

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIALOG TELECOMMUNICATIONS, INC.	)	
	)	CASE NO.
COMPLAINANT	)	2005-00095
	)	
V.	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	
DEFENDANT	)	

O R D E R

On March 5, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”) moved for reconsideration of the Commission’s February 8, 2007 Order (“Order”). This Order stemmed from a complaint filed by Dialog Telecommunications (“Dialog”), wherein Dialog alleged three different causes of action against AT&T Kentucky. The parties negotiated settlement as to the first issue and a portion of the third issue. The Commission’s Order addressed only the second issue, which concerned Dialog’s allegation that AT&T Kentucky had improperly collected sales tax on unbundled network elements (“UNEs”). As to this issue, the Commission ordered that AT&T Kentucky was required to seek a tax refund, as described within the Order, for the potential benefit of Dialog and the Kentucky operations of all competitive local exchange carriers.

In the motion for reconsideration, AT&T Kentucky has asked the Commission to reconsider one aspect of its Order. Specifically, AT&T Kentucky states that on page 3

of the Order, the Commission noted that Dialog had paid the sales tax on the UNEs purchased from AT&T Kentucky. This finding was based upon statements in the record.<sup>1</sup> It was not until AT&T Kentucky filed its motion for reconsideration that any party disputed these statements.

AT&T Kentucky alleges that this statement regarding payment is an error of fact because Dialog has withheld payment of the tax in question and is obligated to immediately pay the tax to AT&T Kentucky. In its response to AT&T Kentucky's motion for reconsideration, Dialog did not dispute the allegation that it had withheld payment of the tax.

Having reviewed the Order, AT&T Kentucky's arguments within its motion and reply, and Dialog's response, as well as the terms of the parties' interconnection agreement, the Commission finds that Dialog is obligated to pay the disputed sales tax prior to AT&T Kentucky seeking a refund. The relevant portion of the interconnection agreement provides, as follows:

In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.<sup>2</sup>

The Commission finds that, based on this provision of the interconnection agreement, in order for AT&T Kentucky to pursue an application for a refund of the

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<sup>1</sup> Portions of the record specifically considered were AT&T Kentucky's Amended Response to the Complaint, filed March 21, 2005, at 3 and Dialog's letter, filed May 8, 2006, at 2.

<sup>2</sup> BellSouth and Dialog Interconnection Agreement, Section 11.4.4.

sales tax which Dialog believes has been improperly collected, Dialog must pay to AT&T Kentucky the tax in question. The Commission finds that AT&T Kentucky cannot legitimately seek a refund for amounts it has not received.

The Commission finds that AT&T Kentucky's motion for reconsideration should be granted. The Commission hereby corrects the statement of fact made within the February 8, 2007 Order and finds that Dialog has failed to pay AT&T Kentucky the sales tax on UNEs, as required under the interconnection agreement. The Commission's Order requiring that AT&T Kentucky pursue the tax refund remains in effect, but the Commission finds that AT&T Kentucky is not required to seek the refund until Dialog has remitted the tax.

IT IS THEREFORE ORDERED that:

1. AT&T Kentucky's motion for reconsideration is granted.
2. Our Order of February 8, 2007 is amended to reflect the corrections set forth in this Order.
3. AT&T Kentucky shall seek a tax refund, as described in the February 8, 2007 Order, immediately after Dialog has remitted payment of the sales tax.
4. All provisions of the Order of February 8, 2007 not in conflict with this Order shall remain in full force and effect.
5. This matter is hereby removed from the Commission's docket.

Done at Frankfort, Kentucky, this 23<sup>rd</sup> day of March, 2007.

By the Commission

ATTEST:

  
Executive Director

Case No. 2005-00095