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June 15, 2010

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JUN 15 2010

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602-0615

Re: *In the Matter of Communications Venture Corporation, d/b/a INdigital
Telecom for Arbitration of Certain Terms and Conditions of Proposed
Interconnection Agreement with BellSouth Telecommunications, Inc., d/b/a
AT&T Kentucky – Case No. 2009-00438*

Dear Mr. Derouen:


In accordance with the Public Service Commission of the Commonwealth of Kentucky's (the "Commission") January 25, 2010 Order setting forth a Proposed Procedural Schedule in the above-referenced case, please find enclosed for filing one (1) original and eleven (11) copies each of the Direct Testimony of Mark Grady and Brent Cummings on behalf of Communications Venture Corporation, d/b/a INdigital Telecom. Signed verification pages for the testimony will be filed at a later date.

Please file-stamp one copy and return it to our delivery person.

Thank you, and if you have any questions please call me.

Sincerely,

DINSMORE & SHOHL LLP


Edward T. Depp

ETD/sdt
Enclosures

Jeff Derouen, Executive Director

April 22, 2010

Page 2

cc: All parties of record (w/encl.)
John E. Selent, Esq. (w/encl.)
Holly C. Wallace, Esq. (w/encl.)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 15 2010

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 BellSouth telecommunications, Inc.,)
d/b/a AT&T Kentucky, Pursuant to the)
Communications Act of 1934, as Amended)
by the telecommunications Act of 1996)

Case No. 2009-00438

PREFILED DIRECT TESTIMONY OF MARK GRADY

ON BEHALF OF

COMMUNICATIONS VENTURE CORPORATION D/B/A INDIGITAL TELECOM

June 15, 2010

Counsel to It

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ORIGINAL

PREFILED DIRECT TESTIMONY OF MARK GRADY

1 **Q. PLEASE STATE YOUR NAME, TITLE, EMPLOYER, AND ADDRESS.**

2 A. My name is Mark Grady. I am the President and Chief Executive Officer for
3 Communications Venture Corporation, d/b/a INdigital telecom ("INdigital"). In addition, I am the
4 General Manager of New Paris Telephone, Inc. ("New Paris Telephone"), an incorporator and
5 shareholder of INdigital. INdigital's business address is 5312 West Washington Center Road, Fort
6 Wayne, Indiana 46818.

7 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.**

8 A. I have been an active participant in a number of workshops, task force initiatives, industry
9 forums and other regulatory and policy matters during the past 28 years in a number of jurisdictions.
10 I have been President of Communications Venture Corporation d/b/a INdigital telecom since its
11 incorporation. I have dealt with matters related to E911 and other many other regulatory matters in
12 several Indiana Utility Regulatory Commission (IURC) dockets on behalf of New Paris Telephone,
13 Inc., INdigital and on behalf of the Indiana Exchange Carrier Association and the National Exchange
14 Carrier Association.

15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

16 A. The purpose of my testimony is to provide some general background information about
17 INdigital's business and the state-of-the-art 911/E911 service it provides to the public safety
18 communications market. I will also discuss generally the negotiations between INdigital and AT&T
19 Kentucky.

20 **Q. PLEASE PROVIDE A DESCRIPTION OF YOUR COMPANY.**

21 A. INdigital is a telecommunications service provider that focuses on the public safety
22 communications market. INdigital is owned by ten independent telephone companies in Indiana,

1 Michigan and Ohio. We have over five years of real world experience in the conception, design,
2 construction, and implementation of next-generation 911/E911 systems, networks and supporting
3 systems.

4 Perhaps the best example of INdigital's experience is the Indiana Wireless Direct Network
5 ("IWDN"). The IWDN is a full-service, statewide network in Indiana that provides service for over
6 four million Indiana wireless customers and the PSAPs who serve them. In 2004, the Indiana
7 Wireless Enhanced 911 Advisory Board ("IWE9AB") chose INdigital over three other vendors,
8 including AT&T Indiana (then SBC Communications), to design and implement the IWDN.
9 Together with INdigital's business partner, Indiana Fiber Network ("IFN"), INdigital has created a
10 state-of-the-art internet protocol ("IP")-based network on a fiber optic backbone throughout the
11 entire state of Indiana. Through this network, INdigital provides advanced data networking and
12 purpose-built networks for a large cross-section of Public Safety Answering Points (PSAPs) across
13 Indiana. The IWDN network is graphically depicted in Exhibit 1 attached to this testimony.

14 As a result of INdigital's work building next generation 911/E911 networks, it has produced a
15 large portfolio of intellectual property, experience and knowledge in all aspects of the public safety
16 communications market. These include the development of custom software, configurations, and
17 business processes that are driven by real world experience. INdigital has also successfully
18 developed new applications and services to enhance public safety capabilities, including the
19 development of a real time text and instant message emergency service ("T.IM"), and a short
20 message service (SMS) to Tele-typewriter (TTY) text message platform ("TexTTY") that ensures
21 accessibility for hearing, speech and speaking impaired ("HSSI") users. These are just two examples.
22 INdigital's "Statement of Qualifications" is attached to this testimony as Exhibit 2.

1 **Q. YOU DESCRIBE INDIGITAL'S 911/E911 SERVICE AS "STATE-OF-THE-ART."**
2 **CAN YOU PLEASE EXPLAIN WHAT YOU MEAN BY THIS?**

3 A. Certainly. INdigital's 911/E911 service is a robust, high availability, IP-based
4 communications service. In order to understand why this makes INdigital's 911/E911 service state-
5 of-the-art, it is helpful to understand the limitations of the legacy 911 network in comparison. For
6 instance, the legacy 911 network relies on the selective routing and call delivery functions of the
7 wireline LEC network – in this case, AT&T Kentucky. This means that wireless calls must first be
8 "converted" or "translated," so to speak, to look very similar to a wireline call before they can be
9 delivered to the appropriate PSAP. Not only is this process inefficient, it is also restrictive of the
10 type of information that can be conveyed from the caller seeking emergency service.

11 In addition, wireless 911 callers -- unlike wireline 911 callers -- are often moving. This
12 necessitates the ability for PSAPs to transfer the call from one to another across jurisdictional
13 boundaries. The legacy 911 network has difficulty with this process. On the legacy 911 network,
14 for example, if PSAP "A" is served by AT&T Kentucky, and PSAP "B" in an adjacent jurisdiction is
15 served by a different LEC, it is very common that the only way calls can be transferred between the
16 PSAPs is for PSAP "A" to call the 10-digit administrative number for PSAP "B." By and large, each
17 LEC's legacy 911 network is an island to itself. Again, this is inefficient, of limited value to the
18 public, and often unreliable in conveying essential call information.

19 Moreover, the legacy 911 network is limited to voice transmission. As wireless providers
20 have entered the market, their service offerings include many new, enhanced features, services, or
21 benefits to the public that the legacy 911 system is unable to take advantage of. As it exists now, the
22 legacy 911 system is incapable of allowing a wireless 911 caller to send text messages, pictures,
23 video, or other data to the PSAP. This is a serious limitation. As just one example, General Motors'

1 OnStar division and ATX, a similar specialized telematics data service, are working to develop a
2 more complete set of data related to an emergency 911 call. OnStar, in particular, has recently
3 enhanced its system so that it can include information from data sensors embedded within the car.
4 Such information as speed and direction of travel, crash impact, number of occupants, and other key
5 data points are now becoming available.

6 A state-of-the-art, next generation, IP-based 911 network like the one INdigital provides is
7 capable of transmitting this data. AT&T Kentucky's legacy 911 network is not.

8 **Q. WHY IS NEXT GENERATION E911 SO IMPORTANT?**

9 A. The use of cellular technology has increased dramatically over the past decade and the
10 changes in consumer calling habits poses serious challenges for the public safety community.
11 According to CTIA, the International Association for the Wireless telecommunications Industry, as
12 of 2009 there were an estimated 285.6 million wireless customers in the United States and roughly
13 291,000 E911 calls per day. In fact, many PSAPs receive between 50 to 75% of all 911 calls from
14 wireless phones. As I explained earlier, legacy 911 systems are simply not well-designed to handle
15 these calls.

16 **Q. DID INDIGITAL TRY TO NEGOTIATE AN INTERCONNECTION AGREEMENT**
17 **WITH AT&T KENTUCKY THAT ADDRESSED THE ISSUES IN THIS PROCEEDING?**

18 A. Yes. INdigital provided AT&T Kentucky with a bona fide request to negotiate an
19 interconnection agreement, and the parties agreed that for the purposes of measuring the arbitration
20 timeframe, that AT&T Kentucky received the bona fide request on June 3, 2009.

21 **Q. WHAT HAPPENED?**

22 A. INdigital and AT&T Kentucky entered into voluntary negotiations for interconnection of
23 their respective networks. Though the parties worked to resolve disputed issues, the voluntary

1 negotiations ultimately broke down. In particular, the parties' divergent views with respect to
2 911/E911 services were at the center of the dispute. AT&T Kentucky initially proposed its "Generic
3 ATT 05 – 911/E911 (CLEC)" attachment to the interconnection agreement, but this attachment did
4 not even contemplate the possibility that INdigital would be the
5 911/E911 service provider.

6 When INdigital notified AT&T Kentucky of this fact, AT&T Kentucky stated that it had a
7 commercial 911/E911 agreement that would address INdigital's concerns, but it demanded that
8 INdigital sign a non-disclosure agreement ("NDA") before it would make the agreement available.
9 The NDA would have resulted in a waiver of INdigital's right to discuss or arbitrate any negotiated
10 alternative 911/E911 terms before the Commission. AT&T Kentucky made this demand without a
11 guarantee or assurance that it would continue to work with INdigital to negotiate equitable 911/E911
12 terms into the commercial agreement. Needless to say, INdigital telecom refused this "pig in a
13 poke."

14 In spite of INdigital's refusal to sign the NDA, AT&T Kentucky nevertheless ultimately
15 provided the commercial 911/E911 agreement to INdigital. Although INdigital redlined the
16 commercial agreement for negotiation, AT&T Kentucky refused to discuss the commercial
17 agreement with INdigital.

18 Subsequently, AT&T Kentucky also provided an alternate 911/E911 attachment for the
19 Interconnection Agreement. The parties did, however, proceed to negotiate the terms of "Alternate
20 ATT 05 – 911/E911 (Service Provider)" and "Alternate ATT 05A 911 NIM (Service Provider)"
21 attachments to replace the "Generic ATT 05 – 911/E911 (CLEC)" originally proposed by AT&T
22 Kentucky. As the joint issues matrix itself evidences, the parties made good progress negotiating
23 and resolving most issues in the terms of Alternate Attachments 5 and 5A.

1 Once INdigital revealed its intention to petition the Commission for arbitration of the
2 remaining issues, however, AT&T Kentucky inexplicably argued that it never agreed to negotiate the
3 terms of the alternative 911/E911 attachment as part of the ICA. In essence, AT&T Kentucky's
4 position appeared to be that it should be able to negotiate certain terms and conditions of 911/E911
5 interconnection with INdigital without being considered to have negotiated these terms and
6 conditions for purposes arbitration under the Act.

7 **Q. HAS INDIGITAL SUCCESSFULLY NEGOTIATED SIMILAR AGREEMENTS**
8 **WITH OTHER LECs?**

9 A. Yes. As Mr. Cummings also discusses in more detail in his testimony, INdigital has
10 successfully negotiated interconnection agreements with both Verizon and Embarq that satisfied all
11 parties' needs, including 911/E911-related needs. In contrast, the regional AT&T affiliates, like
12 AT&T Kentucky, are the only LECs that have consistently made the process of negotiating
13 interconnection difficult. The best illustration of the regional AT&T affiliates' unwillingness to
14 negotiate terms for interconnection was seen in connection with our attempts to implement the
15 IWDN in Indiana. After INdigital successfully negotiated interconnection agreements with all other
16 necessary LECs in Indiana, the only remaining PSAPs that were unable to directly connect to the
17 IWDN were the 40 counties that rely on equipment and wireless location services from AT&T
18 Indiana. Even after the Indiana Utility Regulatory Commission ordered AT&T Indiana to allow
19 interconnection, AT&T Kentucky appealed the decision. A similar scenario has occurred in both
20 Ohio and North Carolina for other 911/E911 service providers. AT&T Kentucky's parent company
21 has apparently made a business decision to make the process of interconnection for competitive
22 911/E911 providers as difficult as possible.

23 **Q. WHAT IS IT THAT INDIGITAL SEEKS FROM THE COMMISSION?**

1 A. INdigital requests that the Commission resolve the remaining issues identified in the issues
2 matrices filed with the Commission in INdigital's favor. As Mr. Cummings's testimony explains in
3 greater detail, AT&T Kentucky's position on the issues identified in the matrices, just as its approach
4 to negotiation, is unreasonable and only aimed at making the process more difficult than necessary.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A. Yes, it does.

VERIFICATION

I hereby verify that the foregoing direct testimony is true and accurate to the best of my knowledge and belief.

Mark Grady,
President and CEO of INdigital telecom

STATE OF INDIANA)
) SS
COUNTY OF _____)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by MARK GRADY,
to me known, this ____ day of June, 2010.

My commission expires: _____.

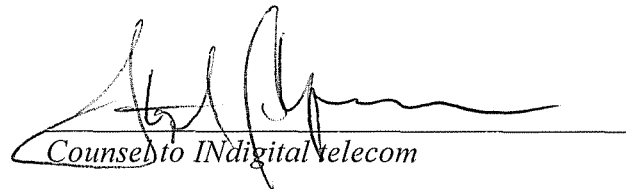
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by Federal Express overnight delivery and electronic mail on this 15th day of June, 2010, to the following individuals:

Mary K. Keyer, Esq.
AT&T Kentucky
601 West Chestnut Street
Room 407
Louisville, Kentucky 40203
mk3978@att.com
General Counsel of AT&T Kentucky

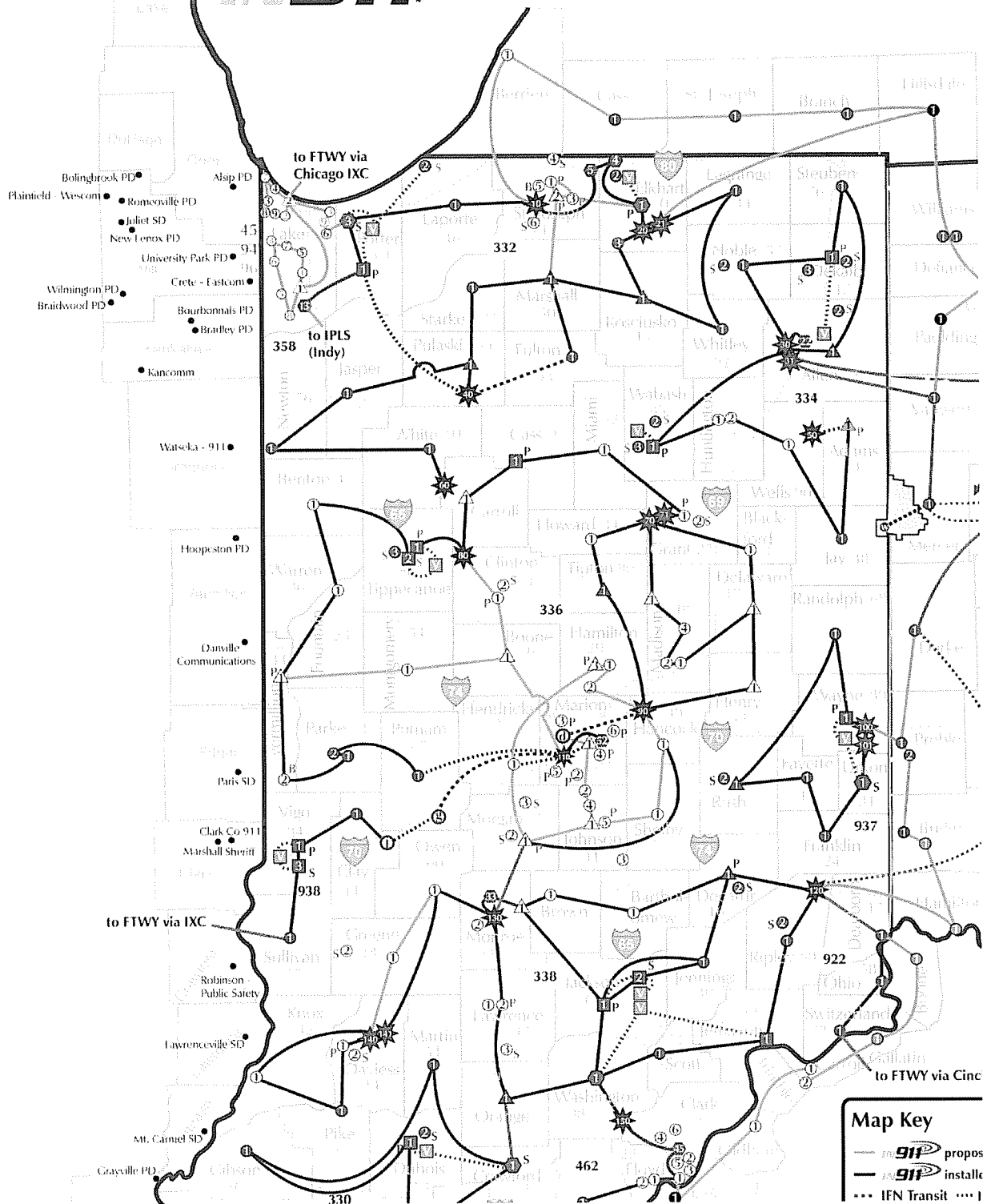
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Indiana's 911 network

Delivering Next Generation Public Safety



CONSULTING / ANALYSIS
SYSTEM DEVELOPMENT
CALL TAKING EQUIPMENT
PROJECT IMPLEMENTATION
TECHNICAL SUPPORT

INDigital is your go to resource for NG9-1-1 service. We have over five years of real world experience in the conception, design, and rollout of NG9-1-1 systems, networks and supporting systems.

Our industry leading initiatives have created the largest full service IP statewide network for 9-1-1 and public safety applications. Our professional development of NG concepts is complemented through a close working relationship with key public safety developers throughout the industry.

INDigital is unique in its ability to deliver on the promises of the Internet Protocol network revolution.

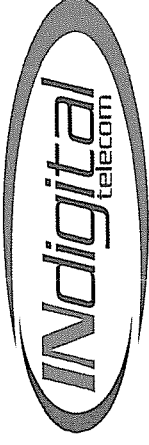
INDigital gets things done.

REAL WORLD EXPERIENCE
VISION AND LEADERSHIP

The best example of our work is the IN911 network. The topography schematic shows our full service, statewide network that provides service for 4 million Indiana wireless customers and the PSAPs who serve them.

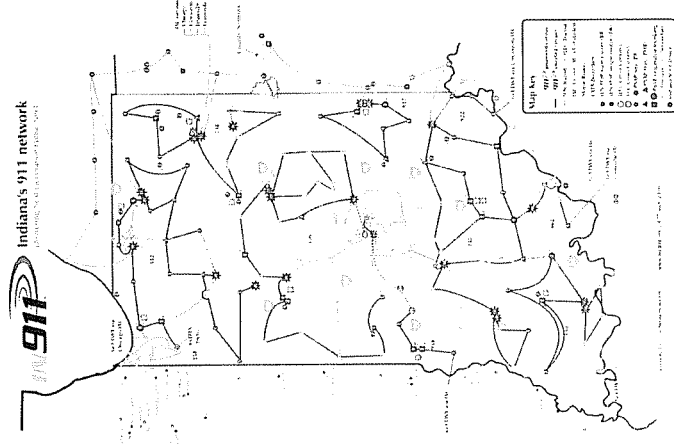
INDigital telecom
9-1-1
EMERGING TECHNOLOGIES

5312 West Washington Center Road
Fort Wayne, IN 46815
877-482-2010 ext.
877-482-4279 fax
www.indigital.net and www.911.com



statement of qualifications
consulting / analysis
system development
call taking equipment
project implementation
technical support

9-1-1
EMERGING TECHNOLOGIES



building the future today

DELIVERING FULL SERVICE PUBLIC SAFETY IN A CHANGING WORLD
INDigital has over 5 years of experience with the real world deployment of one of the nation's largest statewide IP based public safety networks. Not just a theoretical discussion of a next generation network, but a robust, redundant, IP powered network that has delivered millions of critical 9-1-1 calls since 2006.

At INDigital, innovation isn't stopped by the unknown. Our work is guided by our customers' needs and the evolving definition of emerging industry standards.

flexible solutions to meet your needs

RESEARCH AND DEVELOPMENT

INDigital's work building Next Generation networks has produced a large portfolio of intellectual property, experience and knowledge in all aspects of 9-1-1.

- SS7 trunking, traffic management, real time displays and reporting toolkits
- Network monitoring, surveillance and quality assurance at all levels
- Extended feature sets for Cisco™ routers to support legacy signaling conditions.
- Custom, application-specific SIP, XMPP and SOAP based processing engines

INDigital has developed custom software, configurations and business processes that are driven by real world experience.

From planning thru the build-out, testing and implementation project phases, INDigital delivers the highest quality and the most innovative solution to market needs.

INNOVATION

INDigital has a proven track record of success in developing new applications and services to enhance public safety.

Our current project, the development of an instant message emergency service T-IM and SMS-T911 is just another example of our capabilities.

Contact your INDigital account executive today and learn more about our service portfolio.



CONSULTING AND DEVELOPMENT

Leverage INDigital's years of experience to solve your problems. INDigital has broad, comprehensive experience working in concert with other industry leaders such as LR Kimball, NENA, and APCO.

Our business partnerships with key industry segments provide a complete world view to our work for public safety.



PLANNING AND IMPLEMENTATION

Our 360 degree approach to planning is effective and efficient.

INDigital has the resources and breadth of talent to make it an industry recognized company that gets results and advances our industry segment.



SUPPORT

Our commitment to the development of public safety solutions is not tied to a single project or commission. A culture of growth, progress and evolution is one of our core principles.

In a fast changing world, our company stands as a benchmark of excellence in supporting our customers.

9-1-1 EQUIPMENT AND SERVICE
INDigital represents the Solacom product line, which provides cutting edge IP architecture to meet the fast changing needs of public safety.



The Guardian platform provides the flexibility **Your partner in critical communication** to transition forward from a legacy environment, and all the reliability you'd expect from an industry leader.

BAS-EC integrated 911 service platform
For smaller agencies, INDigital has developed a full service platform based on the Samsung iDCS IP phone system. This platform is easy to use, while providing your agency with the full feature set you'd expect, like built in voice mail, call recording



integration, supervision and training, as well as seamless integration with a county wide system (if desired).

For smaller public safety agencies, the BAS-EC platform is a great high value solution.

INDigital is a 'lover not a fighter', making our working relationship with other vendors easy, simple and less stressful on you.

Our references are available on request, and we look forward to talking with you about how we can improve your service today.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
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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 BellSouth telecommunications, Inc.,)
d/b/a AT&T Kentucky, Pursuant to the)
Communications Act of 1934, as Amended)
by the telecommunications Act of 1996)

Case No. 2009-00438

PREFILED DIRECT TESTIMONY OF BRENT CUMMINGS

ON BEHALF OF

COMMUNICATIONS VENTURE CORPORATION D/B/A INDIGITAL TELECOM

June 15, 2010

ORIGINAL

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PREFILED DIRECT TESTIMONY OF BRENT CUMMINGS

1 **Q. PLEASE STATE YOUR NAME, TITLE, EMPLOYER, AND ADDRESS.**

2 A. My name is Brent Cummings. I am the Chief Operations Officer ("COO") for
3 Communications Venture Corporation, d/b/a INdigital telecom ("INdigital"). My business address
4 is 5312 West Washington Center Road, Fort Wayne, Indiana 46818.

5 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.**

6 A. I received a Associates in applied Science from South Western Michigan College in 1976.
7 From 1980 to 1985 I worked for the town of Millersburg, Indiana as the Town Marshal. During that
8 time I completed a 10 week course at the Indiana Law Enforcement Academy and was awarded an
9 Indiana Law Enforcement Certification in 1982. From October 1985 to November 1996, I worked
10 for the Elkhart County Sheriff's department as a patrol officer in various merit positions. I retired
11 from the Sheriff's department in 1996 in the position of Shift Commander, holding the rank of
12 Sergeant. During my tenure as a Sheriff's deputy, I completed many hours of continuing education,
13 including obtaining certifications in various specialized functions such as breath test analysis for
14 intoxication and Law Enforcement personnel training. I wrote, coordinated and implemented
15 Elkhart County's first formalized training program for new road officers.

16 In 1996 I came to work for INdigital. During the last 12 years I've worked in numerous
17 positions including business development, switch translations, circuit ordering and provisioning,
18 circuit engineering, Central Office equipment installation and maintenance and customer premise
19 equipment installation and maintenance. In 2000 I became the Director of Operations for the
20 Corporation. In 2004 I participated in the engineering and implementation of what has become
21 known as the IN911 Network. INdigital was chosen through a competitive RFI process to build a
22 state wide network to carry wireless 911 calls to all of the Public Safety Answering Points in the

1 state of Indiana. In 2006 the Board of Directors appointment me the Chief Operations Officer for
2 the Corporation. I have performed in that capacity for the last 4 years.

3 **Q. HAVE YOU EVER TESTIFIED BEFORE A STATE COMMISSION?**

4 A. No; I have not

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

6 A. The purpose of my testimony is to discuss in greater detail the background of the
7 interconnection agreement ("ICA") negotiations between INdigital and AT&T Kentucky. I will also
8 address in greater depth the most salient issues identified in the joint issues matrices filed by the
9 parties on April 22, 2010.

10 **Q. BEFORE TURNING TO SPECIFIC ISSUES IDENTIFIED IN THE ISSUES**
11 **MATRIX, CAN YOU PLEASE DESCRIBE GENERALLY AT&T KENTUCKY'S**
12 **APPROACH TO NEGOTIATING THE 911 PROVISIONS OF THE ICA?**

13 A. Yes. In one word, I would describe it as uncooperative. The regional AT&T affiliates,
14 including AT&T Kentucky, are the only local exchange carriers ("LECs") that have been
15 consistently difficult and unable to providing a fair and mutually acceptable agreement with
16 reciprocal language. INdigital has a reciprocal interconnection agreement with Verizon North in
17 Indiana. Verizon has been able to provide an interconnection agreement to allow INdigital to
18 interconnect for the purposes of providing 911/E911 service to public safety answering points
19 ("PSAPs") in its service territory. In 2008, we also negotiated an agreement with Embarq (now
20 CenturyLink). The effect has been that in Indiana, INdigital's needs were easily met by Verizon and
21 Embarq (CenturyLink). Only AT&T Kentucky and AT&T Indiana have put up one road block after
22 another, delaying or denying interconnection for 911/E911 traffic with INdigital.

1 **Q. CAN YOU PROVIDE AN EXAMPLE OF THIS TYPE OF "ROAD BLOCK" FROM**
2 **AT&T KENTUCKY?**

3 A. Yes. AT&T Kentucky provided INdigital with an alternative 911/E911 attachment for the
4 911/E911 portions of the master interconnection agreement. Much of the language in the alternative
5 911/E911 attachment was acceptable to INdigital. But after the negotiation process progressed, the
6 parties reached an impasse on certain terms. Lacking any further substantive response from AT&T
7 Kentucky, INdigital notified AT&T Kentucky that it would petition the Commission for arbitration.
8 At that juncture, AT&T Kentucky inexplicably argued that it never agreed to negotiate the terms of
9 the alternative 911/E911 attachment, and it has now taken the position that the very terms it
10 negotiated should not be a part of the ICA between the parties.

11 The fact that AT&T Kentucky offered INdigital language written for an alternate 911/E911
12 attachment that contains generally reciprocal terms is evidence that it fully anticipates the need for
13 such an agreement, but that AT&T will only make it available if it is forced to do so. The only
14 rationale for such a tactic would be to adopt a protectionist stance in fear of losing a portion of its
15 own 911/E911 business. AT&T Kentucky's intransigence on negotiating alternative terms and
16 conditions for 911/E911 service can be seen in AT&T Kentucky's willingness to negotiate the terms
17 and conditions for nearly every other portion of the ICA.

18 **Q. CAN YOU PROVIDE ANY OTHER EXAMPLES OF THIS TYPE OF "ROAD**
19 **BLOCK" FROM AT&T KENTUCKY?**

20 A. Yes, at one point during the negotiation process for this agreement, AT&T Kentucky offered
21 the possibility of negotiating a commercial agreement as opposed to adopting the alternate 911/E911
22 attachment to the ICA. However, AT&T Kentucky first demanded that INdigital sign a
23 nondisclosure agreement ("NDA") before it would even offer its commercial 911/E911 agreement

1 for review by INdigital. INdigital refused to sign the NDA, however, because it contained language
2 requiring INdigital to waive its rights to arbitrate disputed terms in the interconnection agreement
3 which we were seeking, without knowing the terms and conditions of the commercial agreement or
4 whether we would find that it contained any more acceptable terms than those contained in the
5 attachments offered to the ICA.

6 **Q. DO YOU KNOW WHETHER ANY AT&T KENTUCKY AFFILIATES HAVE**
7 **ENTERED INTO AGREEMENTS WITH OTHER 911/E911 SERVICE PROVIDERS**
8 **SIMILARLY SITUATED TO INDIGITAL IN OTHER STATES?**

9 A. AT&T Kentucky has admitted that its affiliates in North Carolina and Ohio have entered into
10 agreements with competitive 911/E911 service providers. However, it did not do so willingly.
11 According to AT&T Kentucky, the state commissions of Ohio and North Carolina have required it to
12 enter into these agreements. It is currently appealing these orders. *See AT&T Kentucky Response to*
13 *Second Data Requests Nos. 2 and 3.* It appears that AT&T Kentucky and its affiliates intend to
14 make the process of opening up the 911/E911 service market to competition as difficult, time
15 consuming and burdensome as possible.

16 **Q. ARE THERE ANY OTHER GENERAL OBSERVATIONS YOU WOULD LIKE TO**
17 **MAKE BEFORE TURNING TO SPECIFIC SECTIONS OF THE ICA?**

18 A. Yes. I would add briefly that the Commission will notice a common theme running through
19 most of the disputed provisions. AT&T Kentucky's position consistently seeks to impose its will
20 unilaterally, to make certain obligations non-mutual, or to make determinations in its sole discretion,
21 all of which directly result in unnecessarily increased expenses and other burdens to INdigital,
22 thereby diminishing its competitive service offerings. INdigital, by comparison, has repeatedly
23 proposed language that would make the ICA more balanced, and thus more reasonable.

1 INdigital may well be the first competitive 911/E911 service provider in the state of
2 Kentucky, and AT&T Kentucky recognizes that the right to compete is meaningless in the absence
3 of reasonable interconnection terms and conditions. AT&T Kentucky's actions make it more
4 difficult for Kentucky to benefit from the competitive marketplace for emergency services; they also
5 delay the evolution of Next Generation public safety communications. INdigital has a proven track
6 record of developing and bringing new technology, capability, knowledge, and improvements to the
7 public safety sector. AT&T Kentucky has attempted to distract the Commission from these issues
8 by cloaking its position in the disguise of protecting its business operations from the imaginary
9 "burden" of competition. Instead, this docket is about establishing reasonable terms and conditions
10 for the parties interconnection agreement -- terms that prevent AT&T Kentucky from imposing
11 unreasonable, one-sided obligations designed to forestall competition by driving up the financial and
12 operational costs of new market entrants like INdigital.

13 **911/E911 TERMS AND CONDITIONS**

14 **Q. DUE TO THEIR CENTRALITY IN THIS PROCEEDING, LET US START WITH**
15 **THE ISSUES REGARDING THE TERMS AND CONDITIONS FOR 911/E911 SERVICE.**
16 **AS A GENERAL MATTER, HOW WOULD YOU DESCRIBE THE SIGNIFICANCE OF**
17 **THESE TERMS AND CONDITIONS FOR INDIGITAL ?**

18 A. That's easy. For INdigital, the 911/E911 terms and conditions are of critical importance.
19 With the exception of very few other provisions located elsewhere in the ICA, the 911/E911 terms
20 and conditions are the primary basis for the interconnection agreement from INdigital 's perspective.
21 INdigital must be able to interconnect its 911/E911 network with AT&T Kentucky's network on
22 generally reciprocal terms in order to provide service to PSAPs in Kentucky. An agreement with

1 AT&T Kentucky that does not include generally reciprocal terms would be of little value to
2 INdigital.

3 **Q. ARE YOU FAMILIAR WITH AT&T KENTUCKY'S "GENERIC ATT 05 - 911/E911**
4 **(CLEC)"ATTACHMENT?**

5 A. Yes.

6 **Q. IS THERE A SIMPLE WAY IN WHICH YOU CAN SUMMARIZE THE ISSUES**
7 **RELATED TO THIS ATTACHMENT?**

8 A. Certainly. AT&T Kentucky's proposed Generic 911/E911 Attachment makes no room
9 whatsoever for INdigital to provide 911/E911 service to PSAPs in AT&T Kentucky's service
10 territory. It is not even a possibility. AT&T Kentucky itself admits this. *See AT&T Kentucky*
11 *Response to Initial Data Request Nos. 29-32.* Instead, AT&T Kentucky's Generic 911/E911
12 Attachment contemplates that AT&T Kentucky will continue to be the sole provider - holding a
13 monopoly - over the provision of 911/E911 service. As such, it undermines INdigital's ability to
14 provide service and prevents marketplace entry. INdigital requires interconnection on fair terms
15 with AT&T Kentucky. AT&T Kentucky has not provided terms and conditions sufficient to permit
16 INdigital to enter the marketplace as an 911/E911 service provider.

17 **Q. IS AT&T KENTUCKY'S "GENERIC ATT 05 - 911/E911 (CLEC)"ATTACHMENT**
18 **ADEQUATE IN ANY RESPECT?**

19 A. No, at least not for INdigital. The language provided for in the "Alternate ATT 05 -
20 911/E911 (Service Provider)" attachment is much closer to the terms and conditions necessary for
21 INdigital to provide its 911/E911 service to PSAPs in AT&T Kentucky's service territory.

1 **Q. LET'S TALK ABOUT THAT ALTERNATIVE ATTACHMENT. DOES AT&T**
2 **KENTUCKY'S "ALTERNATE ATT 05 - 911/E911 (SERVICE PROVIDER)"**
3 **ATTACHMENT MEET INDIGITAL'S NEEDS?**

4 A. Mostly. While the alternate attachment is not perfect, it is certainly preferable to the generic
5 attachment. And with some fairly minor changes to a few provisions, the alternate attachment would
6 come much closer to meeting INdigital's interconnection needs.

7 **Q. OF THE ISSUES IDENTIFIED IN THE JOINT ISSUES MATRIX REGARDING**
8 **THE "ALTERNATE ATT 05 - 911/E911 (SERVICE PROVIDER)" ATTACHMENT, ARE**
9 **THERE ANY ISSUES IN PARTICULAR THAT YOU WOULD LIKE TO ADDRESS?**

10 A. Yes, there are three. First, the language in Section 6.1.1 of the "Alternate ATT 05 -
11 911/E911 (Service Provider)" attachment as proposed by AT&T Kentucky would require that AT&T
12 Kentucky's selective routers route the traffic even where INdigital has its own selective routers in
13 place. This position creates duplicate service and is unreasonable. The only conceivable reason why
14 AT&T Kentucky would want to duplicate this network function -- routing the 911 traffic first --
15 would be to increase its revenue from INdigital. This has the effect of driving up the cost to
16 INdigital, thereby placing it at a competitive disadvantage. The end result is a lethal restraint on
17 meaningful competition.

18 Second, AT&T Kentucky's proposed language for Section 10.1 of the "Alternate ATT 05 -
19 911/E911 (Service Provider)" attachment would require INdigital to mirror AT&T Kentucky's rates
20 for access to 911/E911 databases, trunking and call routing, even where INdigital has its own
21 Commission-approved tariff in place governing the provision of these elements. It is unreasonable
22 for AT&T Kentucky to impose its rates on INdigital because AT&T Kentucky has an undoubtedly
23 different cost structure. This also places INdigital at a competitive disadvantage. Moreover, it is my

1 understanding that if INdigital files a tariff with the Commission addressing the terms and conditions
2 of access to 911/E911 databases, trunking and call routing, and the Commission approves the tariff,
3 then INdigital must follow its own tariff rather than mirror AT&T Kentucky's rates. INdigital's
4 proposed language accomplishes this result, and does not go beyond the reasonable boundary of the
5 tariff process.

6 Third, Sections 11.3 and 11.4 of the "Alternate ATT 05 - 911/E911 (Service Provider)"
7 represent AT&T Kentucky's proposed indemnity provisions. These provisions are not mutual.
8 Because of the lack of mutuality, INdigital proposed additional Sections 11.5 and 11.6 in order to
9 make indemnity mutual between the parties. In the environment where both AT&T Kentucky and
10 INdigital will be operating as 911/E911 service providers, it is only reasonable for indemnification to
11 be mutual. Indemnity obligations arising from access to or use of the other party's respective
12 911/E911 systems should be mutual in scope. There is simply no justifiable reason why INdigital
13 should indemnify AT&T Kentucky for these claims without AT&T Kentucky undertaking the same
14 obligation.

15 **Q. BEFORE TURNING OUR ATTENTION AWAY FROM 911/E911-RELATED**
16 **TERMS AND CONDITIONS, IS THERE ANYTHING ELSE YOU WOULD LIKE TO SAY**
17 **TO THE COMMISSION REGARDING THIS PORTION OF THE ICA?**

18 A. I would just reiterate the importance of this portion of the ICA to INdigital's ability to
19 provide competitive, state-of-the-art 911/E911 service to Kentucky PSAPs. As the Commission
20 recognized in its April 9, 2010 Order on the threshold issue, INdigital is entitled to interconnect with
21 AT&T Kentucky in order to compete in the provision of 911/E911 services. The terms and
22 conditions of this interconnection must be reasonable. The terms and conditions provided by the
23 generic and alternate attachments stand in stark contrast to one another. "Alternate ATT 05 -

1 911/E911 (Service Provider)," as slightly modified by INdigital, represents a reasonable approach.
2 "Generic ATT 05 - 911/E911 (CLEC)" does not. Accordingly, the Commission should order that the
3 parties adopt "Alternate ATT 05 - 911/E911 (Service Provider)," with the language proffered by
4 INdigital, as the basis for the terms and conditions related to 911/E911 service.

5

6

GENERAL TERMS AND CONDITIONS

7 **Q. LET US NOW TURN TO THE GENERAL TERMS AND CONDITIONS ("GTCs")**
8 **OF THE ICA. ARE YOU ABLE TO SUMMARIZE OR CATEGORIZE FOR THE**
9 **COMMISSION WHAT THE ISSUES ARE RELATED TO THE GTCs?**

10 A. Certainly. As a general matter, a number of the provisions offered by AT&T Kentucky in the
11 GTCs are simply unreasonable. For ease of reference, I would say the issues fall into three basic
12 categories: (i) payment related issues; (ii) issues related to auditing procedures; and (iii) issues
13 related to how and when the ICA should expire.

14 **Q. COULD YOU PLEASE EXPLAIN TO THE COMMISSION INDIGITAL'S**
15 **POSITION REGARDING THE PAYMENT RELATED ISSUES IN THE GTCs?**

16 A. Yes. Several provisions in the GTCs pertain to payment related issues. These include when
17 AT&T Kentucky may request assurance of payment from INdigital, and how the parties should
18 resolve payment disputes. As proposed by AT&T Kentucky, these provisions share what appears to
19 be a common assumption: that CLECs like INdigital, as a matter of course, are destined to become
20 financially insolvent. Ironically, the terms and conditions proposed by AT&T Kentucky are so
21 onerous as to be nearly self-fulfilling.

22 For example, in Section 10.2.1 AT&T Kentucky proposes that it be able to perform a "Credit
23 Profile" analysis of INdigital credit worthiness, and if through this analysis it unilaterally determines

1 that INdigital's credit worthiness is impaired, AT&T Kentucky can demand assurance of payment
2 from INdigital. In the alternative, if INdigital is late paying just a single bill, regardless of the
3 underlying reason, AT&T Kentucky's proposed language in Section 10.2.2 would allow it to demand
4 assurance of payment.

5 Under either scenario, AT&T Kentucky's position is unreasonable. As an initial matter, it is
6 altogether unclear how AT&T Kentucky performs its "Credit Profile" analysis and what objective
7 standards, if any, it uses. INdigital asked AT&T Kentucky to describe and provide the standards by
8 which this analysis would be performed, and AT&T Kentucky withheld the criteria it uses. (See
9 AT&T Kentucky Response to Initial Data Request No. 8.) It is also unclear when AT&T Kentucky
10 can perform such an analysis. On its face, Section 10.2.1 appears to allow AT&T Kentucky to
11 perform a "Credit Profile" analysis whenever, and as often as, it likes. AT&T Kentucky's apparent
12 unbridled discretion and potential to employ a subjective analysis that may be results-driven is all
13 too convenient and not reasonably limited by external criteria. As long as INdigital is timely paying
14 its bills consistent with the terms of the ICA, AT&T Kentucky should not be allowed to have
15 recourse to a provision that would allow it to demand assurance of payment based on a self-
16 discretionary "Credit Profile" analysis. Accordingly, INdigital's position is that AT&T Kentucky's
17 proposed language in Section 10.2.1 should be struck altogether.

18 Likewise, the single late payment threshold proposed by AT&T Kentucky in Section 10.2.2
19 is unreasonable. Untimely payment of a single bill can be easily attributable to administrative error
20 on the part of INdigital – or of AT&T Kentucky, for that matter. Because of this possibility,
21 INdigital has made an imminently reasonable proposal that the late payment threshold be increased
22 to two late payments. These methods for assurance of payment create an expensive threshold for
23 new entrants in a competitive market to cross. The demand for such assurance, therefore, should be

1 limited to circumstances where it appears that INdigital is having trouble paying more than just one
2 of its bills. In any event, there can be no reasonable expectation that AT&T Kentucky's multibillion
3 dollar business can be seriously endangered after a single late payment from INdigital.

4 **Q. ARE THERE ANY OTHER PAYMENT RELATED ISSUES THAT YOU WOULD**
5 **LIKE TO ADDRESS FOR THE COMMISSION?**

6 A. Yes. Perhaps the most onerous of all the issues related to payment terms and conditions is
7 AT&T Kentucky's unreasonable demand that all amounts related to a billing dispute be placed in an
8 interest bearing escrow account. These provisions can be found in Sections 11.8, 11.9-11.9.2.5.3,
9 11.10, 11.12-11.12.4, 12.4-12.4.4, 12.6-12.6.2, 13.4.4, and 40.1 of the GTCs. As a general rule,
10 requiring a party to pay disputed amounts into an escrow account has the same effect as taking that
11 money from the escrowing party, insofar as the funds are not available for other capital uses in the
12 interim period. In short, escrow provisions have an anticompetitive effect by unnecessarily tying up
13 financial and administrative resources of new entrants into a competitive market. Again, AT&T
14 Kentucky cannot reasonably fear that the lack of escrow provisions with INdigital will endanger its
15 multibillion dollar business, especially in light of the AT&T Kentucky's ability to timely resolve
16 disputes, ability to timely pursue unpaid charges relating to denied disputes, and the various other
17 default and termination provisions of the ICA. As a practical matter, escrow requirements are
18 unnecessary; as a matter of competition, they are unreasonable.

19 In fact, there is nothing to prevent AT&T Kentucky from creating a billing dispute (due to a
20 lack of incentive to keep its billing mechanisms accurate) for the sole purpose of forcing new
21 entrants like INdigital out of the market. Due to the deleterious effect that escrow payments could
22 have on INdigital and the possibility for abuse by AT&T Kentucky, INdigital believes that these
23 provisions should be stricken from the ICA.

1 **Q. HAS AT&T KENTUCKY ADMITTED THAT IT HAS ENTERED INTO OTHER**
2 **INTERCONNECTION AGREEMENTS WHERE NO PROVISIONS EXISTS REQUIRING**
3 **THE COMPETITIVE LEC TO PAY DISPUTED CHARGES INTO AN INTEREST**
4 **BEARING ESCROW ACCOUNT?**

5 A. Yes. In response to INdigital's Initial Data Request No. 7, AT&T Kentucky admitted that
6 "there are interconnection agreements between AT&T Kentucky and CLECs where no provision
7 exists that would require the CLEC to pay disputed charges into an interest bearing escrow account
8 until the dispute is resolved." *Id.* This fact alone underscores that such a provision is unreasonable
9 and overly burdensome to competition.

10 **Q. ARE THERE ANY OTHER PROVISIONS IN THE GTCs THAT YOU WOULD**
11 **LIKE TO ADDRESS?**

12 A. Yes. One final provision to which I would like to draw the Commission's attention is Section
13 8.2.1 of the GTCs. This section provides for how and when the ICA should expire. The language
14 that AT&T Kentucky has proposed would require that the ICA come to an abrupt end upon the
15 expiration of the term. It makes no provision for the possibility of renewal, but rather would require
16 the parties to again go through the substantial time and expense of negotiating a new ICA from
17 scratch.

18 The language proposed by INdigital, to the contrary, provides an "evergreen" clause similar
19 to the same type of clause that is in INdigital's Indiana ICA with AT&T Indiana. The "evergreen"
20 clause does nothing more than allow the parties to automatically renew the ICA for successive one
21 year terms. As this current proceeding proves, the time and expense of negotiating an ICA with
22 AT&T Kentucky is substantial, and INdigital's proposed language is imminently more reasonable. It

1 would, at the very least, allow the parties to keep the status quo until new terms and conditions can
2 be negotiated.

3
4 **STRUCTURE ACCESS**

5 **Q. LET US NOW TURN TO "ATTACHMENT 03 - STRUCTURE ACCESS." CAN**
6 **YOU EXPLAIN TO THE COMMISSION WHAT ISSUES INDIGITAL IS DISPUTING IN**
7 **THIS ATTACHMENT?**

8 A. Yes. While there are several issues identified in the joint issue matrix for "Attachment 03 -
9 Structure Access," for ease of discussion these issues can be divided into two basic categories. The
10 first category of issues generally involves certain costs and or expenses that AT&T Kentucky alleges
11 it may incur and that it would like to pass off on INdigital.

12 For instance, in Section 16.1 AT&T Kentucky proposes that it will monitor INdigital's
13 facilities in AT&T Kentucky's manholes at INdigital's expense. Similarly, in Section 16.2.1 AT&T
14 Kentucky proposes to perform post-construction inspections of INdigital's facilities at INdigital's
15 expense. Again, in Section 19.7.1 AT&T Kentucky proposes to charge INdigital for the storage of
16 network facilities that INdigital no longer wants and has abandoned.

17 Whether the issue is monitoring, inspecting, or storing unwanted facilities, INdigital does
18 not object to AT&T Kentucky's right to perform these services if it so chooses. INdigital does,
19 however, object to paying AT&T Kentucky for services that it chooses to provide in its own
20 discretion. The "Attachment 03 – Structure Access" goes into great detail as to the parties
21 obligations in relation to structure access. It also provides remedies for failure to abide by its terms
22 and conditions. Therefore, AT&T Kentucky's proposal to push the costs of decisions to monitor,
23 inspect, and/or store INdigital's facilities – decisions that are within AT&T Kentucky's sole

1 discretion to make – on to INdigital does nothing more than increase INdigital's operating costs.
2 Such a proposal is simply unnecessary and unreasonable.

3 **Q. WHAT IS THE SECOND ISSUE RELATED TO "ATTACHMENT 03 –**
4 **STRUCTURE ACCESS"?**

5 A. The second issue involves the indemnification provisions contained in this attachment. Like
6 the indemnification provisions in the GTC discussed earlier, AT&T Kentucky would have the
7 indemnification provisions in Sections 22.1.3-22.1.4 and 22.1.6 apply only to INdigital. Yet, such
8 one-sided indemnification provisions in the "Attachment 03 – Structure Access" are unnecessary,
9 unreasonable, and unfair. While INdigital proposes that the indemnification provisions in this
10 attachment be stricken altogether, it would, in the alternative, agree to mutually applicable
11 indemnification provisions.

12 While AT&T Kentucky makes a blanket objection to the deletion of its proposed
13 indemnification provisions on the basis that they are intended to protect it only in cases related to the
14 use of facilities and are limited to this attachment, the language proposed by AT&T Kentucky in
15 Section 22.1.3 in particular is less than clear that it is limited to that purpose. In fact, AT&T
16 Kentucky's proposed language states that INdigital must indemnify AT&T Kentucky against any and
17 all claims "including but not limited to" the costs of relocating facilities. This language would
18 appear to swallow whole the otherwise mutual indemnification provisions elsewhere in the ICA.
19 Even something as simple as striking this phrase from the provision may be more amenable to
20 INdigital's view of a reasonable set of indemnification concerns related solely to matters involving
21 structure access.

22

BONA FIDE REQUESTS

Q. I WOULD LIKE NOW TO TURN YOUR ATTENTION TO "ATTACHMENT 08 - BONA FIDE REQUESTS." CAN YOU PLEASE SUMMARIZE FOR THE COMMISSION WHAT YOU BELIEVE IS THE UNDERLYING ISSUE WITH CERTAIN TERMS AND CONDITIONS CONTAINED IN THIS ATTACHMENT?

A. Yes. Much like the issues discussed above regarding "Attachment 03 - Structure Access" the disputed provisions in the BFR Attachment relate to attempts by AT&T Kentucky to pass along certain costs and/or expenses to INdigital. While several provisions are at issue in the "Attachment 08 – Bona Fide Requests," from INdigital's perspective there is only one underlying issue: whether AT&T Kentucky should receive a fee for evaluating, canceling, and/or implementing a statutorily qualified bona fide request for interconnection services from INdigital. We believe the answer should be an unequivocal "no."

Very simply stated, AT&T Kentucky should not be paid for evaluating INdigital's good faith requests for interconnection services. In fact, the "good faith" element of this concept protects AT&T Kentucky from undertaking evaluations and/or work not required under applicable law, making any provision for a "complex request" fee moot. Presumably, the cost of doing the requested work or making the requested interconnection services available will be included in the rate charged for the work or service.

Moreover, with respect to AT&T Kentucky's fear that INdigital will cancel a request and leave it uncompensated, INdigital has proposed language in Section 3.8 that it will be responsible for paying all reasonable costs incurred by AT&T Kentucky up to the date of cancellation. As a result, AT&T Kentucky's alleged fears that it will be left uncompensated for costs related to INdigital's bona fide requests are entirely misplaced.

1 COLLOCATION

2 **Q. IN "ATTACHMENT 12 – COLLOCATION" THE PARTIES HAVE IDENTIFIED**
3 **TWO ISSUES. THE FIRST PERTAINS TO LANGUAGE IN SECTION 4.4 THAT WOULD**
4 **LIMIT INDIGITAL'S LIABILITY WITH RESPECT TO COLLOCATION FACILITIES.**
5 **CAN YOU EXPLAIN INDIGITAL'S POSITION HERE?**

6 A. Yes. In Section 4.4 of the "Attachment 12 – Collocation," INdigital has added language that
7 clarifies the limitation on liability stated elsewhere in the ICA. Specifically, the added language
8 reads: "In no event shall CLEC be liable to AT&T Kentucky or other CLECs for consequential,
9 incidental, or punitive damages." Not only is the likelihood of such damages extremely remote, but
10 they are customarily excluded from these types of collocation arrangements. AT&T Kentucky, for
11 example, is not similarly responsible for these types of damages that may occur to INdigital's
12 facilities located in the collocation facility.

13 As AT&T Kentucky notes in its own position statement in the issues matrix, Section 16.4 of
14 the General Terms and Conditions also sets forth a limitation of liabilities regarding consequential,
15 incidental, and punitive damages. Such an admission makes there position here all the more
16 unreasonable. If the same limitation on liability is stated elsewhere in the ICA without AT&T
17 Kentucky's objection, then it is natural for INdigital to question AT&T Kentucky's motives for
18 refusing to repeat the same language here. INdigital's proposed language simply reiterates and
19 makes clear that, in the context of collocation facilities, it is not liable to AT&T Kentucky for
20 consequential, incidental or punitive damages.

21 In any event, AT&T Kentucky and other CLECs have (and are typically required to have)
22 insurance to protect against such losses. Any attempt by AT&T Kentucky to impose these costs on
23 INdigital in a non-mutual manner is commercially unreasonable and should be denied.

1 **Q. IS INDIGITAL ATTEMPTING TO ESCAPE LIABILITY OTHERWISE IF IT IS AT**
2 **FAULT FOR DAMAGES TO COLLOCATION FACILITIES?**

3 A. By no means. Section 4.4 will continue to hold INdigital liable for other types of damages in
4 the event that any should occur. All INdigital is proposing in Section 4.4 is to incorporate the
5 already existing limitation of liability of Section 16.4 of the General Terms and Conditions into the
6 "Attachment 12 – Collocation." This is a reasonable proposal as it merely clarifies the parties'
7 general obligations in a manner that, presumably, the parties already agree.

8 **Q. REGARDING THE SECOND ISSUE IDENTIFIED REGARDING THE**
9 **"ATTACHMENT 12 – COLLOCATION," CAN YOU EXPLAIN TO THE COMMISSION**
10 **INDIGITAL'S POSITION REGARDING MATERIAL DEVIATIONS IN SECTION 10.2?**

11 A. Certainly. As I mentioned earlier, you can see a pattern to many of the issues between the
12 parties. AT&T Kentucky consistently proffers a non-mutual, unilateral, "in-its-sole-discretion"
13 approach to the provisions of the ICA, while INdigital simply wants a level playing field and to be
14 treated like an equal party at the negotiating table so that it can compete in the 911/E911 market.
15 Here, for instance, AT&T Kentucky has proposed language that would allow it to determine in its
16 sole discretion whether a material deviation from previously agreed to specifications for the
17 collocation space is, in fact, a material deviation.

18 There is simply no good reason to permit AT&T Kentucky to make this determination in its
19 sole discretion. The language AT&T Kentucky proposes would allow it to unreasonably impose
20 opportunity and financial costs on INdigital by unilaterally "determining" that material deviations
21 from a mutually agreed collocation application do not qualify as exceptions, notwithstanding the
22 material deviation. Again, AT&T Kentucky's position appears directly geared for opportunity to

1 increase INdigital's costs, and, consequently, to impede its ability to effectively compete with AT&T
2 Kentucky.

3 The Commission should strike these unilateral provisions from the ICA.
4

5 **251(C)(3) UNEs**

6 **Q. MOVING ON TO THE "ATT 13 251(c)(3) UNEs" ATTACHMENT, ARE THERE**
7 **ANY PROVISIONS IN DISPUTE THAT YOU WOULD LIKE TO ADDRESS?**

8 A. Yes. In section 16.4 of the "ATT 13 251(c)(3) UNEs" attachment, AT&T Kentucky
9 proposes language that would allow it unilaterally to disconnect circuits in the event INdigital and
10 AT&T Kentucky are unable to reach agreement for substitute service arrangements or elements.
11 AT&T Kentucky would be able to take this action "at its sole option."

12 **Q. SHOULD AT&T KENTUCKY BE PERMITTED TO UNILATERALLY**
13 **DISCONNECT CIRCUITS WHEN THE PARTIES HAVE BEEN UNABLE TO REACH**
14 **AGREEMENT FOR SUBSTITUTE SERVICE ARRANGEMENTS OR ELEMENTS?**

15 A. No. AT&T Kentucky should not be permitted to unilaterally disconnect circuits just because
16 the parties have been unable to reach agreement as to an appropriate substitute arrangement or
17 element. INdigital's proposed language is much more reasonable in that it would still permit AT&T
18 Kentucky to convert these elements as necessary, but does not permit it to make a unilateral decision
19 to take a service-affecting action like disconnection, with no prior written notice. In the unlikely
20 event such a situation arises, the ICA contains dispute resolution provisions that adequately and
21 fairly address the manner in which the dispute should be resolved. The Commission should require
22 the parties to adopt INdigital's more reasonable approach.
23

1 CHC

2 **Q. THE FINAL ISSUE IDENTIFIED IN THE JOINT ISSUES MATRIX RELATES TO**
3 **"ATTACHMENT 15 - COORDINATED HOT CUTS (CHC)." CAN YOU BRIEFLY**
4 **DESCRIBE FOR THE COMMISSION WHAT IS AT STAKE IN SECTION 3.5 OF THIS**
5 **ATTACHMENT?**

6 A. Yes. In Attachment 15 – CHC, INdigital has proposed a single, reasonable change to one
7 section that would simply require that AT&T Kentucky work cooperatively with INdigital, as
8 opposed to being able to make a unilateral decision to suspend coordinated hot cuts ("CHCs"). This
9 is a significant issue because the suspension of CHCs can lead to out-of-service periods for INdigital
10 and its customers.

11 Unexpected out-of-service periods are not simply detrimental to INdigital's 911/E911
12 service, but potentially disastrous to those customers who depend upon our service in emergency
13 circumstances, which for our customers is all of the time. Proposing that AT&T Kentucky work
14 cooperatively with INdigital, as opposed to unilaterally and without warning, is imminently
15 reasonable. The fact that AT&T Kentucky is disputing this simple change to "Attachment 15 –
16 CHC" provides an excellent example of the general difficulty INdigital has had negotiating
17 reasonable terms and conditions with AT&T Kentucky.

18
19 CONCLUSION

20 **Q. WHAT ACTION WOULD YOU HAVE THE COMMISSION TAKE IN THIS**
21 **MATTER?**

22 A. I would request that the Commission resolve the outstanding disputed provisions identified
23 by the parties in the joint issues matrices in INdigital's favor.

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2 A. Yes.

VERIFICATION

I hereby verify that the foregoing direct testimony is true and accurate to the best of my knowledge and belief.

Brent Cummings,
Chief Operating Officer of INdigital telecom

STATE OF INDIANA)
) SS
COUNTY OF _____)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by BRENT CUMMINGS, to me known, this ____ day of June, 2010.

My commission expires:_____.

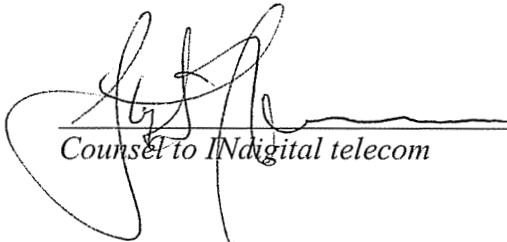
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by Federal Express overnight delivery and electronic mail on this 15th day of June, 2010, to the following individuals:

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