

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF COMMUNICATIONS VENTURE)	
CORPORATION D/B/A INDIGITAL TELECOM)	
FOR ARBITRATION OF CERTAIN TERMS AND)	
CONDITIONS OF PROPOSED)	
INTERCONNECTION AGREEMENT WITH)	CASE NO.
BELLSOUTH TELECOMMUNICATIONS, INC.)	2009-00438
D/B/A AT&T KENTUCKY PURSUANT TO THE)	
COMMUNICATIONS ACT OF 1934, AS)	
AMENDED BY THE TELECOMMUNICATIONS)	
ACT OF 1996)	

O R D E R

This matter is now before the Commission to address the threshold issue in Communications Venture Corporation d/b/a INdigital Telecom's ("INdigital") petition for arbitration with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"). The threshold issue is whether the 911/E911 service to be furnished by a competitive carrier for Public Safety Answering Point ("PSAP")¹ end-users qualifies for interconnection to an incumbent carrier under 47 U.S.C. § 251(c)(2) and whether the

¹ A public safety agency is the functional division of a city or county which provides firefighting, law enforcement, ambulance, medical or other emergency services. Typically, 911 telephone calls consist not only of calls to report crimes but of calls for all emergencies, including fire, ambulance, medical, and any other needed emergency service. Furthermore, such calls are routed, in the first instance, to the "PSAP" center designated by that municipality or county, which may or may not be the local police department. PSAP center operators typically function as the 911 dispatchers. Some Kentucky cities or counties may have more than one PSAP center. Also, some Kentucky cities and counties operate an "enhanced 9-1-1" ("E911") system. This is a system that automatically identifies on a screen the telephone number and geographical location from which the call was made.

inclusion of the terms, rates, and conditions of such interconnection must be within an agreement established pursuant to 47 U.S.C. § 252. This is an issue of first impression for this Commission. The parties have fully briefed the matter and it is now ripe for Commission decision. Having reviewed the pleadings and applicable law, the Commission finds that competitive access to 911/E911 services and facilities qualifies for interconnection under Section 251(c) and can be included within a Section 252(b) interconnection agreement.

POSITIONS OF THE PARTIES

INdigital is a competitive local exchange carrier registered to provide service in Kentucky. Under the company's business model, its principal service offerings are focused, in part, on providing competition within the 911/E911 service market through "reliable, technologically advanced, high-quality telephone exchange service that is interconnected with the legacy AT&T Kentucky system."² INdigital states that its entry into the Kentucky market will present many PSAPs with a competitive alternative to AT&T Kentucky's current provision of the routing and switching of 911 service telephone calls and information.³ INdigital states that its competitive 911/E911 service will permit its PSAP subscribers to receive and originate calls. INdigital says its PSAP customers will be capable of originating calls within the local exchanges to anyone they may choose, but they will also have the ability to self-restrict the amount and type of

² Arbitration Petition at 2.

³ Id.

outbound calls its operators can originate to reserve the emergency bandwidth for inbound emergency calls.⁴

INdigital seeks to have an interconnection agreement with AT&T Kentucky established pursuant to 47 U.S.C. § 252(b). The company states that it cannot offer its competitive 911/E911 services in the state without interconnecting to the public switched telephone network, and AT&T Kentucky, under the facts of its petition, is the gatekeeper to that network. The parties have engaged in negotiations but have failed to reach a final agreement.⁵ INdigital filed a petition for arbitration with the Commission for resolution of certain issues to be included in the agreement, including the contract terms and conditions for its access to certain AT&T Kentucky services and facilities to enable the provision of competitive 911/E911 services by INdigital.

INdigital argues that there are several bases under which the Commission has authority to arbitrate competitive 911/E911 access service issues, including: (1) INdigital's service falls under the telephone exchange service definition under 47 U.S.C. § 153;⁶ (2) the Commission has the authority under 47 U.S.C. § 252(b) to arbitrate any open issues raised during negotiations and presented in an arbitration petition;⁷ and (3) state law, pursuant to KRS 278.546 and related sections, provides for Commission authority over consumer access issues related to E911 services.⁸

⁴ INdigital Reply Brief at 4.

⁵ Arbitration Petition at 4. AT&T Kentucky Response to Petition at 2.

⁶ INdigital Brief at 15.

⁷ Id. at 27, 28.

⁸ Id. at 31.

AT&T Kentucky argues that this issue should be dismissed from the arbitration proceeding, as INdigital is entitled to interconnection and arbitration for the provision of 911/E911 service only if the service qualifies as “telephone exchange service” or “exchange access service” under 47 C.F.R. § 51.305(b) and 47 U.S.C. § 153(47).⁹ AT&T Kentucky says the service does not qualify, as INdigital’s potential PSAP customers could not originate and terminate calls to all subscribers, beyond a few designated points, and such communication does not meet the qualities of “intercommunicating” or occur within “an exchange” or “system of exchanges” under Section 153(47).¹⁰ In support of its position, AT&T Kentucky references two Orders¹¹ by the Federal Communications Commission (“FCC”) and declares that those Orders interpret the definition of “telephone exchange service” and that the results, when applied to INdigital’s service, show that INdigital’s proposed method for service does not have the elements to satisfy that definition.¹² AT&T Kentucky states that it is willing to enter into only a non-Section 252(b) agreement with INdigital that would enable INdigital to interconnect and obtain what it needs to provide 911/E911 service, but it does not

⁹ AT&T Kentucky Brief at 2. AT&T Kentucky admits “exchange access service” is not at issue in this proceeding.

¹⁰ *Id.* at 2, 4-6, 12, 13.

¹¹ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd. 385 (1999) (hereinafter “*Advanced Services Order*”) and *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd. 2736 (2001) (hereinafter “*Directory Listing Order*”).

¹² AT&T Kentucky Brief at 7-15.

believe that INdigital is entitled to interconnection under Section 251 or an agreement under Section 252(b).¹³

INdigital says AT&T Kentucky mischaracterizes the terms in Section 153, misinterprets the FCC's *Directory Listing Order* and the *Advanced Services Order*, and misinterprets the definitions of "telephone exchange service" and "intercommunication" for the purpose of maintaining its monopoly in the local 911 market.¹⁴ INdigital states that AT&T Kentucky makes inaccurate statements regarding INdigital's competitive 911/E911 service, specifically as to the origination and termination of calls.¹⁵ INdigital says that its services satisfy the definition of "intercommunication" and that PSAP customers will, unlike the characterization by AT&T Kentucky, be able to facilitate calls beyond simple transfers.¹⁶

DECISION

INdigital seeks to provide competitive 911/E911 services to some of the Kentucky PSAPs currently served by AT&T Kentucky.¹⁷ The Commission finds that AT&T Kentucky is obligated to allow INdigital to interconnect with AT&T Kentucky's services and facilities under both Section 251(c)(2) and Section 251(c)(3) and that

¹³ See AT&T Kentucky Response to Petition at 3 and Reply Brief at 2. AT&T Kentucky categorizes non-Section 252(b) agreements as "commercial agreements."

¹⁴ INdigital Reply Brief at 2, 3, 8.

¹⁵ Id. at 4, 9, 10.

¹⁶ Id. at 4.

¹⁷ The competitive access to 911/E911 services, while one of first impression before this agency, has been addressed by the utility commissions in several other states. See INdigital Brief at fns. 2, 3, and 4. See AT&T Kentucky Brief at fns. 7, 8, and 9.

INdigital's request for interconnection pursuant to Section 251 must be placed within the confines of a written agreement developed pursuant to Section 252(b). The Commission finds that there are several grounds to support this decision.¹⁸

First, 47 U.S.C. § 153(44) states that "any provider of telecommunications services" is a telecommunications carrier and shall be treated as a common carrier under the Act. Additionally, Section 153(51) defines "telecommunications services" as "the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." Lastly, Section 153(48) defines "telecommunications" as "the transmission between or among points specified by the user of information of the user's choosing, without change in the form or the content of the information as sent and received." The Commission finds that INdigital is a telecommunications carrier and provides telecommunications services, pursuant to Section 153 of the Telecom Act. INdigital seeks to compete with AT&T Kentucky¹⁹ within its incumbent area for the ability to provide telecommunications services specifically to facilitate the transmission of emergency calls from the general public to PSAPs and to allow those PSAP customers

¹⁸ The Commission notes that, in addition to the federal jurisdiction discussed, this agency also has jurisdiction over agreements and arrangements among and between incumbents and competitors pursuant to KRS 278.542(1)(b), as well as 911 telephone service and wireless E911 systems, as provided in KRS 278.542(1)(d). See also KRS 278.010(3)(e), defining Commission jurisdiction over utilities' transmitting or conveying messages by telephone or telegraph for the public for compensation.

¹⁹ In Kentucky, local PSAPs make their own determinations as to the carriers they will select to be responsible for facilitating the routing of emergency calls to their centers. Local and state government agencies collect monthly fees from landline and wireless customers to support the 911 system. Local governments and agencies then use these funds to pay carriers to facilitate the 911/E911 calling systems within their jurisdictions. See KRS 65.750, *et al.*

to communicate with the public and originate any calls necessary in fulfillment of its emergency services duties. The Commission finds that the facilitation of telephone communication satisfies the definitions of “telecommunications” and “telecommunications services.”

The Commission finds that, as INdigital meets the definition of a telecommunications carrier under Section 153, then pursuant to 47 U.S.C. § 251(c)(2), AT&T Kentucky, as an incumbent, has the duty to provide for the facilities and equipment of any requesting telecommunications carrier seeking interconnection with AT&T Kentucky’s network. AT&T Kentucky’s argument against INdigital’s right to have a Section 252(b) agreement centers on whether the services that company will provide can be defined as “telephone exchange service” under Section 251(c)(2)(A). Section 251(c)(2) specifies that interconnection must be provided:

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier’s network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

Emphasis added.

AT&T Kentucky’s position would limit an incumbent’s obligation to interconnect pursuant to Section 251(c)(2) to only telephone exchange service. As the Commission previously stated, INdigital is a telecommunications carrier providing telecommunications services.

The arbitration provisions of Section 252(b) also apply to all Section 251(c) incumbent carrier obligations, including the duty to provide “unbundled access” to network elements at any technically feasible point pursuant to Section 251(c)(3) and provide for physical collocation of equipment necessary for access to unbundled network elements.²⁰ The relevant portions of Section 251(c) state:

(c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

. . . .

(3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

. . . .

(6) Collocation

The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. . . .

²⁰ Resale is also an incumbent obligation under Section 251(c)(4).

Even if the Commission presumed that AT&T Kentucky is correct in its assertion that its obligation to interconnect pursuant to Section 251(c)(2) is limited to telephone exchange service that INdigital does not allegedly provide,²¹ that presumption would not preclude arbitration pursuant to Section 252(b). Sub-sections (2), (3), and (6) of Section 251(c) each provide reasonable, legitimate, and correct methods by which a carrier like INdigital can request interconnection with an incumbent, thereby mandating an incumbent to participate in good faith negotiations under Section 251(c)(1) and participate in arbitration under Section 252(b) when negotiations fail. The Commission takes specific note of the “unbundled access” portion of Section 251(c)(3). Both parties admit that, in providing competitive 911/E911 services, INdigital will need and have access to E911 selective routers and the E911 database management system—each of which are network elements (the physical and functional components needed to make the telephone system work) that are to be provided by the incumbent on an unbundled basis.²² The relevant portions of Section 252(b) state:

(b) Agreements arrived at through compulsory arbitration

(1) Arbitration

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

²¹ INdigital strongly disputes AT&T Kentucky’s characterization of its ability to provide services to local PSAPs.

²² See AT&T Kentucky Exhibit A of Response to Petition, Attachment 5, describing access to its selective routers and database. See also Exhibit 2 of INdigital Petition, Attachment 5, describing access to selective routers and databases.

(2) Duty of petitioner

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning--

(i) the unresolved issues;

Emphasis added.

47 U.S.C. § 252(b) states that any party negotiating an agreement with an incumbent local exchange carrier may “petition a State commission to arbitrate any open issues.” A state commission’s standards for arbitration of “any open issues” include ensuring that the interconnection agreement meets “the requirements of Section 251” and establishing “any rates for interconnection, services, or network elements.”²³ Based on INdigital’s proposed service arrangement sought with AT&T Kentucky, a portion, if not all, of the arrangement involves access to network elements for the provision of telecommunications services.²⁴ As stated previously, based on the proposed interconnection agreement submitted by INdigital, the parties contemplated that the intended arrangement for competitive 911/E911 services would include access to databases for the transmission and routing of 911/E911 calls.²⁵ If INdigital also

²³ 47 U.S.C. § 252(c)(2).

²⁴ Under 47 U.S.C. § 153(29), network element is defined as a facility or equipment used in the provision of a telecommunications service which includes “features, functions, and capabilities” including “subscriber numbers, databases, signaling systems, and information sufficient . . . for transmission, routing, or other provision of a telecommunications service.” See also 47 U.S.C. § 153(46) where telecommunications service is broadly defined as the transmission of information for a fee.

²⁵ See AT&T Kentucky Exhibit A of Response to Petition, Attachment 5, describing access to its selective routers and database. See also Exhibit 2 of INdigital Petition, Attachment 5, describing access to selective routers and databases.

requires interconnection or access to unbundled network elements for the provision of telecommunications service “at the premises of the local exchange carrier,”²⁶ then AT&T Kentucky is further subject to arbitration under the 1996 Telecom Act, absent a negotiated agreement.

Second, the Commission finds that, under Section 252(b), state commissions have the authority to arbitrate “any open issues” presented in the arbitration petition. AT&T Kentucky is under the obligation to: (1) negotiate in good faith pursuant to Section 251(c)(1); (2) interconnect for the transmission and routing of telephone exchange service pursuant to Section 251(c)(2); (3) provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point for the provision of telecommunications service pursuant to Section 251(c)(3); and (4) provide physical collocation of equipment necessary for interconnection or access to unbundled network elements for the provision of telecommunications service pursuant to Section 251(c)(6). If AT&T Kentucky refuses to negotiate the rates, terms, and/or conditions for any of these requirements, then, pursuant to Section 252(b)(1) and (2), INdigital shall petition a state commission to arbitrate the unresolved issues, and the state commission must, pursuant to Section 252(b)(4) and Section 252(c), resolve by arbitration any open issues and must establish any rates for interconnection, services, or network elements. This Commission has the authority to hear and issue a final determination on the terms of INdigital's competitive access to 911/E911 services and facilities. This issue was included by INdigital in its petition for arbitration, and the terms for access to those

²⁶ Such as “collocation,” pursuant to Section 251(c)(6).

services and facilities are open and unresolved issues stemming from the parties' failed negotiations to reach an agreement.

Third, the Commission finds that, despite AT&T Kentucky's descriptions as to INdigital's competitive service, the company will satisfy the requirements of "telephone exchange service."²⁷ The definition of "telephone exchange service" is outlined in 47 U.S.C. § 153(47) as:

(47) Telephone exchange service

The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Emphasis Added.

Under this statute, when either part (A) or part (B) is satisfied, the service in question will meet the terms of the definition. Any entity certified as a competitive local exchange carrier by the commission of the state where that carrier intends to provide service is presumptively held to be a competing provider of telephone exchange service.²⁸ The Commission finds that INdigital is a competitive carrier registered with the Commission to provide service in Kentucky. Additionally, the transmission of both voice and data communications within a local area constitutes telephone exchange service.²⁹ The

²⁷ INdigital Reply Brief at 2-5.

²⁸ *Directory Listing Order*, *supra*, at ¶ 14.

²⁹ *Advanced Services Order*, *supra*, at ¶¶ 17, 21.

provision of telephone exchange service is not limited only to traditional local exchange service through resale and facilities ownership, but may include the provision of alternate loops for telecommunications services, separate from the public switched telephone network, in a manner that is comparable to the provision of local loops by a traditional local exchange carrier.³⁰ Under part (A), a carrier must provide “intercommunicating service,” which is defined as the provision of individual two-way voice communication.³¹ INdigital notes that its service fulfills that definition by:

Allowing its PSAP subscribers to intercommunicate with 911 callers, other PSAP subscribers for which it provides service, and with PSAP customers of AT&T Kentucky. Moreover, INdigital Telecom’s service would allow Kentucky end users to make calls to PSAPs and communicate with other local emergency personnel. In this way, INdigital’s competitive 911/E911 service will allow “a community of interconnected customers to make calls to one another” (citation omitted). This interconnected community would consist of 911 callers, PSAPs, and other emergency personnel in the relevant geographic area.³²

The Commission finds that this type of service satisfies the requirements of origination by enabling two-way communications between a PSAP and a 911 caller, or two-way communications between two PSAPs or other emergency service providers. The Commission notes that part (A) also requires that service be within a telephone exchange or connected exchanges within the same exchange area. However, part (A)

³⁰ *In the Matter of Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501 at ¶ 54 (1998).

³¹ *Advanced Services Order*, *supra*, at ¶ 23 (citations omitted).

³² INdigital Brief at 20, 21.

does not have a specific boundary requirement³³ and, more importantly, the parties are well aware that wireless service and incumbent-to-incumbent extended areas of service arrangements are designed to facilitate local calls across the boundaries of neighboring exchanges and have already been found to satisfy the definition requirements of within “a telephone exchange.”³⁴ PSAPs must have a service that takes into account the location of fire, police, and other emergency personnel within the geographic area for that PSAP or local government jurisdiction. The reach of a particular local 911 service may not always coincide with the boundaries of the incumbent’s exchanges; however, the service would generally have geographic limits that are consistent with a community of interest relative to that PSAP. The 911/E911 service would take into account wireless calls and, potentially, emergency service providers who may be located just beyond the boundary of certain exchanges but who are obligated to provide emergency assistance to a caller physically located within an exchange. INdigital’s 911/E911 service will account for geographic location in the dispatch of emergency assistance generally consistent with the community of interest in relation to the PSAP, the caller-in-need, and the location of the closest emergency personnel—all of which may or may not exactly coincide with specific exchange boundaries.³⁵

³³ *Application of BellSouth Corp., BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, at ¶ 30 (1998).

³⁴ *Id.* and *Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, 12 FCC Rcd 10646 at ¶ 7 (1997). *See also* *911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, n. 32 (2005) (discussing the routing of 911 calls being based on geography and jurisdiction and not the termination point).

³⁵ INdigital Brief at 20, 22.

Additionally, “intercommunication” refers to a service that permits a community of interconnected customers to make calls to one another over a switched network.³⁶ 47 U.S.C. § 153(47) does not specify the number of interconnected customers that must be within a community to equal the standard of “intercommunication,” only that “intercommunication” must exist. INdigital demonstrates that its PSAP end-users will be able to “intercommunicate” within other PSAPs and emergency personnel.³⁷ Also, in part (A), the term “exchange service charge” concerns the service and payment agreement entered into by the end-user and the provider for the provision of local service.³⁸ The Commission finds that this definition is satisfied, as INdigital, in the same manner as AT&T Kentucky, will have its PSAP customers render payment to INdigital if selected by that PSAP’s local government or agency to route local emergency calls and information to the service center. The Commission finds that INdigital has rebutted the claims and characterizations by AT&T Kentucky and that its 911/E911 services will fulfill the requirements of Section 153(47)(A).

As to part (B) of Section 153(47), an analysis is not necessary by the Commission, as the statute, in its entirety, only requires that a carrier satisfy one part or the other, and the Commission has found that INdigital’s services satisfy part (A). However, for the sake of clarity, the Commission also finds that INdigital’s services satisfy part (B). This part serves only to broaden the inclusion of the services that fall within the category of telephone exchange service and does not restrict or further limit

³⁶ *Advanced Services Order, supra*, at ¶ 23.

³⁷ INdigital Brief at 19-22; See also INdigital Reply Brief at 9, 10.

³⁸ *Advanced Services Order* at ¶ 27.

that definition.³⁹ As INdigital satisfies the specific requirements delineated under part (A), the Commission finds that INdigital also satisfies the broader definitions under part (B).

INdigital's provision of competitive 911/E911 services qualifies as "telephone exchange service" pursuant to 47 U.S.C. § 251(c)(2)(A). The Commission finds that, based on the information provided, INdigital intends to transport emergency calls and transmit the information provided by the originating end-user or the end-user's handset location between and among points specified by the end-user, without change of the form or content, as specified by the end-user, as required under 47 U.S.C. § 153(47). As the facilities containing the 911/E911 information are used for the transmission and routing of telephone exchange services, INdigital is entitled to seek interconnection with those facilities under Section 251(c), and the terms, rates, and conditions for interconnection with those facilities must be outlined within a Section 252(b) agreement.

CONCLUSION

Having reviewed the arguments of the parties and applicable law, the Commission finds that competitive access to 911/E911 services must be provided by AT&T Kentucky to INdigital pursuant to 47 U.S.C. § 251(c), as outlined herein, and the rates, terms, and conditions for competitive access must be outlined within an arbitrated interconnection agreement pursuant to 47 U.S.C. § 252(b). Therefore, AT&T Kentucky is obligated to participate in the arbitration of this issue, and the Commission has the

³⁹ *Advanced Services Order* at ¶ 17. Specifically, the FCC found that part (B) was added to ensure that the definition of telephone exchange service was not limited to traditional voice telephony, but included non-traditional means of communicating information within a local area.

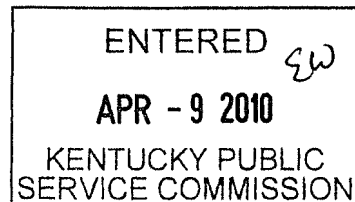
jurisdiction to decide the arbitration issues related to INdigital's competitive 911/E911 services.

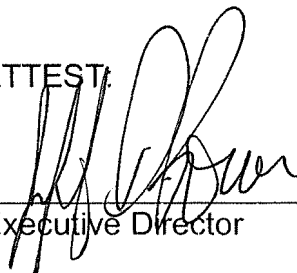
IT IS THEREFORE ORDERED that:

1. The competitive access to 911/E911 services and facilities that INdigital plans to provide to Public Safety Answering Point customers qualifies for interconnection to AT&T Kentucky under Sections 251(c) and 252(b) of the 1996 Telecommunications Act.

2. The parties shall continue to follow the procedural schedules issued by the Commission, by Orders, on February 19, 2010 and March 3, 2010.

By the Commission



ATTEST:


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