specific issues in dispute in this arbitration.

Q. PLEASE DESCRIBE DIALOG'S CONSUMER TELECOMMUNICATIONS BUSINESS IN KENTUCKY?

Dialog Telecommunications operates primarily in the Owensboro LATA in Western Kentucky and provides telecommunications services to residential and

small business customers. We do not offer T1 or above services in the enterprise market. Dialog's initial service offerings were provided via unbundled network elements, including circuit switching, that Dialog purchased from BellSouth. This combination of network elements is typically referred to as the unbundled network platform, or "UNE-P."

Q. DOES DIALOG CONTINUE TO OFFER ITS SERVICES VIA UNE-P PURCHASED FROM BELLSOUTH?

A. No. As this Commission is aware, in the beginning of 2005, the FCC issued its decision that eliminated the obligation of incumbent phone companies, including BellSouth, to provide unbundled local switching which was critical to the unbundled network elements in the combination of unbundled network elements that make up the UNE-P. In response, the larger UNE-P CLECs serving residential customers (AT&T and MCI – later acquired by SBC and Verizon) in Kentucky basically abandoned the consumer and small business local telecommunications market and ceased marketing to consumers in Kentucky. Dialog, however, remained determined to compete. Dialog decided in early 2005 to make a substantial investment in switching and collocated line termination equipment to continue as a facilities-based telecommunications company. In effect, we "doubled down" on our bet that Kentucky consumers would continue to respond positively to Dialog's offer of a choice between Dialog and the incumbent, BellSouth. Rather than abandoning the market and the customer base that Dialog had worked hard to build in the Owensboro LATA, Dialog accelerated plans to deploy a network. In less than a year, Dialog designed a network, selected vendors, negotiated agreements, and deployed a network that includes a switch in Paducah and nine collocations in BellSouth central offices in the Owensboro LATA.

As a result of Dialog's decision to invest in facilities in Kentucky to serve and expand its rural Kentucky consumer base, Dialog began negotiations with BellSouth to put in place an interconnection agreement to establish trunking arrangements for the exchange of traffic; the establishment of collocation arrangements where Dialog could place its line termination equipment and the processes for migrating its existing customers' lines to that equipment, in addition to the myriad other financial and operational matters that needed to be finalized between a facilities-based CLEC and BellSouth.

Q. PLEASE DESCRIBE BRIEFLY THOSE NEGOTIATIONS AND THE RESULTS?

A. During the course of the negotiations between Dialog and BellSouth, we were able to resolve most of the points of contention. However, the FCC's TRRO order in March of 2005 apparently reduced BellSouth's interest in providing unbundled switching to Dialog or any other CLEC – BellSouth substantially increased its rates for this critical element. Thereafter, Dialog determined to migrate its customers from the UNE-P platform to its own facilities by March 11, 2006. However, there remained many issues and questions about the interpretation of the FCC's TRRO Order as well as BellSouth's unique obligation to provide switching under a different section of the Act. Since those issues and questions were being addressed by this Commission in Case No. 2004-00427, the parties agreed early on in the negotiations to await the Commission's decision in that case and to incorporate the results into the final interconnection agreement.

In addition, during the course of the negotiations, the Commission issued its September 25, 2006 decision and order in Case No. 2004-00044, which was an arbitration proceeding between BellSouth and NuVox, Expedius and several other CLECS. The parties could not agree on two issues that had been decided in that arbitration and agreed to await the Commission's final decision in that case and to incorporate the results into the final interconnection agreement.

With March 11, 2006 approaching, Dialog and BellSouth could not agree on several issues and those are the issues that have been put forward in the Statement of Unresolved issues that were listed in Dialog's Petition for Arbitration with BellSouth that was filed with this Commission on March 3, 2006. BellSouth created a dilemma for Dialog by threatening to convert our end users to resale in early March if we did not execute a new agreement and submit orders to convert existing customers from the UNE-P to UNE-L. A forced conversion to resale would have been customer-affecting as well as disruptive to Dialog's plans to remain a facilities-based carrier.

In order to meet BellSouth's self-imposed deadline for Dialog to either migrate customers or have them converted involuntarily to resale, Dialog was required to sign an interconnection agreement containing provisions for Bulk Migration. Prior to signing the interconnection agreement in order to gain access to BellSouth's Bulk Migration ordering system, Dialog attempted to negotiate with BellSouth for an appropriate rate for Bulk Migration, but that effort was unsuccessful.

Q. TURNING NOW TO THE UNRESOLVED ISSUES IN THIS ARBITRATION, WOULD YOU PROVIDE DIALOG'S POSITION ON ISSUES 1 AND 2?

<u>ISSUE 1</u> – WHAT IS THE APPROPRIATE RATE FOR BATCH OR BULK MIGRATIONS WHEN DIALOG REQUESTS CONVERSION FROM A UNE-P LOOP AND PORT COMBINATION TO A UNE LOOP CONFIGURATION?

<u>ISSUE 2</u> – SHOULD THE RATE ESTABLISHED BY THE COMMISSION FOR BATCH OR BULK MIGRATION FROM UNE-P TO UNE-L BE APPLIED TO CONVERSIONS WHICH WERE REQUIRED BY THE TRRO TO BE SUBMITTED BY MARCH 11, 2006?

A. As I discussed above, Dialog attempted to negotiate a rate for the bulk migration from UNE-P loop and port combination to a UNE-L loop to be connected to Dialog's line termination equipment in its collocation space. Dialog's basic position was and is that, since the Dialog customer is already utilizing the loop to be converted and Dialog has already paid for that loop, the conversion process does not require a new loop or activation of an existing loop. The only functions that are required of BellSouth is to cross connect that existing loop from the main distribution frame of the BellSouth switch to Dialog's line termination equipment in its collocation space. Therefore, Dialog objects to paying a non-recurring charge for that *existing loop already serving the customer* during the Bulk Migration of Dialog's UNE-P base.

We are sponsoring the expert testimony of Steve Turner who more fully articulates why the application of the non-recurring charge for the UNE Loop and certain other rate elements is inappropriate in a batch or bulk migration operation. The parties were unable to come to an agreement on the appropriate rate.

Given BellSouth's refusal to provide an appropriate rate for Bulk Migration, Dialog reserved its rights to arbitrate the issue and the parties included language in the interconnection agreement to reflect this disputed issue, as follows:

> "The Parties acknowledge that the rates applicable to Bulk Migration as described in this Section are an issue in arbitration between the Parties in the BellSouth-Dialog arbitration proceeding in Kentucky filed March 3, 2006. The Parties have agreed to abide by the Commission's decision with respect to this issue in such proceeding and have agreed to amend this Section, if necessary, to conform to that decision. Such amendment shall apply to the state of Kentucky only. In the interim, Dialog has agreed to utilize BellSouth proposed rates with respect to this issue solely for the purpose of implementing a complete Interconnection Agreement in Kentucky during the pendency of the Dialog-BellSouth Arbitration proceeding filed March 3, 2006. BellSouth agrees that it will not use Dialog's agreement to utilize BellSouth's language and rates with respect to this issue as an admission that Dialog has reached agreement with BellSouth on proposed language for this issue in Kentucky."
>
> <u>BellSouth-Dialog Interconnection Agreement, Attachment 2, Paragraph 2.1.12.1</u>

After the interconnection agreement was signed, Dialog began submitting orders via the Bulk Migration process beginning March 4, 2006 in order to meet the March 11 deadline. Dialog is asking that the Commission establish an appropriate TELRIC based rate for Bulk Migration and direct that that rate should be applied to the Bulk Migration orders that Dialog was required to submit in order to meet the March 11, 2006 deadline.

Q. WHAT IS DIALOG'S POSITION ON UNRESOLVED ISSUE 3?

<u>ISSUE 3(a)</u> HOW SHOULD LINE CONDITIONING BE DEFINED AND WHAT SHOULD BELLSOUTH'S OBLIGATION BE WITH RESPECT TO LINE CONDITIONING?

<u>ISSUE 3(b)</u> SHOULD THE INTERCONNECTION AGREEMENT CONTAIN SPECIFIC PROVISIONS LIMITING THE AVAILABILITY OF LINE CONDITIONING TO COPPER LOOPS OF 18,000 FEET OR LESS?

<u>ISSUE 3(c)</u> UNDER WHAT RATES, TERMS AND CONDITIONS SHOULD BELLSOUTH BE REQUIRED TO PERFORM LINE CONDITIONING TO REMOVE BRIDGED TAP?

A. In the Commission's September 25, 2005 Order in Case No. 2004-00044, an arbitration proceeding between BellSouth and several CLECs, the Commission concluded that line conditioning is a routine network modification and not the creation of a "superior network" as suggested by BellSouth. As a result, the Commission concluded that BellSouth must provide line conditioning when requested by a CLEC. The Commission further found that BellSouth was obligated to remove load coils on loops in excess of 18,000 feet, when requested by a CLEC, at no additional cost. Finally, the Commission concluded that BellSouth was not permitted to charge special construction rates pursuant to its FCC tariff for the removal of bridged taps resulting in levels of less than 2,500 feet and that the removal of bridged taps should be performed at TELRIC rates. Dialog's position is that the Commission was and is correct in these conclusions.

During our negotiations with BellSouth, we could not come to an agreement on these issues. While the Commission had ruled on these issues and BellSouth acknowledged this ruling, BellSouth at that time had an outstanding Motion for Reconsideration of that Order lodged at the Commission. As a result, Dialog and BellSouth agreed that the final decision of these issues by the Commission in Case No. 2004-00044 would be incorporated into the interconnection agreement between BellSouth and Dialog.

On March 3, 2006, Dialog filed its Petition for Arbitration. On March 14, 2003, the Commission issued its Order on the Motions for Reconsideration in Case No. 2004-00044 and denied BellSouth's Motion for Reconsideration on Issues 3(a), 3(b) and 3(c). To date, Dialog has not received BellSouth's proposed language to incorporate that Commission decision.

Q. WHY IS THIS IMPORTANT TO DIALOG?

A. As Dialog has built out its network to serve rural Western Kentucky, we are finding more and more demand from our customers for broadband services that can only be delivered using DSL technology. Dialog intends to implement this technology using its own DSLAMs and connections to the Internet backbone. Wholesale DSL from BellSouth is no longer an option to achieve this. As the Commission is aware, BellSouth sought FCC preemption of any attempt by the Commission to require BellSouth to provide DSL transport over unbundled loops. BellSouth also lobbied for statutory changes in Kentucky ("the Kentucky Broadband Act") which have had the same effect. The Commission ruled in Case No. 2004-00501 that it could not require BellSouth to provide DSL transport over a UNE loop. Thus, to provide broadband services Dialog must implement DSL technology on its own.

In order to provide DSL-based Internet access services to its customer base, Dialog must be able to order unbundled loops that have been conditioned by the removal of load coils and bridged taps. This is conditioning BellSouth would provide for its own DSL-based services and BellSouth should not be permitted to assess special charges for that conditioning. As the Commission noted in Case No. 2004-00044, BellSouth's TELRIC rates provide for the recovery of its costs plus a profit. Permitting BellSouth to assess special charges for line conditioning will simply drive up the costs to Dialog to meet consumer demand for broadband in rural Kentucky.

Q. WHAT IS DIALOG'S POSITION ON UNRESOLVED ISSUE 4?

<u>ISSUE 4</u> SHOULD BELLSOUTH BE ALLOWED TO CHARGE DIALOG A TRANSIT INTERMEDIARY CHARGE (TIC) FOR THE TRANSPORT AND TERMINATION OF LOCAL TRAFFIC AND ISP-BOUND TRAFFIC?

A. In the Commission's September 25, 2205 Order in Case No. 2004-00044 the Commission concluded that BellSouth is required to provide the transit function for third parties to indirectly interconnect with each other. The Commission rejected BellSouth's request to impose a Tandem Intermediary Charge (TIC) additive above and beyond the TELRIC rates for transit service.

During our negotiations with BellSouth, we could not come to an agreement on this issue. While the Commission had ruled on this issue and BellSouth acknowledged this ruling, BellSouth at that time had an outstanding Motion for Reconsideration of that Order lodged at the Commission. As a result, Dialog and BellSouth agreed that the final determination of this issue by the Commission in Case No. 2004-00044 would be incorporated into the interconnection agreement between BellSouth and Dialog.

On March 3, 2006, Dialog filed its Petition for Arbitration. On March 14, 2003, the Commission issued its Order on the Motions for Reconsideration in Case No. 2004-00044 and reaffirmed its September 25, 2005 decision. The Commission found that it will continue to require BellSouth to transit traffic and clarified its requirement that BellSouth is required to provide this transit service at a TELRIC-based rate unless an additional TIC can be justified. To date, Dialog has not received BellSouth's proposed language to incorporate that Commission decision.

Q. WHY IS THIS IMPORTANT TO DIALOG?

A. In areas adjacent to where Dialog has invested and built its network, there are several independent telephone companies and wireless carriers. In order to provide its customer base with local calling service, Dialog must be able to exchange local traffic with these other carriers. Given that BellSouth is the largest incumbent telephone company in Western Kentucky, BellSouth's tandem switches are the point where most wireline and wireless networks interconnect and it makes logical sense for other network providers to "transit" through the BellSouth network at these points to exchange local traffic. As the Commission has noted, this is the most efficient use of the network and is essential to the provision of services to rural Kentucky.

BellSouth's TELRIC based rates for tandem switching and common transport adequately compensate BellSouth for its costs of performing this transit function – a function that BellSouth is uniquely positioned to perform given its legacy monopoly network status in western Kentucky.

Q. WHAT IS DIALOG'S POSITION ON UNRESOLVED ISSUE 5?

<u>ISSUE 5</u> HOW SHOULD THE COMMISSION'S DECISION IN CASE NO. 2004-00427, PETITION TO ESTABLISH A GENERIC DOCKET TO CONSIDER AMENDMENTS TO INTERCONNECTION AGREEMENTS RESULTING FROM CHANGES OF LAW, BE INCORPORATED INTO THE PARTIES INTERCONNECTION AGREEMENT?

A. Dialog and BellSouth have agreed to incorporate into their interconnection agreement the decision by the Commission in that matter. Dialog adopts the position of CompSouth on the issues in that proceeding.

Q. WHAT IS DIALOG'S POSITION ON UNRESOLVED ISSUE 6?

<u>ISSUE 6</u> UNDER WHAT CONDITIONS CAN BELLSOUTH REQUIRE DIALOG TO ESTABLISH DIRECT INTERCONNECTION TRUNKING WITH BELLSOUTH END OFFICES?

A. This is no longer an unresolved issue. Since the date of the filing of Dialog's Petition for Arbitration, Dialog and BellSouth have agreed upon the language to be included in Attachment 3 dealing with network interconnection.

Q. WHAT IS DIALOG'S POSITION ON UNRESOLVED ISSUE 7?

<u>ISSUE 7</u> SHOULD BELLSOUTH HAVE THE ABILITY TO MODIFY UNILATERALLY THE TERMS OF THE AGREEMENT BASED UPON CHANGES IN "OTHER LEGAL REQUIREMENTS" ?

A. This is no longer an unresolved issue. Since the date of the filing of Dialog's Petition for Arbitration, Dialog and BellSouth have agreed upon the language to be included in Paragraph 31.3 of the General Terms and Conditions section of the interconnection agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY

A. Yes.