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December 4, 2009

VIA COURIER

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED

DEC 04 2009

**PUBLIC SERVICE
COMMISSION**

Re: 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 Telecommunicates Act of 1996
KPSC 2009-00438

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and five (5) copies of the Response of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky to INdigital Telecom's Petition for Arbitration.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Enclosures

cc: Party of Record

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof via U.S. Mail, this 4th day of December 2009.

Edward T. Depp, Esq.
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202



Mary K. Keyer

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)	Case No. 2009-000438
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)	

RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T KENTUCKY TO INDIGITAL TELECOM'S
PETITION FOR ARBITRATION

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), in accordance with Section 252 of the Communications Act of 1934, as amended ("the Act"), hereby responds to the Petition for Arbitration filed herein on November 10, 2009, by Communications Venture Corporation, d/b/a INdigital Telecom ("INdigital").

AT&T Kentucky will hereafter respond to each numbered paragraph of INdigital's Petition, admitting or denying as appropriate.

PARTIES

1. AT&T Kentucky is without knowledge or information sufficient to admit or deny the allegations in Paragraph 1 of the Petition and, therefore, denies the same.
2. AT&T Kentucky is without knowledge or information sufficient to admit or deny the allegations in Paragraph 2 of the Petition and, therefore, denies the same.
3. AT&T Kentucky admits the allegations in Paragraph 3 of the Petition.

4. AT&T Kentucky admits the allegations in Paragraph 4 of the Petition, except for the last sentence, which states legal conclusions to which a response is not required.

5. AT&T Kentucky admits the allegations in Paragraph 5 of the Petition except those portions of the allegations delineating the named company of each AT&T representative identified therein.

JURISDICTION

6. The allegations in Paragraph 6 of the Petition state legal conclusions to which a response is not required. AT&T Kentucky further states that 47 U.S.C. § 252(b) referred to in Paragraph 6 speaks for itself.

7. AT&T Kentucky admits the allegations in Paragraph 7 of the Petition.

8. AT&T Kentucky admits the allegations in Paragraph 8 of the Petition.

9. The allegations in Paragraph 9 of the Petition state a legal conclusion to which no response is required. AT&T Kentucky further states that the Kentucky statute referenced in Paragraph 9 speaks for itself.

10. The allegations in Paragraph 10 of the Petition state a legal conclusion to which no response is required. AT&T Kentucky further states that the Kentucky statute referenced in Paragraph 9 speaks for itself.

ARBITRATION ISSUES

11. AT&T Kentucky denies that all issues identified by INdigital in its Petition “remain subject to some discussion between it and AT&T Kentucky,” and is without knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 11 and, therefore, denies the same.

12. AT&T Kentucky denies the allegations in Paragraph 12 of the Petition and denies that INdigital has a right to amend, supplement or modify its Petition with additional issues that may arise during the course of negotiations. AT&T Kentucky offered an extension of the arbitration window to allow the Parties further time to negotiate but INdigital did not want to extend the window. 47 U.S.C. § 252(b)(4)(A) limits the Commission's consideration to the issues set forth in the petition and in the response thereto.

13. AT&T Kentucky admits the allegations in Paragraph 13 of the Petition, but states that there were some issues that were resolved between the Parties that are not reflected in Exhibit 1 as filed by INdigital in its Petition, and denies that alternate Attachments 5 or 5A, regarding INdigital's 911 service can be included in a Section 251(c)/252 interconnection agreement unless the Commission first finds that provisions regarding such services are properly included in such an agreement rather than in a commercial agreement. See response to Paragraph 15, below.

14. AT&T Kentucky admits that INdigital attached as Exhibit 2 to its Petition an issues matrix as indicated in Paragraph 14 of the Petition and that AT&T Kentucky requested an extension of the arbitration window on November 6, 2009, in an effort to try to resolve further issues before filing for arbitration, and denies that Exhibit 2 accurately reflects all of the issues and AT&T Kentucky's positions regarding those issues. Accordingly, AT&T Kentucky submits its issues list for arbitration, attached hereto as **Exhibit A**.¹

¹ AT&T Kentucky has noted in its issues matrices, attached as Exhibit A hereto, each issue that is an "AT&T Kentucky Identified Issue" that was not included in INdigital's issues matrices filed with its Petition.

15. AT&T Kentucky denies the allegations in Paragraph 15 of the Petition and states that AT&T Kentucky informed INdigital via email as early as February 26, 2009, a copy of which is attached hereto as **Exhibit B**, that AT&T Kentucky did not agree that the 911 Attachment and Appendix proposed by INdigital was applicable for a Section 251(c) interconnection agreement, and informed INdigital that AT&T Kentucky would be glad to discuss a commercial agreement for such services if INdigital were interested. Several subsequent emails were exchanged between the Parties regarding this issue, including INdigital's request on February 26, 2009, for AT&T Kentucky's legal basis for its position, INdigital's request on March 5, 2009, to review the commercial agreement without waiving its rights to argue that such services should be subject to Section 251/252 negotiations, AT&T Kentucky's response on March 6, 2009, outlining its legal basis, and INdigital's acknowledgment on June 11, 2009, of AT&T Kentucky's position. Copies of these emails are attached hereto as **Exhibits C, D, E and F** respectively. In September 2009, AT&T Kentucky's negotiator Lori Colon sent to INdigital proposed alternate language for KY 911 services and an alternate 911 appendix in a subsequent email. These documents were intended to be used only if AT&T Kentucky lost the threshold issue of whether these services are appropriate for a Section 251/252 interconnection agreement. Before receiving any feedback on these alternate documents, *i.e.*, before any "negotiation" occurred, Ms. Colon sent an email to INdigital on October 21, 2009, attached hereto as **Exhibit G**, to make clear AT&T Kentucky's position that this language is not appropriate for a Section 251(c) interconnection agreement. It is AT&T Kentucky's position that 911 services as proposed by INdigital are not appropriate for inclusion in a Section 251/252 interconnection agreement and

that the alternate attachments are to be used only in the event the Commission were to disagree with AT&T Kentucky on the threshold issue. AT&T has consistently taken and maintained this position not only in Kentucky but in other states across its 22-state region, as acknowledged by INdigital in its email dated June 11, 2009. See **Exhibit F**.

16. In response to the allegations in Paragraph 16 of the Petition, AT&T Kentucky states it received a copy of the Petition on November 11, 2009, via U.S. mail.

17. AT&T Kentucky denies any and all allegations in the Petition not otherwise admitted or denied.

Prayer for Relief

WHEREFORE, AT&T Kentucky respectfully requests:

A. that the Commission find that INdigital's provision of 911 service should not be covered by a Section 251(c)/252 interconnection agreement

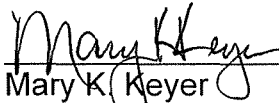
B. that the Commission arbitrate any remaining outstanding issues on which arbitration was properly requested between the Parties;

C. that the Commission resolve each outstanding issue consistent with the position and proposed contract language of AT&T Kentucky;

D. that the Commission require the Parties to execute and file an interconnection agreement consistent with the rulings of the Commission on each arbitrated issue; and

E. any and all other relief to which it may be entitled.

Respectfully submitted,



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Issue No.	Issue Statement	Section(s)	CLEC Language	CLEC Preliminary Position	<u>AT&T Kentucky's</u> Language	<u>AT&T Kentucky's</u> Position
1	Should Disputed Charges constitute Unpaid Charges?	2.168	2.168 "Unpaid Charges" means any charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible. <u>Disputed Amounts are not Unpaid Charges.</u>		2.168 "Unpaid Charges" means any charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible.	Yes. Disputed charges are deemed to be unpaid charges. A charge held in dispute is still a charge that has not been paid and therefore is subject to late payment charges if the dispute is resolved in favor of the billing party. If merely disputing a charge could absolve a party of any duty to pay late-payment charges, parties could continually dispute charges merely as a means of delaying payment, effectively turning AT&T Kentucky into an interest-free banker for CLECs.
2	Should the Severability provision be reflected in such a manner that the distinct provisions of this agreement are treated in their totality?	3.7.2	3.7.2 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.		3.7.2 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement for Interconnection Services as a total arrangement and it is intended to be non-severable.	Yes. The agreement is a negotiated agreement between the parties and an interconnection agreement, regardless of the attachments/appendices the parties negotiate to append to the general terms and conditions, is intended to be a total arrangement and not severable. The parties have agreed to language that addresses an event where if a provision is found to be invalid how the agreement would be handled.

Key: **Bold** represents language proposed by AT&T KENTUCKY and opposed by CLEC.
Bold/Italics/Underline language represents language proposed by CLEC and opposed by AT&T KENTUCKY.

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3	Should the ICA contain an "evergreen" clause?	8.2.1	8.2.1 Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on _____ (the "Initial Term"). <u>Following the expiration of the Initial Term, the Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Term") unless CLEC provides no less than thirty (30) days prior written Notice of its intent to terminate the Agreement at the end of the Initial Term or any Renewal Term.</u>		8.2.1 Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on _____ (the "Initial Term").	No. AT&T Kentucky's proposal of a three (3) year term sufficiently meets the needs of both INdigital and AT&T Kentucky. To provide an annual auto renewal would restrict the parties to outdated terms and conditions as technology and the markets advance. AT&T Kentucky is only required to make an agreement available for a certain period of time because at that point the agreement becomes stale. The parties could always mutually agree to extend the contract, but renewal should not be automatic, and certainly should not be in the sole control of INdigital.
4	Should INdigital Telecom be required to provide a deposit in the event AT&T Kentucky determines there has been a general impairment of INdigital Telecom's financial stability? If so, which deposit language should be used in Section 10.2.2?	10.2.1 - 10.2.2	10.2.1 <u>Intentionally deleted;</u> 10.2.2 CLEC fails to timely pay at <u>least two (2) bill(s)</u> rendered to CLEC by <u>AT&T Kentucky</u> (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 12.4 below); and/or		10.2.1 If based on AT&T Kentucky's analysis of the AT&T Kentucky Credit Profile and other relevant information regarding CLEC's credit and financial condition, there is an impairment of the credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from Third Party financial sources; or 10.2.2 CLEC fails to timely pay a bill rendered to CLEC by <u>AT&T Kentucky</u> (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 12.4 below); and/or	Yes. Deposit requirements are a standard business operating practice for companies when extending credit and thus should be determined by reasonable measures developed by AT&T Kentucky in the event that a CLEC is or becomes credit impaired' to reduce AT&T Kentucky's risk of loss from nonpayment of undisputed bills. AT&T Kentucky believes that today's financial conditions make a deposit requirement essential. AT&T Kentucky offers deposit language that allows AT&T Kentucky to assess a reasonable deposit in the event that a CLEC customer is or becomes credit impaired. Therefore,

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						<p>AT&T Kentucky's proposed language addresses the failure to make a timely payment to trigger a deposit requirement but believes Pay history alone does not indicate a future ability to pay and therefore additional safeguards are also required of which the criteria are objective and measurable.</p> <p>AT&T Kentucky's proposed language is objective and reasonable for both Parties. It balances the need of AT&T Kentucky to protect itself and also protect those CLECs that pay on time from the requirement to pay a deposit.</p>
5	Should the deposit amount be equal to two (2) or three (3) months of anticipated charges?	10.5	10.5 The Cash Deposit, Letter of Credit or Surety Bond must be in an amount <u>of up to two (2)</u> months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by AT&T Kentucky , for the Interconnection Services, 251(c)(3) UNEs, Collocation or any other functions, facilities, products or services to be furnished by AT&T Kentucky under this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if CLEC has received service from AT&T Kentucky during such period at a level comparable to that anticipated to occur over the next six (6) months. If either CLEC or AT&T Kentucky has reason to believe that the level of service to be received during the next six (6) months will be		10.5 The Cash Deposit, Letter of Credit or Surety Bond must be in an amount up to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by AT&T Kentucky , for the Interconnection Services, 251(c)(3) UNEs, Collocation or any other functions, facilities, products or services to be furnished by AT&T Kentucky under this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if CLEC has received service from AT&T Kentucky during such period at a level comparable to that anticipated to occur over the next six (6) months. If either CLEC or AT&T Kentucky has reason to believe that the level of service to be received during the next six (6) months will be	Three months. AT&T Kentucky's language allows the assessment for a reasonable deposit in the event a CLEC becomes credit impaired. AT&T Kentucky believes that two months of anticipated charges is insufficient protection against the risk of non-payment given the length of the disconnection process. AT&T Kentucky is exposed to several weeks of service prior to being able to disconnect the CLEC and its end user services. Given this, two months of anticipated charges are not adequate. The proposed language that the deposit be equal to 3 months of anticipated charges is in an effort to reduce AT&T Kentucky's exposure

DOCKET#
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			materially higher or lower than received in the previous six (6) months, CLEC and <u>AT&T Kentucky</u> shall agree on a level of estimated billings based on all relevant information.		materially higher or lower than received in the previous six (6) months, CLEC and <u>AT&T Kentucky</u> shall agree on a level of estimated billings based on all relevant information.	should a disconnection of service become necessary.
6	Is it reasonable to require CLEC to pay disputed charges into an escrow account while the disputed amounts are being resolved through the dispute process?	11.8 11.9 – 11.9.2.5.3, 11.10, 11.12 – 11.12.4, 12.4 – 12.4.4, 12.6 – 12.6.2, 13.4.4, 40.1	11.8 If any portion of an amount due to the Billing Party under this Agreement is subject to a bona fide dispute between the Parties, the Non-Paying Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 13.4 below. The Disputing Party should utilize any existing and preferred form or method provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay all undisputed amounts to the Billing Party. <u>11.9 Intentionally Omitted.</u> <u>- 11.9.2.5.3 Intentionally Omitted.</u>		11.8 If any portion of an amount due to the Billing Party under this Agreement is subject to a bona fide dispute between the Parties, the Non-Paying Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 13.4 below. The Disputing Party should utilize any existing and preferred form or method provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts, other than disputed charges arising from Intercarrier Compensation into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties. 11.9 Requirements to Establish Escrow Accounts. 11.9.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria: 11.9.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States; 11.9.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and	Yes. AT&T has experienced large financial losses from CLECs who have either gone bankrupt or otherwise exited the business. Many of these CLECs filed frivolous or inflated disputes in order to delay or avoid collection action. This ultimately resulted in larger losses for AT&T. The escrow provisions discourage those types of disputes and ensure that if a dispute is resolved in favor of the billing party, the funds are there to pay the bill. Without this requirement there is no incentive on the part of the CLEC to provide the information or assistance needed to resolve the dispute.

DOCKET#
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					<p>11.9.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH credit transfers.</p> <p>11.9.2 In addition to the foregoing requirements for the Third Party escrow agent, the Disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:</p> <p>11.9.2.1 The escrow account must be an interest bearing account;</p> <p>11.9.2.2 all charges associated with opening and maintaining the escrow account will be borne by the Disputing Party;</p> <p>11.9.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;</p> <p>11.9.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and</p> <p>11.9.2.5 disbursements from the escrow account will be limited to those:</p> <p>11.9.2.5.1 authorized in writing by both the Disputing Party and the Billing Party (that is, signature(s) from representative(s) of the Disputing Party only are not sufficient to properly authorize any disbursement); or</p> <p>11.9.2.5.2 made in accordance with the final,</p>	

DOCKET#
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			<p>11.10 Disputed Amounts <u>that are resolved in favor of the Billing Party</u> will be subject to Late Payment Charges as set forth in Section 11.2 above.</p> <p><u>11.12.2 Intentionally deleted;</u></p> <p>11.12.3 within ten (10) Business Days after resolution of the dispute, the portion <u>(if any)</u> of the Disputed Amounts resolved in favor of the Billing Party will be <u>paid</u> to the Billing Party; and</p> <p>11.12.4 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 11.8 above.</p>		<p>non-appealable order of the arbitrator appointed pursuant to the provisions of Section 13.7 below; or</p> <p>11.9.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 13.7 below.</p> <p>11.10 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 11.2 above.</p> <p>11.12.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;</p> <p>11.12.3 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and</p> <p>11.12.4 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 11.8 above.</p>	

DOCKET#
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			<p>12.4.2 pay all undisputed Unpaid Charges to the Billing Party.</p> <p><u>12.4.3 Intentionally Omitted.</u></p> <p><u>12.4.4 Intentionally Omitted.</u></p> <p><u>12.6.2 Intentionally Omitted.</u></p> <p><u>13.4.4 Intentionally Omitted.</u></p>		<p>12.4.2 pay all undisputed Unpaid Charges to the Billing Party; and</p> <p>12.4.3 pay all Disputed Amounts (other than Disputed Amounts arising from Inter-carrier Compensation) into an interest bearing escrow account that complies with the requirements set forth in Section 11.9 above and</p> <p>12.4.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 11.9 above and deposited a sum equal to the Disputed Amounts into that account (other than Disputed Amounts arising from Inter-carrier Compensation). Until evidence that the full amount of the Disputed Charges (other than Disputed Amounts arising from Inter-carrier Compensation) has been deposited into an escrow account that complies with Section 11.9 above is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 13.0 below.</p> <p>12.6.2 deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 11.9 above within the time specified in Section 12.2 above.</p> <p>13.4.4 When CLEC is the Disputing Party, CLEC must provide evidence to AT&T-22STATE that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 11.9 above of this Agreement and</p>	

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			<p>40.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 8.0 above and Section 8.4 above on Termination; 10.6 above on Cash Deposits, Section 10.7 above on Deposit Interest, Section 10.8 above on Drawing on Cash Deposits; Sections 11.1 above thru Section 11.6 above on Billing & Payment of Charges; Section 12.0 above on Non Payment and Procedures for Disconnection, Section 14.0 above on Audits, Section 15.0 above on Warranties, Section 17.0 above Indemnity; Section 18.0 above Performance Measures; Section 19.0 above Intellectual Property/License; Section 20.0 above Notices; Section 21.0 above Publicity and Use of Trademarks or Service Marks; Section 22.0 above Confidentiality; 24.0 above Governing Law; Section CALEA Compliance; Section 34.0 above Taxes;</p>		<p>deposited all Unpaid Charges relating to Resale Services and 251(c)(3) UNEs into that escrow account in order for that billing claim to be deemed a "dispute". Failure to provide the information and evidence required by this Section 13.0 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.</p> <p>40.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 8.0 above and Section 8.4 above on Termination; 10.6 above on Cash Deposits, Section 10.7 above on Deposit Interest, Section 10.8 above on Drawing on Cash Deposits; Section 11.9 above, Escrow requirements; Sections 11.1 above thru Section 11.6 above on Billing & Payment of Charges; Section 12.0 above on Non Payment and Procedures for Disconnection, Section 14.0 above on Audits, Section 15.0 above on Warranties, Section 17.0 above Indemnity; Section 18.0 above Performance Measures; Section 19.0 above Intellectual Property/License; Section 20.0 above Notices; Section 21.0 above Publicity and Use of Trademarks or Service Marks; Section 22.0 above Confidentiality; 24.0 above Governing Law; Section</p>	

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Issue No.	Issue Statement	Section(s)	CLEC Language	CLEC Preliminary Position	AT&T Kentucky's Language	AT&T Kentucky's Position
			Section 35.0 above Non Waivers and Section 42.0 below Amendments and Modifications.		CALEA Compliance; Section 34.0 above Taxes; Section 35.0 above Non Waivers and Section 42.0 below Amendments and Modifications.	
7	What is an appropriate error threshold for the right to conduct follow-up audits?	14.1, 14.8	<p>14.1 Subject to the restrictions set forth in Section 22.0 below and except as may be otherwise expressly provided in this Agreement, the Auditing Party may audit the Audited Party's books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the Service Start Date for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least <u>twenty</u> percent (<u>20%</u>) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least <u>twenty</u> percent (<u>20%</u>) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.</p> <p>14.8 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing</p>		<p>14.1 Subject to the restrictions set forth in Section 22.0 below and except as may be otherwise expressly provided in this Agreement, the Auditing Party may audit the Audited Party's books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the Service Start Date for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least <u>five</u> percent (<u>5%</u>) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least <u>five</u> percent (<u>5%</u>) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.</p> <p>14.8 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing</p>	<p>AT&T Kentucky's language provides for an initial audit once a year with a follow-up audit(s) if there is an error with an aggregate value of at least five percent (5%) of the amounts payable by the auditing party for the audit time frame.</p> <p>AT&T Kentucky believes that follow-up audits must be warranted if there is an error with an aggregate value of at least five percent (5%) of the amounts payable by the auditing party for the audit time frame and should not be conducted on a whim or without sufficient cause. 5% is an appropriate threshold where dealing with billing accuracy between the Parties. The purpose of the terms contained within the Agreement are intended for the Parties to invoice and bill each other accurately; any incidence of billing above a 5% threshold likely signifies meaningful errors in the billing Party's practices, and therefore merits an additional check by the auditing Party to ensure the billing Party remains in compliance with the audit. It must be noted that previous audits correct errors, so the incidence of ongoing problems will be miniscule in those very rare occasions where they may occur</p>

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DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GTC

Issue No.	Issue Statement	Section(s)	CLEC Language	CLEC Preliminary Position	AT&T Kentucky's Language	AT&T Kentucky's Position
			Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than <u>twenty</u> percent (20%) of the aggregate charges for the audited services during the period covered by the audit.		Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.	at all.
8	What is the appropriate language to be included in Section 16.7 of the interconnection agreement?	16.7	16.7 <u>Neither Party</u> shall be liable to <u>the other Party</u> , its End User, or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.		16.7 AT&T Kentucky shall not be liable to CLEC, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.	Should AT&T Kentucky prevail on the threshold issue (Issue 1) AT&T Kentucky would not be accessing INdigital's 911 system under this agreement. Additionally, as a 911 Service provider, Kentucky law limits AT&T Kentucky's liability for damages, and AT&T Kentucky should not be required to indemnify for such damages.

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 03 - STRUCTURE ACCESS

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
1	Should AT&T Kentucky absorb costs associated with research, review and copying of records?	6.2.1.1	6.2.1.1 <u>AT&T Kentucky</u> employee Costs based on the <u>reasonable</u> time spent researching, reviewing and copying records.		6.2.1.1 <u>AT&T Kentucky</u> employee Costs based on the time spent researching, reviewing and copying records.	No. It is AT&T Kentucky's position that the word "reasonable" is subjective and likely to lead to disputes. AT&T Kentucky should be compensated for the actual time its employees spend on these tasks.
2	Should INdigital Telecom pay for AT&T Kentucky to monitor the entrance and exit of Facilities?	16.1	16.1 <u>AT&T Kentucky</u> may monitor, at <u>AT&T Kentucky's</u> expense, the entrance and exit of CLEC's Facilities into <u>AT&T Kentucky's</u> Manholes and the placement of CLEC's Facilities in <u>AT&T Kentucky's</u> Manholes.		16.1 <u>AT&T Kentucky</u> may monitor, at CLEC's expense, the entrance and exit of CLEC's Facilities into <u>AT&T Kentucky's</u> Manholes and the placement of CLEC's Facilities in <u>AT&T Kentucky's</u> Manholes.	Yes. To the extent AT&T Kentucky needs to monitor the entrance and exit of CLEC facilities into AT&T Kentucky's manholes and the placement of CLEC facilities in AT&T Kentucky's manholes, the CLEC is the cost-causer and should reimburse AT&T Kentucky for that work.
3	Should INdigital Telecom pay for the cost of post-construction inspections?	16.2.1, 16.3.3	16.2.1 <u>AT&T Kentucky may</u> , at <u>its own</u> expense, conduct a post-construction inspection of the Attaching Party's attachment of Facilities to <u>AT&T Kentucky's</u> Structures for the purpose of determining the conformance of the attachments to the occupancy permit. <u>AT&T Kentucky</u> will provide the Attaching Party advance written Notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany <u>AT&T Kentucky</u> on the post-construction inspection. 16.3.3 Such inspections shall be conducted at <u>AT&T Kentucky's</u> expense.		16.2.1 <u>AT&T Kentucky will</u> , at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of Facilities to <u>AT&T Kentucky's</u> Structures for the purpose of determining the conformance of the attachments to the occupancy permit. <u>AT&T Kentucky</u> will provide the Attaching Party advance written Notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany <u>AT&T Kentucky</u> on the post-construction inspection. 16.3.3 Such inspections shall be conducted at <u>AT&T Kentucky's</u> expense; provided, however, that CLEC shall bear the Costs of inspections as delineated in Sections 16.1 above and 16.2.1 above.	Yes. This is a charge that is extended to all CLECs to ensure all are in compliance.
4	Should the time attributable to make-ready work be included in INdigital Telecom's time to bring Facilities into compliance?	16.3.5	16.3.5 If the inspection reflects that Attaching Party's Facilities are not in compliance with the terms of this Appendix, Attaching Party shall bring its Facilities into compliance within thirty (30) calendar days <u>exclusive of any necessary make-ready work</u> after being notified of		16.3.5 If the inspection reflects that Attaching Party's Facilities are not in compliance with the terms of this Appendix, Attaching Party shall bring its Facilities into compliance within thirty (30) calendar days after being notified of such noncompliance. If any make ready or	Yes. CLEC must be in compliance after attaching to AT&T Kentucky's poles, conduits and rights of way, without consideration of make ready work. Make ready work is addressed in the next

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ATTACHMENT 03 - STRUCTURE ACCESS

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's</u> Language	<u>AT&T Kentucky's</u> Position
			such noncompliance. If any make ready or modification work to <u>AT&T Kentucky's</u> Structures is required to bring Attaching Party's Facilities into compliance, the Attaching Party shall provide Notice to <u>AT&T Kentucky</u> and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, Facilities must be brought into compliance upon notification.		modification work to <u>AT&T Kentucky's</u> Structures is required to bring Attaching Party's Facilities into compliance, the Attaching Party shall provide Notice to <u>AT&T Kentucky</u> and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, Facilities must be brought into compliance upon notification.	sentence of the agreed-upon language.
5	Should CLEC pay the costs for storage, in relation to AT&T Kentucky's removal of CLEC's facilities?	19.7.1	19.7.1 If <u>AT&T Kentucky</u> removes any of Attaching Party's Facilities pursuant to this article, Attaching Party shall reimburse <u>AT&T Kentucky</u> for <u>AT&T Kentucky's</u> Costs in connection with the removal of the removed Facilities.		19.7.1 If <u>AT&T Kentucky</u> removes any of Attaching Party's Facilities pursuant to this article, Attaching Party shall reimburse <u>AT&T Kentucky</u> for <u>AT&T Kentucky's</u> Costs in connection with the removal, storage, delivery, or other disposition of the removed Facilities.	Yes. AT&T Kentucky is not fully aware of all the types of costs it may incur when CLEC facilities will have to be removed. Therefore, reimbursement for storage of these facilities is appropriate, and AT&T Kentucky should not be limited to recovery of removal costs alone. AT&T Kentucky's language is more specific and more likely to eliminate or minimize any future disputes.
6	Should the indemnification provisions of the GT&C govern the structure access, and if not, should the indemnification provisions relating to damage to Facilities be mutual in nature?	22.1.3 – 22.1.4, 22.1.6	22.1.3 <i>[Intentionally omitted.]</i> 22.1.4 Each Party shall indemnify, protect and save harmless the other Party, its directors, officers, employees and agents, <u>AT&T Kentucky's CLECs and</u> each Party's		22.1.3 CLEC shall indemnify, protect and save harmless <u>AT&T Kentucky, its directors, officers, employees and agents, AT&T Kentucky's other CLECs, and Joint User(s)</u> from and against any and all claims, demands, causes of action, damages and Costs, including reasonable attorney's fees through appeals incurred by <u>AT&T Kentucky, AT&T Kentucky's other CLECs and Joint User(s)</u> as a result of acts by the CLEC, its employees, agents or contractors, including but not limited to the Costs of relocating Pole(s), Anchor(s), Guy(s), or Conduit System resulting from a loss of ROW or property owner consents and/or the Costs of defending those rights and/or consents. 22.1.4 Each Party shall indemnify, protect and save harmless the other Party, its directors, officers, employees and agents, each Party's other CLECs, and Joint User(s)	Under the agreement, the CLEC will utilize AT&T Kentucky's Poles, Conduits, and Rights-of-Way; therefore, it is reasonable that the CLEC would be the party indemnifying AT&T Kentucky for claims that arise out of such utilization. AT&T Kentucky does not agree to make this language mutual nor will it agree to omit the language.

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ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 03 - STRUCTURE ACCESS

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's</u> Language	<u>AT&T Kentucky's</u> Position
			<p>other Joint User(s) from and against any and all claims, demands, causes of actions and Costs, including reasonable attorney's fees, through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, used by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use or removal of either Party's Facilities, or by their proximity to the Facilities of all parties attached to a Pole, Anchor and/or Guy, or placed in a Conduit System, or by any act or omission of the other Party's employees, agents or contractors in the vicinity of <u>AT&T Kentucky's</u> Pole(s), Anchor(s), Guy(s), or Conduit System.</p> <p>22.1.6 <u><i>[Intentionally omitted.]</i></u></p>		<p>from and against any and all claims, demands, causes of actions and Costs, including reasonable attorney's fees, through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, used by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use or removal of either Party's Facilities, or by their proximity to the Facilities of all parties attached to a Pole, Anchor and/or Guy, or placed in a Conduit System, or by any act or omission of the other Party's employees, agents or contractors in the vicinity of <u>AT&T Kentucky's</u> Pole(s), Anchor(s), Guy(s), or Conduit System.</p> <p>22.1.6 CLEC shall promptly advise <u>AT&T Kentucky</u> of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use or removal of the CLEC's Facilities. CLEC shall promptly notify <u>AT&T Kentucky</u> in writing of any suits or causes of action which may involve <u>AT&T Kentucky</u> and, upon the request of <u>AT&T Kentucky</u> copies of all relevant accident reports and statements made to CLEC's insurer by CLEC or others shall be furnished promptly to <u>AT&T Kentucky</u>.</p>	

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
1	<p>Does INdigital have the right to interconnect with AT&T under Section 251(c) of the Act for INdigital's provision of competitive 911/E911 services to PSAPs?</p> <p>If not, what is the appropriate language to be included in the interconnection agreement?</p>					<p>The 911 service that INdigital intends to provide does not meet the definition of "telephone exchange service" as set forth in 47 U.S.C. 153(47) because the service will not provide the ability to both originate and terminate calls. Accordingly, AT&T Kentucky is not required to provide interconnection pursuant to the provisions set forth in Section 251(c). AT&T Kentucky is available to negotiate a commercial agreement for INdigital's 911 services.</p> <p>In the event the Kentucky Commission renders a decision in favor of AT&T Kentucky regarding the definition of "telephone exchange service," the language in this attached, Generic Attachment 5 – 911/E911 DPL would be AT&T Kentucky's proposed language and should be adopted.</p> <p>In the event the Kentucky Commission renders a decision in favor of INdigital then AT&T Kentucky's language in the Alternate Attachment 05 911/E911 DPL and Alternate Attachment 05A 911/E911 NIM DPL would be the AT&T Kentucky proposed language and should be adopted.</p>
2	<p>Should the language allow for E911 service providers other than AT&T Kentucky?</p>	1.2	<p>1.2 The Parties acknowledge and agree that <u>each Party</u> can only provide E911 Service in a territory where <u>that Party</u> is the E911 network provider, and that only said service</p>		<p>1.2 The Parties acknowledge and agree that AT&T Kentucky can only provide E911 Service in a territory where AT&T Kentucky is the E911 network provider, and that only said</p>	<p>This AT&T Kentucky Attachment 05 provides the guidelines by which AT&T Kentucky will provide INdigital with</p>

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GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
			configuration will be provided once it is purchased by the E911 Customer and/or PSAP. Access <u>to a Party's</u> E911 Selective Routers and E911 Database Management System will be by mutual agreement between the Parties.		service configuration will be provided once it is purchased by the E911 Customer and/or PSAP. Access to AT&T Kentucky's E911 Selective Routers and E911 Database Management System will be by mutual agreement between the Parties.	<p>access to E911 Service in territories where AT&T Kentucky is the E911 network provider. Where AT&T Kentucky requires access to another E911 network provider for the completion AT&T Kentucky's E911 calls, AT&T Kentucky will enter into a separate agreement with that E911 service provider to obtain such connectivity.</p> <p>Should the Kentucky Commission render a decision in favor of Indigital on Issue 1, then AT&T Kentucky's language in the Alternate Attachment 05 911/E911 DPL and Alternate Attachment 05A 911/E911 NIM DPL would be the AT&T Kentucky proposed language and should be adopted.</p>
3	Should AT&T be required to provide access to its selective routers for switches not owned by CLEC as identified in this agreement? [AT&T Kentucky Identified Issue]	1.3	1.3 [intentionally deleted.]		1.3 For CLEC's own switches, AT&T Kentucky shall provide access to its E911 Selective Routers as described herein only where the PSAP and/or E911 Customer served by the E911 Selective Routers has approved CLEC to carry E911 Emergency Services calls, which approval is subject to being revoked, conditioned, or modified by the PSAP and/or E911 Customer at any time.	This language is appropriate and in accordance with the administration of CLEC interconnection to insure that CLEC has established E911 service prior to exchanging telephone exchange or exchange access services. Attachment 05 provides for ancillary services used in conjunction with the CLEC interconnection for the transmission and routing of Telephone Exchange Service traffic between the respective End Users of the parties pursuant to section 251(c)(2) of the Act.
4	Should the definition of	2.13	2.13 "Selective Routing" (SR) means the routing and "E911		2.13 "Selective Routing" (SR) means the routing and "E911	The items listed in the CLEC definition

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ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
	Selective Router extend beyond the routing of 911 calls from CLEC to the proposed PSAP? [AT&T Kentucky Identified Issue]		Selective Router" (E911 SR) means the equipment used to route a call to 911 to the proper PSAP based upon the number and location of the caller. SR is controlled by an ESN, which is derived from the location of the access line from which the 911 call was placed. <u><i>For purposes of this attachment: (i) SR includes selective call rejection and secondary selective routing services by which 911 calls may be automatically routed to CLEC, AT&T Kentucky, or any other carrier that may serve as the underlying carrier of an E911 Customer; and (ii) E911 SR includes both primary and secondary equipment used to route a call to 911 to the proper PSAP based upon the number and location of the caller.</i></u>		Selective Router" (E911 SR) means the equipment used to route a call to 911 to the proper PSAP based upon the number and location of the caller. SR is controlled by an ESN, which is derived from the location of the access line from which the 911 call was placed.	are not applicable to the AT&T Kentucky Selective Router operation. The AT&T Kentucky Selective Router routes calls from Competitive Local Exchange Providers (CLECs), not to them. The current AT&T Kentucky definition is applicable for the E911 service provided under the terms of this agreement.
5	What trunking and traffic routing arrangements should be used for the exchange of traffic? [AT&T Kentucky Identified Issue]	3.0, 3.2.1 – 3.2.2 3.3.1, 3.3.2 3.4.1 - 3.4.3	3.0 AT&T <u><i>and CLEC</i></u> Responsibilities 3.2 Call Routing: 3.2.1 <u><i>AT&T Kentucky</i></u> will route 911 calls from the <u><i>AT&T Kentucky</i></u> SR to the designated primary PSAP or to designated alternate locations, according to routing criteria specified by the PSAP, <u><i>unless CLEC is the provider of E911 Service to an E911 Customer, in which case AT&T Kentucky will route calls to CLEC over SS7 ISUP trunking, for ultimate termination by CLEC in a manner specified by CLEC's E911 Customer(s).</i></u> 3.22 <u><i>AT&T Kentucky and CLEC, as appropriate,</i></u> will forward the ANI <u><i>for</i></u> the calling party number it receives from <u><i>the other party</i></u> and the associated 911 ALI to the PSAP for display. If no ANI is forwarded by <u><i>the calling party's carrier, the party routing the call(s) to the PSAP</i></u> will forward an Emergency Service Central Office (ESCO) identification code for display at the PSAP. If ANI is forwarded by the <u><i>calling party's carrier,</i></u> but no ALI record is found in the E911 DBMS, <u><i>the party routing the call(s) to the PSAP</i></u> will report this "No Record Found" condition to the <u><i>calling party's carrier</i></u> in accordance with NENA standards.		3.0 AT&T Responsibilities 3.2 Call Routing: 3.2.1 <u><i>AT&T Kentucky</i></u> will route 911 calls from the <u><i>AT&T Kentucky</i></u> SR to the designated primary PSAP or to designated alternate locations, according to routing criteria specified by the PSAP. 3.22 <u><i>AT&T Kentucky</i></u> will forward the ANI to the calling party number it receives from CLEC and the associated 911 ALI to the PSAP for display. If no ANI is forwarded by CLEC, <u><i>AT&T Kentucky</i></u> will forward an Emergency Service Central Office (ESCO) identification code for display at the PSAP. If ANI is forwarded by the CLEC, but no ALI record is found in the E911 DBMS, <u><i>AT&T Kentucky</i></u> will report this "No Record Found" condition to the CLEC in accordance with NENA standards. 3.3 Facilities and Trunking: 3.3.1 <u><i>AT&T Kentucky</i></u> shall provide and maintain sufficient dedicated E911 Trunks from <u><i>AT&T Kentucky's</i></u> E911 SR to the PSAP of the E911 Customer, according to provisions of the appropriate state Commission-approved tariff and <u><i>documented</i></u> specifications of the E911 Customer.	All of Section 3.0; CLEC has inserted language that attempts to make the 911 attachment into a reciprocal agreement for CLEC's service offering. This is related to the threshold issue (Issue 1). Since AT&T Kentucky's offering of E911 and the associated attachment are ancillary to the interconnection agreement, it is not appropriate for CLEC to write its network requirements for its customer service offerings into this attachment. Should the Kentucky Commission render a decision in favor of INdigital on Issue 1, then AT&T Kentucky's language in the Alternate Attachment 05 911/E911 DPL and Alternate Attachment 05A 911/E911 NIM DPL would be the AT&T Kentucky proposed language and should be adopted.

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ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
			<p>3.3 Facilities and Trunking:</p> <p>3.3.1 <u>Each Party</u> shall provide and maintain sufficient dedicated E911 Trunks from <u>their respective</u> E911 SR to the PSAP of the E911 Customer, according to provisions of <u>any</u> appropriate state Commission-approved tariff and specifications of the E911 Customer.</p> <p>3.3.2 <u>AT&T Kentucky</u> will provide <u>SS7 ISUP direct trunking</u> facilities to interconnect the CLEC to the <u>AT&T Kentucky's</u> E911SR or per the requirements set forth via <u>any</u> applicable state tariff. Additionally, CLEC has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities. If diverse facilities are requested by CLEC, <u>AT&T Kentucky</u> will provide such diversity where technically feasible, at standard applicable tariff rates.</p> <p>3.4 Database:</p> <p>3.4.1 Where <u>a Party ("Managing Party")</u> manages the E911 Database, <u>the Managing Party</u> shall provide <u>the other Party ("Accessing Party")</u> access to the E911 Database to store <u>Accessing Party's</u> End User "911 Records" (i.e., the name, address, and associated telephone number(s) for each of <u>Accessing Party's</u> End Users). <u>Accessing Party</u> or its representative(s) is responsible for electronically providing End User 911 Records and updating this information.</p> <p>3.4.2 Where <u>Managing Party</u> manages the E911 Database, <u>Managing Party</u> shall coordinate access to the <u>Managing Party</u> DBMS for the initial loading and updating of <u>Accessing Party</u> End User 911 Records.</p> <p>3.4.3 Where <u>Managing Party</u> manages the E911 Database, <u>Managing Party's</u> E911 Database shall accept electronically transmitted files that are based upon NENA standards. Manual (i.e., facsimile) entry shall be utilized only in the event</p>		<p>3.3.2 <u>AT&T Kentucky</u> will provide facilities to interconnect the CLEC to the <u>AT&T Kentucky's</u> E911SR, as specified in Attachment 02-Network Interconnection of this Agreement or per the requirements set forth via the applicable state tariff. Additionally, CLEC has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities. If diverse facilities are requested by CLEC, <u>AT&T Kentucky</u> will provide such diversity where technically feasible, at standard applicable tariff rates.</p> <p>3.4 Database:</p> <p>3.4.1 Where <u>AT&T Kentucky</u> manages the E911 Database, <u>AT&T Kentucky</u> shall provide CLEC access to the E911 Database to store CLEC's End User "911 Records" (i.e., the name, address, and associated telephone number(s) for each of CLEC's End Users). CLEC or its representative(s) is responsible for electronically providing End User 911 Records and updating this information.</p> <p>3.4.2 Where <u>AT&T Kentucky</u> manages the E911 Database, <u>AT&T Kentucky</u> shall coordinate access to the <u>AT&T Kentucky</u> DBMS for the initial loading and updating of CLEC End User 911 Records.</p> <p>3.4.3 Where <u>AT&T Kentucky</u> manages the E911 Database, <u>AT&T Kentucky's</u> E911 Database shall accept electronically transmitted files that are based upon NENA standards. Manual (i.e., facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly.</p>	

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
			that the DBMS is not functioning properly.			
6	<p>Should CLEC's responsibilities be omitted?</p> <p>Should CLEC be financially responsible for the transport facilities to route 911 calls?</p> <p>Should CLEC be responsible for ordering dedicated E911 trunks for originating 911 emergency calls?</p> <p>[AT&T Kentucky Identified Issue]</p>	4.0 – 4.3.4	4.0 [Intentionally deleted.]		<p>4.0 CLEC Responsibilities</p> <p>4.1 Call Routing (for CLEC's own switches):</p> <p>4.1.1 CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T Kentucky E911 SR location.</p> <p>4.1.2 CLEC will forward the ANI information of the party calling 911 to the AT&T Kentucky E911 SR.</p> <p>4.2 Facilities and Trunking (for CLEC's own switches):</p> <p>4.2.1 CLEC shall be financially responsible for the transport facilities to each AT&T Kentucky E911 SR that serves the Exchange Areas in which CLEC is authorized to and will provide Telephone Exchange Service.</p> <p>4.2.2 CLEC acknowledges that its End Users in a single local calling scope may be served by different E911 SRs and CLEC shall be financially responsible for the transport facilities to route 911 calls from its End Users to the proper E911 SR.</p> <p>4.2.3 CLEC shall order a minimum of two (2) one-way outgoing E911 Trunk(s) dedicated for originating 911 Emergency Service calls for each default PSAP or default ESN to interconnect to each appropriate AT&T Kentucky E911 SR, where applicable. Where Signaling System 7 (SS7) connectivity is available and required by the applicable E911 Customer, the Parties agree to implement Common Channel Signaling (CCS) trunking rather than Multi-Frequency (MF) trunking.</p> <p>4.2.4 CLEC is responsible for ordering a separate E911 Trunk group from AT&T Kentucky for each county, default PSAP or other geographic area that the CLEC serves if the E911 Customer for such county or geographic area has a</p>	<p>Section 4.0 identifies the responsibilities for the CLEC. CLEC functionality is not that of an E911 provider.</p> <p>All of Section 4 should remain in the agreement because it describes the requirements of the CLEC (not a 911 competitive Service Provider) in conjunction with its Network Interconnection.</p>

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
					<p>specified varying default routing condition. Where PSAPs do not have the technical capability to receive 10-digit ANI, E911 traffic must be transmitted over a separate trunk group specific to the underlying technology. CLEC will have administrative control for the purpose of issuing ASRs on this trunk group. Where the parties utilize SS7 signaling and the E911 network has the technology available, only one (1) E911 Trunk group shall be established to handle multiple NPAs within the local Exchange Area or LATA. If the E911 network does not have the appropriate technology available, a SS7 trunk group shall be established per NPA in the local Exchange Area or LATA. In addition, 911 traffic originating in one (1) NPA must be transmitted over a separate 911 Trunk group from 911 traffic originating in any other NPA 911.</p> <p>4.2.5 CLEC shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 Interconnection between the CLEC switch and the AT&T Kentucky E911 SR.</p> <p>4.2.6 CLEC shall order sufficient trunking to route CLEC's originating 911 calls to the designated AT&T Kentucky E911 SR.</p> <p>4.2.7 Diverse (i.e., separate) 911 facilities are highly recommended and may be required by the Commission or E911 Customer. If required by the E911 Customer, diverse 911 Trunks shall be ordered in the same fashion as the primary 911 Trunks. CLEC is responsible for initiating trunking and facility orders for diverse routes for 911 Interconnection.</p> <p>4.2.8 CLEC is responsible for determining the proper quantity of trunks and transport facilities from its switch (es) to interconnect with the AT&T Kentucky E911 SR. CLEC shall engineer its 911 Trunks to attain a minimum P.01 grade of service as measured using the time</p>	

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
					<p>consistent average busy season busy hour twenty (20) day averaged loads applied to industry standard Neal-Wilkinson Trunk Group Capacity algorithms (using Medium day-to-day Variation and 1.0 Peakedness factor), or such other minimum grade of service as required by Applicable Law.</p> <p>4.2.9 CLEC shall monitor its 911 Trunks for the purpose of determining originating network traffic volumes. If CLEC's traffic study indicates that additional 911 Trunks are needed to meet the current level of 911 call volumes, CLEC shall provision additional 911 Trunks for Interconnection with AT&T Kentucky.</p> <p>4.2.10 CLEC is responsible for the isolation, coordination and restoration of all 911 facility and trunking maintenance problems from CLEC's demarcation (for example, collocation) to the AT&T Kentucky E911 SR(s).</p> <p>4.2.11 CLEC is responsible for advising AT&T Kentucky of the 911 Trunk identification and the fact that the trunks are dedicated for 911 traffic when notifying AT&T Kentucky of a failure or outage. The Parties agree to work cooperatively and expeditiously to resolve any 911 outage. AT&T Kentucky will refer network trouble to CLEC if no defect is found in AT&T Kentucky's 911 network. The Parties agree that 911 network problem resolution will be managed expeditiously at all times.</p> <p>4.2.12 CLEC will not turn up live traffic until successful testing of E911 Trunks is completed by both Parties.</p> <p>4.2.13 Where required, CLEC will comply with Commission directives regarding 911 facility and/or 911 Trunking requirements.</p> <p>4.3 Database:</p> <p>4.3.1 Once the 911 Interconnection between CLEC and all appropriate AT&T Kentucky E911 SR(s) has been</p>	

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DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
					<p>established and tested, CLEC or its representatives shall be responsible for providing CLEC's End User 911 Records to AT&T Kentucky for inclusion in AT&T Kentucky's DBMS on a timely basis.</p> <p>4.3.2 CLEC or its agent shall provide initial and ongoing updates of CLEC's End User 911 Records that are Master Street Address Guide (MSAG) valid in electronic format based upon established NENA standards.</p> <p>4.3.3 CLEC shall adopt use of a Company/NENA ID on all CLEC End User 911 Records in accordance with NENA standards. The Company ID is used to identify the carrier of record in facility configurations.</p> <p>4.3.4 CLEC is responsible for providing AT&T Kentucky updates to the E911 database; in addition, CLEC is responsible for correcting any errors that may occur during the entry of their data to the AT&T Kentucky 911 DBMS.</p>	
7	<p>Should the CLEC be allowed to forgo identifying the responsibility for transport from the CLEC owned switches?</p> <p>Should CLEC be allowed to insert additional parties outside of the ICA for responsibility of implementing 911 facilities?</p> <p>[AT&T Kentucky Identified Issue]</p>	<p>5.0 – 5.1.1</p> <p>5.2 – 5.2.1.3</p>	<p>5.0 Responsibilities of the Parties</p> <p>5.1 The Parties shall jointly coordinate the provisioning of transport capacity sufficient to route originating E911 calls from <u>their respective</u> POI(s) to the designated E911 SR(s).</p> <p>5.1.1 The Parties and CLEC will cooperate to promptly test all trunks and facilities between <u>their networks</u> and the E911 SR(s).</p> <p>5.2 911 Surcharge Remittance to PSAP:</p> <p>5.2.1 The Parties agree that:</p> <p>5.2.1.1 The Parties are not responsible for collecting and remitting applicable 911 surcharges or fees <u>on behalf of each other</u> directly to municipalities or government entities where such surcharges or fees are assessed by said municipality or government entity, and</p>		<p>5.0 Responsibilities of the Parties</p> <p>5.1 For CLEC's own switch(es), both Parties shall jointly coordinate the provisioning of transport capacity sufficient to route originating E911 calls from CLEC's POI to the designated AT&T Kentucky E911 SR(s).</p> <p>5.1.1 AT&T Kentucky and CLEC will cooperate to promptly test all trunks and facilities between CLEC's network and the AT&T Kentucky E911 SR(s).</p> <p>5.2 911 Surcharge Remittance to PSAP:</p> <p>5.2.1 For CLEC's own switch(es), the Parties agree that:</p> <p>5.2.1.1 AT&T Kentucky is not responsible for collecting and remitting applicable 911 surcharges or fees directly to municipalities or government entities where such surcharges or fees are assessed by said municipality or government entity,</p>	<p>AT&T Kentucky's language of Section 5 should remain as it describes the requirements of both parties for the joint provisioning of E911 service for a Competitive Local Exchange Carrier interconnecting with AT&T Kentucky to provide local exchange service and the provisioning of ancillary services (as is E911) to the CLEC's end user that will be originating the E911 call.</p> <p>Per the Telecommunications Act of 1996 CLEC has an obligation to interconnect on the ILEC's network.</p>

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DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
			<p>5.2.1.2 <u>The Parties are</u> not responsible for providing <u>each other with</u> the 911 Customer detailed monthly listings of the actual number of access lines, or breakdowns between the types of access lines (e.g., residential, business, payphone, Centrex, PBX, and exempt lines).</p> <p>5.2.1.3 <u>Each Party</u> shall be responsible for collecting and remitting all applicable 911 fees and surcharges on a per line basis to the appropriate PSAP or other governmental authority responsible for collection of such fees and surcharges.</p>		<p>and</p> <p>5.2.1.2 AT&T Kentucky is not responsible for providing the 911 Customer detailed monthly listings of the actual number of access lines, or breakdowns between the types of access lines (e.g., residential, business, payphone, Centrex, PBX, and exempt lines).</p> <p>5.2.1.3 Facility based CLECs shall be responsible for collecting and remitting all applicable 911 fees and surcharges on a per line basis to the appropriate PSAP or other governmental authority responsible for collection of such fees and surcharges.</p>	
8	RESOLVED	N/A	RESOLVED	RESOLVED	RESOLVED	RESOLVED

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 –911/E911 (SERVICE PROVIDER)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
1	<p>Does INdigital have the right to interconnect with AT&T under Section 251(c) of the Act for INdigital's provision of competitive 911/E911 services to PSAPs?</p> <p>If so, what is the appropriate language that should be included in the interconnection agreement?</p>	<p>Title/ Overall Alternate Attachment 05A – 911/E911 NIM (Service Provider)</p>	<p>Alternate Attachment 05 – 911/E911</p>		<p>Alternate Attachment 05 –911/E911 (Service Provider)</p>	<p>The 911 service that INdigital intends to provide does not meet the definition of "telephone exchange service" as set forth in 47 U.S.C. 153(47) because the service will not provide the ability to both originate and terminate calls. Accordingly, AT&T Kentucky is not required to provide interconnection pursuant to the provisions set forth in Section 251(c). AT&T Kentucky is available to negotiate a commercial agreement for INdigital's 911 services.</p> <p>AT&T Kentucky offers the language in Alternate Attachment 05 only as a backup in the event the Kentucky Commission renders a decision in favor of INdigital on this same issue. If the Commission finds that INdigital is entitled to Section 251(c) interconnection, AT&T Kentucky's language in this Appendix 911 DPL would be the AT&T Kentucky proposed language and should be adopted.</p> <p>If the Commission finds that INdigital is not entitled to Section 251(c) interconnection, AT&T Kentucky's language set forth in the Generic ATT 05 – 91/E911 (CLEC) issues matrix would be the AT&T Kentucky proposed language and should be adopted.</p>

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 -911/E911 (SERVICE PROVIDER)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
2	Should only the 911/E911 System Network providers be identified as part of this agreement?	1.2	1.2 The Parties acknowledge and agree that the Parties can only provide 911/E911 Service in a territory where the Party is <u>an</u> E911 <u>service</u> provider, and then only that E911 Service configuration as purchased by the E911 Customer. The Parties' E911 Selective Routers and E911 Database Management System are by mutual agreement being provided under this Agreement on an "as is" basis.		1.2 The Parties acknowledge and agree that the Parties can only provide 911/E911 Service in a territory where the Party is the E911 network provider, and then only that E911 Service configuration as purchased by the E911 Customer. The Parties' E911 Selective Routers and E911 Database Management System are by mutual agreement being provided under this Agreement on an "as is" basis.	This agreement is specific to the territory in which AT&T Kentucky provides 911/E911 Service. AT&T Kentucky's language more specifically focused on how the parties react at the network level which is the purpose of this agreement and Indigital's language is ambiguous.
3	How should the "primary" provider of selective routing be determined? [Section 4.1.1.1 AT&T Kentucky Identified Issue - Not in Indigital's Matrix]	4.1.1.1, 6.1.1.1	4.1.1.1 Where <u>an</u> End Office serves End Users both within and outside of the AT&T Kentucky network serving area, CLEC shall work cooperatively with AT&T Kentucky and the affected E911 Customer(s) (i) to establish call routing and/or call handoff arrangements, (ii) to establish which E911 Service provider will serve as the "primary" Selective Routing provider for direct trunking from the split wire center, determined by <u>the E911 Customer's stated preference or, if no preference is expressed</u> , a clear majority based on the Number of Access Lines (NALs) served by the Designated Primary Wireline Service Provider; and (iii) to establish which 911/E911 Service provider will serve as the "secondary" Selective Routing provider receiving a call hand-off from the primary Selective Routing provider. 6.1.1.1 Where an End Office serves End Users both within and outside of the CLEC network serving area, AT&T Kentucky shall work cooperatively with CLEC and the affected E911 Customer(s) (i) to establish call routing and/or call handoff arrangements, (ii) to establish which E911 Service provider will serve as the "primary" Selective Routing provider for direct trunking from the		4.1.1.1 Where a CLEC End Office serves End Users both within and outside of the AT&T Kentucky network serving area, CLEC shall work cooperatively with AT&T Kentucky and the affected E911 Customer(s) (i) to establish call routing and/or call handoff arrangements, (ii) to establish which E911 Service provider will serve as the "primary" Selective Routing provider for direct trunking from the split wire center, determined by mutual agreement by the 911 systems service providers, or a clear majority of end users , based on the Number of Network Access Lines (NALs) served by the Designated Primary Wireline Service Provider; and (iii) to establish which 911/E911 Service provider will serve as the "secondary" Selective Routing provider receiving a call hand-off from the primary Selective Routing provider. 6.1.1.1 Where an End Office serves End Users both within and outside of the CLEC network serving area, AT&T Kentucky shall work cooperatively with CLEC and the affected E911 Customer(s) (i) to establish call routing and/or call handoff arrangements, (ii) to establish which E911 Service provider will serve as the "primary" Selective Routing provider for direct trunking from the split wire center,	Section 4.1.1.1 and 6.1.1.1 specifies how to route 911 calls when a CLEC wire center overlaps both an AT&T Kentucky E911 Customer and a CLEC E911 Customer. Because two E911 Customers will be involved, it is more appropriate to require mutual agreement between the 911 system service providers, not to let one E911 Customer unilaterally choose. The 911 service providers will be representing their E911 Customer's preference. A third party who is not a party to the agreement should not be included in making the determination under this provision.

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DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 -911/E911 (SERVICE PROVIDER)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
			split wire center, determined by <u>the E911 Customer's stated preference or, if no preference is expressed</u> , a clear majority based on the Number of Access Lines (NALs) served by the Designated Primary Wireline Service Provider; and (iii) to establish which 911/E911 Service provider will serve as the "secondary" Selective Routing provider receiving a call hand-off from the primary Selective Routing provider.		determined by as mutually agreed to by the 911 systems service providers, or a clear majority of end users, based on the Number of Access Lines (NALs) served by the Designated Primary Wireline Service Provider; and (iii) to establish which 911/E911 Service provider will serve as the "secondary" Selective Routing provider receiving a call hand-off from the primary Selective Routing provider.	
4	Does the word "route" in Section 6.1.1 appropriately determine the method of transporting calls between the parties of this agreement?	6.1.1	6.1.1 AT&T Kentucky will transport 911 calls from its End Offices to the CLEC POI(s). This traffic may be aggregated but not switched after AT&T Kentucky End Office origination and prior to delivery to the CLEC E911 Selective Router. In the event AT&T Kentucky's End Office has End Users served by more than one E911 Selective Router network, AT&T Kentucky will <u>transport</u> 911 calls from its End Offices to the appropriate E911 Selective Router location consistent with the terms of section 6.1.1.1, below.		6.1.1 AT&T Kentucky will transport 911 calls from its End Offices to the CLEC POI(s). This traffic may be aggregated but not switched after AT&T Kentucky End Office origination or AT&T Kentucky Selective Router and prior to delivery to the CLEC E911 Selective Router. In the event AT&T Kentucky's End Office has End Users served by more than one E911 Selective Router network, AT&T Kentucky will route 911 calls from its End Offices to the appropriate E911 Selective Router location consistent with the terms of section 6.1.1.1, below.	Use of the word "route" rather than "transport" is more appropriate in section 6.1.1 because that section is used in conjunction with section 6.1.1.1, which describes the routing of 911 calls. Transport is dealt with under the physical interconnection portion of the agreement.
5	Is the term "customer" properly stated in 7.3.2?	7.3.2	Where CLEC has been designated the 911 Service Provider for a 911 Customer contiguous to an AT&T Kentucky 911 Customer, and where each Party's respective 911 Customer has requested the ability for PSAP-to-PSAP call transfer (and <u>when AT&T Kentucky's 911/E911</u> Customer has entered into an agreement with AT&T Kentucky for additional features of Tandem to Tandem transfer between two E911 services providers) the Parties shall work cooperatively to establish methods and procedures to support PSAP to PSAP call transfer with ALI for 911 calls.		7.3.2 Where CLEC has been designated the 911 Service Provider for a 911 Customer contiguous to an AT&T Kentucky 911 Customer, and where each Party's respective 911 Customer has requested the ability for PSAP-to-PSAP call transfer (and customer has entered into an agreement with AT&T Kentucky for additional features of Tandem to Tandem transfer between two E911 services providers) the Parties shall work cooperatively to establish methods and procedures to support PSAP to PSAP call transfer with ALI for 911 calls.	Yes, the use of "customer" in this section refers to the 911/E911 Customer which is defined in the definitions section of the document. It should not be limited to AT&T Kentucky's customer.
6	Should the ICA include rates	10.1	10.1 Rates for access to 911 and E911 Databases,		10.1 Rates for access to 911 and E911 Databases,	ICAs normally include only AT&T

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DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 -911/E911 (SERVICE PROVIDER)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
	for CLEC services?		trunking and call routing of E911 call completion to a Public Safety Answering Point (PSAP) as required by Section 251 of the Act as set forth in the <u>AT&T Kentucky Appendix Pricing</u> or the applicable <u>AT&T Kentucky or CLEC</u> Commission-approved access tariff.		trunking and call routing of E911 call completion to a Public Safety Answering Point (PSAP) as required by Section 251 of the Act as set forth in the <u>AT&T Kentucky Appendix Pricing</u> or the applicable <u>AT&T Kentucky</u> Commission-approved access tariff.	Kentucky's rates for services available in the ICA and do not include rates applicable to CLEC's services. To the extent the CLEC provides a reciprocal service to AT&T Kentucky (e.g., intercarrier compensation) the CLEC typically mirrors AT&T Kentucky's rates. As for services AT&T Kentucky will provide to INdigital, AT&T Kentucky's rates are included in its ICA pricing schedules and/or its tariffs referenced in the ICA, as appropriate.
7	Should the parties have mutual indemnity obligations with respect to claims arising from access to or use of each party's respective 911/E911 systems?	11.5, 11.6	<p><u>11.5 AT&T Kentucky agrees to release, indemnify, defend and hold harmless CLEC from any and all Loss arising out of CLEC providing AT&T Kentucky access to the 911 System hereunder or out of AT&T Kentucky's End Users' use of the 911 System, whether suffered, made, instituted or asserted by AT&T Kentucky, its End Users, or by any other parties or persons, for any personal injury or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by AT&T Kentucky, its End Users or others, unless the act or omission proximately causing the Loss constitutes gross negligence, recklessness or intentional misconduct of CLEC.</u></p> <p><u>11.6 AT&T Kentucky also agrees to release, indemnify, defend and hold harmless CLEC from any and all Loss involving an allegation of the infringement or invasion of the right of privacy or confidentiality of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate,</u></p>		<p>11.5 Intentionally deleted.</p> <p>11.6 Intentionally deleted.</p>	Should AT&T Kentucky prevail on the threshold issue (Issue 1) AT&T Kentucky would not be accessing INdigital's 911 system under this agreement, therefore, these provisions are unnecessary and unwarranted. Additionally, as a 911 Service provider, Kentucky law limits AT&T Kentucky's liability for damages, and AT&T Kentucky should not be required to indemnify for such damages.

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 -911/E911 (SERVICE PROVIDER)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
			<u><i>maintenance, removal, presence, condition, occasion or use of the 911 System features and the equipment associated therewith, including by not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing the 911 System provided hereunder, unless the act or omission proximately causing the Loss constitutes the gross negligence, recklessness or intentional misconduct of CLEC.</i></u>			

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DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05A – 911/E911 NIM (SERVICE PROVIDER)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
1	<p>Does INdigital have the right to interconnect with AT&T under Section 251(c) of the Act for INdigital's provision of competitive 911/E911 services to PSAPs?</p> <p>If so, what is the appropriate language to be included in the interconnection agreement?</p>	<p>Title/Overall Alternate Attachment 05A – 911/E911 NIM (Service Provider)</p>	<p>Alternate Attachment 05A – 911/E911 NIM (Network Interconnection Methods)</p>		<p>Alternate Attachment 05A – 911/E911 NIM (Service Provider) (Network Interconnection Methods)</p>	<p>No. The 911 service that INdigital intends to provide does not meet the definition of "telephone exchange service" as set forth in 47 U.S.C. 153(47) because the service will not provide the ability to both originate and terminate calls. Accordingly, AT&T Kentucky is not required to provide interconnection pursuant to the provisions set forth in Section 251(c). AT&T Kentucky is available to negotiate a commercial agreement for INdigital's 911 services.</p> <p>AT&T Kentucky offers the language in Alternate Attachment 05A only as a backup in the event the Kentucky Commission renders a decision in favor of INdigital on this same issue. If the Commission finds that INdigital is entitled to Section 251(c) interconnection, the language in this Alternate ATT 05A 911/E911 NIM DPL would be the AT&T Kentucky's proposed language and should be adopted.</p> <p>If the Commission finds that INdigital is not entitled to Section 251(c) interconnection, AT&T Kentucky's language set forth in the Generic ATT 05 – 91/E911 (CLEC) issues matrix would be the AT&T Kentucky</p>

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05A – 911/E911 NIM (SERVICE PROVIDER)

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
						proposed language and should be adopted.

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 08 - BONA FIDE REQUEST

Issue	Issue Statement	Section(s)	CLEC Language	CLEC Preliminary Position	AT&T Kentucky's Language	AT&T Kentucky's Position
1	Should the language address compensation to AT&T Kentucky for costs incurred as a result of CLEC's BFR request?	2.2, 2.3, 3.1.2	<p>2.2 <i>[Intentionally deleted.]</i></p> <p>2.3 <i>[Intentionally deleted.]</i></p> <p>3.1.2 <i>[Intentionally deleted.]</i></p>		<p>2.2 "Complex Request Evaluation Fee" means an Individual Case Basis (ICB) fee to compensate AT&T Kentucky for the extraordinary expenses directly related to the CLEC's BFR which is a complex request that requires the allocation and engagement of additional resources above the existing allocated resources used on BFR cost development which include, but are not limited to, expenditure of funds to develop feasibility studies, specific resources that are required to determine request requirements (such as operation support system analysts, technical managers, software developers), software impact analysis by specific software developers; software architecture development, hardware impact analysis by specific system analysts, etc.</p> <p>2.3 "Development Rate" means the estimated cost for AT&T Kentucky to develop the new or modified 251(c)(3) element and other network elements.</p> <p>3.1.2 If the BFR Deposit amount identified in the Pricing Schedule is not made at the time of the BFR Application, CLEC shall be responsible for all preliminary evaluation costs incurred by AT&T Kentucky to complete the preliminary analysis (regardless of whether such costs are greater or lesser than the BFR Deposit amount in the Pricing Schedule).</p>	<p>AT&T Kentucky's proposed language is necessary because it describes the process which has been developed and put into place for Bona Fide Requests (BFR's). It is a process that is followed throughout the AT&T region and works effectively when used properly by both parties.</p> <p>If AT&T Kentucky is requested by a CLEC (cost causer) to provide a specific element or product which has currently not been identified or developed, then AT&T is entitled to recover all of the costs associated with completing that CLEC request.</p> <p>AT&T should not be held accountable for costs it incurs at the specific request of the CLEC (cost causer).</p>
2	Should the costs incurred by AT&T Kentucky for a Complex Evaluation be addressed through the dispute resolution procedures?	3.3	3.3 For any new or modified Section 251 or 251(c)(3) element required to be unbundled by Act, if AT&T Kentucky determines that the preliminary analysis of the requested BFR is of such complexity that it will cause AT&T Kentucky to expend extraordinary resources to evaluate the BFR, AT&T Kentucky shall notify CLEC within ten (10) Business Days of AT&T Kentucky's receipt of the BFR and the parties may		3.3 For any new or modified Section 251 or 251(c)(3) element required to be unbundled by Act, if AT&T Kentucky determines that the preliminary analysis of the requested BFR is of such complexity that it will cause AT&T Kentucky to expend extraordinary resources to evaluate the BFR, AT&T Kentucky shall notify CLEC within ten (10) Business Days of AT&T Kentucky's receipt of the BFR that a Complex	The dispute resolution process is not designed for or intended for use in addressing BFR requests, which is a separate process with specific requirements and procedures of its own. The dispute resolution process is in place for elements or wholesale products that already exist and have been identified within the terms and conditions of the ICA and have been

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ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 08 - BONA FIDE REQUEST

Issue	Issue Statement	Section(s)	CLEC Language	CLEC Preliminary Position	AT&T Kentucky's Language	AT&T Kentucky's Position
			<p><u>pursue the dispute resolution procedures provided pursuant to the General Terms and Conditions of this Agreement.</u></p>		<p>Request Evaluation Fee will be required prior to the preliminary analysis of the BFR being performed by AT&T Kentucky. If CLEC accepts the Complex Request Evaluation Fee proposed by AT&T Kentucky, CLEC shall submit such fee within thirty (30) Business Days of AT&T Kentucky's notice that a Complex Request Evaluation Fee is required. AT&T Kentucky will not be obligated to further process the BFR until such Complex Request Evaluation Fee is received by AT&T Kentucky. Within thirty (30) Business Days of AT&T Kentucky's receipt of the Complex Request Evaluation Fee, AT&T Kentucky shall respond to CLEC by providing a preliminary analysis.</p>	<p>provisioned via the AT&T network. A Bona Fide Request (BFR) is the process in which a CLEC may request the development of a NEW element or product, which is not currently available within the AT&T element or product offerings, or is currently not developed to provide the functionality being requested by the CLEC. If a current functionality or product needs to be developed or reconfigured as a result of the CLEC's request, AT&T Kentucky should not be held responsible, as it is not the cost causer for the change.</p> <p>The request for, and payment of, the Complex Request Evaluation fee is necessary for a couple of reasons:</p> <ol style="list-style-type: none"> 1) it confirms a commitment by the CLEC that the BFR is in fact a legitimate one and that the CLEC truly wants to move forward with the development of its request. 2) It is good business sense to cover AT&T Kentucky's costs as well as alleviate any waste of time and/or resources in order to dispute something which is not currently available or even wanted by any other CLEC. 3) Should the CLEC choose to abandon its request after AT&T Kentucky has begun its analysis, AT&T Kentucky will at least be able to recoup some of its expenses
3	Should AT&T Kentucky be held to a 30-day response time even if extraordinary situations occur preventing AT&T Kentucky from completing its evaluation?	3.4	<p>3.4 Notwithstanding any other provision of this attachment, AT&T Kentucky shall, within thirty (30) Business Days of <u>its</u> receipt of CLEC's complete and valid BFR, respond to CLEC by <u>confirming whether AT&T Kentucky</u> will or will not offer the new or modified Section 251 or 251(c)(3) element and, if it will offer the new or modified Section 251 or</p>		<p>3.4 If AT&T Kentucky is not required to expend extraordinary resources to evaluate the BFR as described in Section 3.3 above, then within thirty (30) Business Days of AT&T Kentucky's receipt of CLEC's fully complete and valid BFR, AT&T Kentucky shall respond to CLEC by providing a preliminary analysis of the new or modified Section 251 or 251(c)(3)</p>	<p>The CLEC's language is attempting to require AT&T Kentucky to do something it is not obligated to do. AT&T Kentucky will, when no extraordinary additional resources and/or funding are required, commit to respond to a CLEC within 30 days. The CLEC language, on the other hand, is silent as to how AT&T</p>

Key: **Bold** represents language proposed by AT&T KENTUCKY and opposed by CLEC.
Bold/Italics/Underline language represents language proposed by CLEC and opposed by AT&T KENTUCKY.

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 08 - BONA FIDE REQUEST

Issue	Issue Statement	Section(s)	CLEC Language	CLEC Preliminary Position	AT&T Kentucky's Language	AT&T Kentucky's Position
			<u>251(c)(3) element, provide a preliminary analysis of such element(s).</u>		element. The preliminary analysis shall confirm either that AT&T Kentucky will or will not offer the new or modified Section 251 or 251(c)(3) element.	<p>Kentucky will be compensated in those cases where resources and/or funding are required of AT&T Kentucky. This is clearly an unequal proposition in which AT&T Kentucky is disadvantaged. In addition, it is contrary to the already established AT&T Kentucky BFR process.</p> <p>AT&T Kentucky's language also provides for a preliminary analysis of what is being requested as well as whether or not AT&T Kentucky intends to offer the new/modified Section 251 or 251(c)(3) element. The preliminary analysis will provide AT&T Kentucky's reasoning for its decision.</p> <p>AT&T Kentucky's language addresses a substantiated, in-place process which has been established in AT&T throughout the AT&T region.</p> <p>The CLEC's language is redundant and poorly written, which would lead to misunderstanding and possible confusion.</p>
4	Should AT&T Kentucky be compensated for CLEC's failure to timely cancel a request when AT&T Kentucky has already expended resources for the preliminary analysis?	3.5	<u>3.5 if CLEC desires to cancel a BFR, it shall notify AT&T Kentucky of that desire as soon as commercially practicable.</u>		3.5 CLEC may cancel a BFR at any time up until thirty (30) Business Days after receiving AT&T Kentucky's preliminary analysis. If CLEC cancels the BFR within thirty (30) Business Days after receipt of AT&T Kentucky's preliminary analysis, AT&T Kentucky shall be entitled to retain the BFR Deposit or any Complex Request Evaluation Fee, minus those costs that have not been incurred by AT&T Kentucky as of the date of cancellation	<p>A CLEC always has the option to cancel its BFR request. However, depending on when the CLEC chooses to do so and the extent of resources and/or funding AT&T Kentucky has committed, a CLEC should not simply walk away free of any financial obligations. AT&T Kentucky's language states what its expectations are when work has been done, costs have been incurred, etc.</p> <p>The CLEC's language appears to allow it to be free of any responsibility, financially or otherwise, for a cancelled BFR.</p>

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 08 - BONA FIDE REQUEST

Issue	Issue Statement	Section(s)	CLEC Language	CLEC Preliminary Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
5	Should CLEC be required to provide payment of an estimated Development Rate for a new or modified network element?	3.6	3.6 CLEC will have thirty (30) Business Days from receipt of the preliminary analysis to accept the preliminary analysis. CLEC must provide acceptance of the preliminary analysis in writing. If CLEC fails to respond within this thirty (30) Business Day period, the BFR will be deemed cancelled.		3.6 CLEC will have thirty (30) Business Days from receipt of the preliminary analysis to accept the preliminary analysis. CLEC must provide acceptance of the preliminary analysis in writing and provide the payment of the estimated Development Rate for the new or modified network element quoted in the preliminary analysis. If CLEC fails to respond within this thirty (30) Business Day period, the BFR will be deemed cancelled.	AT&T Kentucky is not required to develop any product/service free of charge; AT&T Kentucky has the right to be compensated for the time, resources and funding it expends at the CLEC's request. If the CLEC is serious about continuing with the development of the element it requested, then it should be expected to pay all of the associated costs required in various parts of the process. Otherwise, it could be construed that that CLEC has not chosen to commit to the element development at the same level AT&T Kentucky has.
6	Should CLEC be obligated to commit to accepting the preliminary analysis and pay an estimated Development Rate prior to AT&T Kentucky's moving forward?	3.7	3.7 As soon as feasible, but not more than ninety (90) calendar days after <u>AT&T Kentucky's</u> receipt of CLEC's <u>BFR</u> , <u>AT&T Kentucky</u> shall provide to CLEC a firm price quote <u>for the requested element(s)</u> . The firm price quote will include the nonrecurring rate and the recurring rate, and a detailed implementation plan.		3.7 As soon as feasible, but not more than ninety (90) calendar days after <u>AT&T Kentucky's</u> receipt of CLEC's written acceptance of the preliminary analysis and payment of the estimated Development Rate, AT&T Kentucky shall provide to CLEC a firm price quote. The firm price quote will include any additional Development Rates , the nonrecurring rate and the recurring rate, and a detailed implementation plan. The firm nonrecurring rate will not include any of the Development Rate or the Complex Request Evaluation Fee, if required, in the calculation of this rate.	AT&T Kentucky's language clarifies the timing of events in the BFR process, the payment responsibilities along the way, and what will be included in the firm price quote. The CLEC's language, by contrast, omits some of the important details, leaving them up in the air, and implies that someone other than that CLEC should be responsible for the financial aspect of the development by stating what will be included within the firm price quote. Whereas AT&T Kentucky's language places the burden of cost on the cost causer CLEC who is specifically requesting the development, not any other CLEC who comes in later. Additionally, by including the CLEC language, AT&T Kentucky risks: 1) never recovering any of the costs it was required to incur for the development/implementation since no other CLEC may ever want the resulting element; or 2) with the number of CLECs exiting the business, never recovering its costs from the requesting CLEC, much less anyone else.

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Bold/Italics/Underline language represents language proposed by CLEC and opposed by AT&T KENTUCKY.

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 08 - BONA FIDE REQUEST

Issue	Issue Statement	Section(s)	CLEC Language	CLEC Preliminary Position	<u>AT&T Kentucky's</u> Language	<u>AT&T Kentucky's</u> Position
7	Should AT&T be compensated for necessary work that is required to complete the CLEC's request? [AT&T Kentucky Identified Issue]	3.8	3.8 CLEC shall have thirty (30) Business Days from receipt of the firm price quote to accept or deny the firm price quote in writing. If AT&T Kentucky does not receive Notice of any of the foregoing within such thirty (30) Business Day period, the BFR shall be deemed canceled. CLEC shall be responsible to reimburse AT&T Kentucky for its <u>reasonable</u> costs incurred up to the date of cancellation (whether affirmatively canceled or deemed canceled by AT&T Kentucky).		3.8 CLEC shall have thirty (30) Business Days from receipt of the firm price quote to accept or deny the firm price quote in writing and submit any additional Development Rates or nonrecurring rates quoted in the firm price quote. If AT&T Kentucky does not receive Notice of any of the foregoing within such thirty (30) Business Day period, the BFR shall be deemed canceled. CLEC shall be responsible to reimburse AT&T Kentucky for its costs incurred up to the date of cancellation (whether affirmatively canceled or deemed canceled by AT&T Kentucky).	AT&T Kentucky's language proposes to recover any additional costs for work that was necessary to complete in order to fulfill the CLEC's request. These are costs which were, for any number of reasons, unforeseen in the original analysis, but necessary for the completion and implementation of the BFR.

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 12 - COLLOCATION

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's</u> Language	<u>AT&T Kentucky's</u> Position
1	Can the CLEC limit the damage liability to AT&T Kentucky and other CLECs resulting from the installation, operation, or maintenance of the CLEC's equipment, including but not limited to from any defect in CLEC's equipment or its installation, operation, or maintenance, or resulting from the actions or inaction, willful, or negligent, of the CLEC's employees, suppliers, or contractors?	4.4	4.4 The CLEC will be responsible for any and all damages resulting from any harm to <u>AT&T Kentucky's</u> or other CLEC's premises, or any outage in <u>AT&T Kentucky's</u> or other CLEC's network, which is a result of the installation, operation, or maintenance of the CLEC's equipment, including but not limited to from any defect in CLEC's equipment or its installation, operation, or maintenance, or resulting from the actions or inaction, willful, or negligent, of the CLEC's employees, suppliers, or contractors. <u><i>In no event shall CLEC be liable to AT&T Kentucky or other CLECs for consequential, incidental, or punitive damages.</i></u>		4.4 The CLEC will be responsible for any and all damages resulting from any harm to <u>AT&T Kentucky's</u> or other CLEC's premises, or any outage in <u>AT&T Kentucky's</u> or other CLEC's network, which is a result of the installation, operation, or maintenance of the CLEC's equipment, including but not limited to from any defect in CLEC's equipment or its installation, operation, or maintenance, or resulting from the actions or inaction, willful, or negligent, of the CLEC's employees, suppliers, or contractors.	AT&T Kentucky's position is that the CLEC is liable for all damages subject to the limitations on liability set forth in Section 16 of the Agreement, including the limitation on consequential, incidental, and punitive damages in Section 16.4 If the CLEC's equipment or employee is found to be the fault of the damage, then the CLEC needs to be held accountable.
2	Does AT&T Kentucky have the right to review and agree to the exceptions CLEC has listed during the acceptance walk-through?	10.2	10.2 After the Physical Collocator's receipt of such notice, the Physical Collocator shall request within fifteen (15) calendar days an acceptance walk-through of the Collocation space with <u>AT&T Kentucky</u> . The acceptance walk-through will be scheduled on a mutually agreed upon date. Any material deviations from mutually agreed Application specifications may be noted by the Physical Collocator as exceptions. The exceptions shall be corrected by <u>AT&T Kentucky</u> by a mutually agreed upon date. The correction of these exceptions shall be at <u>AT&T Kentucky's</u> expense. <u>AT&T Kentucky</u> will then establish a new Space Ready Date.		10.2 After the Physical Collocator's receipt of such notice, the Physical Collocator shall request within fifteen (15) calendar days an acceptance walk-through of the Collocation space with <u>AT&T Kentucky</u> . The acceptance walk-through will be scheduled on a mutually agreed upon date. Any material deviations from mutually agreed Application specifications may be noted by the Physical Collocator as exceptions, which to qualify as exceptions, must be agreed to as exceptions by AT&T Kentucky . The agreed upon exceptions shall be corrected by <u>AT&T Kentucky</u> by a mutually agreed upon date. The correction of these exceptions shall be at <u>AT&T Kentucky's</u> expense. <u>AT&T Kentucky</u> will then establish a new Space Ready Date.	AT&T Kentucky believes it has the right to review the exceptions from CLEC's list after the acceptance walk-through. AT&T's language is very clear that the parties will agree on the exceptions and AT&T Kentucky will correct them. If a dispute arises then the CLEC can use the Dispute Resolution process. If AT&T Kentucky is not allowed to review and approve the exceptions, AT&T Kentucky should not be held responsible for resolving those identified exceptions at its expense.

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATT 13 251(C)(3) UNE's

Issue No	Issue Statement	Section	CLEC Language	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
1	<p>Should the language clearly indicate that the provisions of the underlying agreement are subject to declassification?</p> <p>Whose language should appear in the ICA?</p>	1.4	<p>1.4 <u>Subject</u> to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an Unbundled Network Element or 251(c)(3) UNE in this Agreement is Declassified or is otherwise no longer a 251(c)(3) UNE, then the Transition Procedure defined in Section 3.5 below, shall govern.</p>		<p>1.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an Unbundled Network Element or 251(c)(3) UNE in this Agreement is Declassified or is otherwise no longer a 251(c)(3) UNE, then the Transition Procedure defined in Section 3.5 below, shall govern.</p>	<p>AT&T Kentucky's proposed language should be accepted as it properly limits AT&T Kentucky's obligation to provide UNEs to those required under the Act as determined by the FCC rules and associated lawful and effective FCC and judicial orders. AT&T Kentucky's language makes it clear so as to alleviate any future conflict or future dispute with respect to AT&T Kentucky's obligations to provide such declassified UNEs.</p>
2	<p>Should AT&T Kentucky be allowed to disconnect or convert services?</p>	16.4	<p>16.4 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the applicable transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 14.4.1 above of this Agreement, and if CLEC and <u>AT&T Kentucky</u> have failed to reach agreement under Section 14.4.1 above of this Agreement as to a substitute service arrangement or element, then <u>AT&T Kentucky</u> may convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available, at rates applicable to such analogous service or arrangement.</p>		<p>16.4 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the applicable transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 14.4.1 above of this Agreement, and if CLEC and <u>AT&T Kentucky</u> have failed to reach agreement under Section 14.4.1 above of this Agreement as to a substitute service arrangement or element, then <u>AT&T Kentucky</u> may, at its sole option, disconnect DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport, whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available, at rates applicable to such analogous service or arrangement.</p>	<p>AT&T Kentucky's UNE declassification transition language states that AT&T Kentucky will provide reasonable notice that an item or category of items otherwise included in the UNE Attachment as a 251 (c)(3) UNE has been declassified. Upon that notice, CLEC has a choice – it can request that it discontinue the item, in which case AT&T Kentucky will do so. Or, if it doesn't request discontinuance, AT&T Kentucky will simply replace and/or re-price the item accordingly. This process will minimize disruption and disputes. AT&T Kentucky will continue to provide the item as a "UNE" during the 30-day period between the notice and the discontinuance or re-pricing and/or replacement of the product. If for some reason, there is no analogous product available, AT&T Kentucky's language provides for the parties to negotiate and incorporate terms and conditions for a replacement product. AT&T Kentucky's approach is reasonable and orderly, and should help avoid disputes at the Commission.</p>

DOCKET#
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 15 - CHC

Issue No.	Issue Statement	Section(s)	CLEC Language	CLEC's Position	<u>AT&T Kentucky's</u> Language	<u>AT&T Kentucky's</u> Position
1	Should language be included to enable AT&T to suspend CHC/OC activity due to unanticipated heavy work loads/activity periods? [AT&T Kentucky Identified Issue]	3.5	3.5 <u>AT&T Kentucky shall work cooperatively with CLEC regarding</u> the availability of CHC/OC service during unanticipated heavy workload/activity periods. Heavy workload includes any unanticipated volume of work that impacts <u>AT&T Kentucky's</u> ability to provide its baseline service. Where time permits, <u>AT&T Kentucky</u> will make every effort to notify CLEC when such unanticipated activities occur.		3.5 <u>AT&T Kentucky reserves the right to suspend</u> the availability of CHC/OC service during unanticipated heavy workload/activity periods. Heavy workload includes any unanticipated volume of work that impacts <u>AT&T Kentucky's</u> ability to provide its baseline service. Where time permits, <u>AT&T Kentucky</u> will make every effort to notify CLEC when such unanticipated activities occur.	AT&T Kentucky proposes terms and conditions for Coordinated Hot Cuts (CHC) that should be incorporated into the agreement. Whether AT&T Kentucky is performing work for itself, for INdigital or for another customer, the scheduling for any particular activity is subject to certain workload constraints. AT&T Kentucky's proposed language provides a necessary mechanism for AT&T Kentucky to schedule CHC service and ensures that INdigital receives non-discriminatory treatment. In order to maintain a high level of service at reasonable costs, AT&T Kentucky must be able to manage the scheduling of its workload. Accordingly, AT&T Kentucky's proposed language should be adopted.

Exhibit B

From: COLON, LORI (ATTASIAIT)
Sent: Thursday, February 26, 2009 7:10 PM
To: Depp,Tip
Cc: Brent Cummings; Turbes, Michael
Subject: RE: INdigital Telecom ICA; GTC
Attachments: REDLINE_ INdigital - AT&T ICA_ (Att. 5_ 911).DOC

Tip,

AT&T does not agree that the attached 911 Attachment/Appendix should be included or is applicable for a 251 Agreement as redlined by INdigital. If INdigital is interested in a commercial agreement in relation to the attached redline AT&T would be glad to discuss that further with INdigital. Please let me know. Thanks.

Lori Colon

Lead Interconnection
Agreements Manager
AT&T Wholesale
AT&T Illinois
847-248-2093
lc2683@att.com

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From: COLON, LORI (ATTASIAIT)
Sent: Thursday, February 26, 2009 5:58 PM
To: 'Depp,Tip'
Cc: Brent Cummings; TURBES, MICHAEL M (Legal)
Subject: INdigital Telecom ICA; GTC

Tip,

Please find attached AT&T's response on the GTC. Please let me know your availability for tomorrow and next week and I will get some time scheduled to discuss. Thank you.

Lori Colon

Lead Interconnection
Agreements Manager
AT&T Wholesale
AT&T Illinois
847-248-2093
lc2683@att.com

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From: Depp,Tip [tip.depp@dinslaw.com]
Sent: Thursday, February 26, 2009 9:24 PM
To: COLON, LORI (ATTASIAIT)
Cc: Brent Cummings; Turbes, Michael
Subject: RE: INdigital Telecom ICA; GTC

Lori,

Can you or your legal counsel (who I think is copied here) provide me with your legal authority for the proposition that the proposed 911 attachment is not appropriate for a 251 ICA? We're going to need to take a look at that. Thanks.

-Tip

-----Original Message-----

From: COLON, LORI (ATTASIAIT) [<mailto:lc2683@att.com>]
Sent: Thu 2/26/2009 7:09 PM
To: Depp,Tip
Cc: Brent Cummings; TURBES, MICHAEL M (Legal)
Subject: RE: INdigital Telecom ICA; GTC

Tip,

AT&T does not agree that the attached 911 Attachment/Appendix should be included or is applicable for a 251 Agreement as redlined by INdigital. If INdigital is interested in a commercial agreement in relation to the attached redline AT&T would be glad to discuss that further with INdigital. Please let me know. Thanks.

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Agreements Manager
AT&T Wholesale
AT&T Illinois
847-248-2093
lc2683@att.com

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Exhibit D

From: Depp,Tip [tip.depp@dinslaw.com]
Sent: Thursday, March 05, 2009 5:33 PM
To: COLON, LORI (ATTASIAIT)
Cc: Brent Cummings
Subject: INdigital Telecom; 911 Agmt.

Lori,

We don't want to waive any of our rights or arguments with respect to whether the 911 attachment is appropriate for 251(c) interconnection, but we would nevertheless like to take a look at the proposed, alternative commercial agreement. Will you please send us a draft?

Thanks!

-Tip

Edward T. Depp
Dinsmore & Shohl LLP
1400 PNC Plaza
500 W. Jefferson St.
Louisville, KY 40202
Direct Dial: 502-540-2347
Cell: 502-599-5731
Fax: 502-585-2207
tip.depp@dinslaw.com
www.dinslaw.com

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From: COLON, LORI (ATTASIAIT)
Sent: Friday, March 06, 2009 11:32 AM
To: 'Depp,Tip'
Cc: 'Brent Cummings'; Turbes, Michael
Subject: RE: INdigital Telecom ICA; GTC

Tip,

In response to your request for legal authority supporting AT&T's assertion that INdigital's proposed revisions to the 911 attachment are not appropriate for a Section 251(c) ICA, note that the 911 service that INdigital proposes to provide does not meet the definition of "telephone exchange service" as set forth in 47 U.S.C. 153(47) because the service will not provide the ability both to originate and terminate calls. Accordingly, AT&T is not required to provide interconnection pursuant to the provisions set forth in Section 251(c).

For your reference, I attached a copy of a recent Final Order by the Florida Public Service Commission concluding that Section 251(c) was not applicable to 911 services that were substantially similar to those proposed by INdigital.

AT&T remains willing to negotiate a commercial agreement for INdigital's 911 services. We look forward to hearing from INdigital regarding such negotiations.

Lori Colon

Lead Interconnection
Agreements Manager
AT&T Wholesale
AT&T Illinois
847-248-2093
lc2683@att.com

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Sent: Thursday, February 26, 2009 8:24 PM
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Cc: Brent Cummings; TURBES, MICHAEL M (Legal)
Subject: RE: INdigital Telecom ICA; GTC

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-Tip

-----Original Message-----

From: COLON, LORI (ATTASIAIT) [<mailto:lc2683@att.com>]
Sent: Thu 2/26/2009 7:09 PM
To: Depp,Tip
Cc: Brent Cummings; TURBES, MICHAEL M (Legal)
Subject: RE: INdigital Telecom ICA; GTC

Tip,

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Lori Colon
Lead Interconnection
Agreements Manager
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Sent: Thursday, February 26, 2009 5:58 PM
To: 'Depp,Tip'
Cc: Brent Cummings; TURBES, MICHAEL M (Legal)
Subject: INdigital Telecom ICA; GTC

Tip,

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Lori Colon
Lead Interconnection
Agreements Manager
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lc2683@att.com

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Exhibit F

From: Depp,Tip [edepp@DINSLAW.com]
Sent: Thursday, June 11, 2009 8:27 PM
To: Turbes, Michael
Cc: Depp,Tip; COLON, LORI (ATTASIAIT); Brent Cummings
Subject: Re: Commercial NDA - INdigital

Thanks, Michael.

We understand AT&T's position regarding 911 and the 251/252 issue. We are also aware of the differing results different state commissions have reached on that issue. We are evaluating that issue now, and I expect to be able to provide our thoughts/comments on the 911 commercial agreements to Mr. Latawiec tomorrow. Once we have his responses, we should be able to make a more informed decision regarding the 911 issue.

In the meantime, Attachment 5 remains in dispute.

Thanks!

-Tip

Sent from my iPhone

Exhibit G

From: COLON, LORI (ATTASIAIT)
Sent: Wednesday, October 21, 2009 8:20 PM
To: Depp,Tip; Brent Cummings
Cc: Turbes, Michael
Subject: INDigital DPLs - 911

Attachments: 082509 INDIGITAL ATT 5 911 DPL.doc; 093009 ATT 5 911 DPL.doc; 101309 ATT 5 911 NIM DPL.doc

Tip,
Brent,

In reviewing documents for the upcoming arbitration, it appears that I did not restate AT&T Kentucky's position when I provided to you via email Appendix 911 on September 30, 2009 and Appendix 911 NIM on October 12, 2009. Based on our email exchanges between September 21 and now, I am afraid I may have inadvertently created some confusion as to the purpose of those documents and wanted to make sure we were on the same page as you indicated in your email to me dated October 15, 2009. AT&T Kentucky's position, which has not changed, is that this language is not appropriate for a Section 251(c) interconnection agreement. The language was intended to be provided to INdigital in the event that AT&T Kentucky were to lose the issue concerning the definition of "telephone exchange service" as set forth in 47 U.S.C. 153(47), and not as a replacement for the language in AT&T Kentucky's 251(c) interconnection agreement. Therefore, in the event the Kentucky Commission decides in favor of AT&T Kentucky regarding the definition of "telephone exchange service," the language in the attached, Attachment 5 – 911/E911 DPL dated August 25, 2009, would be AT&T Kentucky's proposed language. If, however, the Kentucky Commission renders a decision in favor of INdigital on this same issue, the language in Appendix 911 and Appendix 911 NIM referenced above and sent to you on September 30 and October 12, 2009, respectively, and inserted into the attached DPLs entitled ATT-5 – 911/E911 dated 9/30/09, and ATT 911 NIM dated 10/13/09, would be AT&T Kentucky's proposed language.

Sorry for any confusion my previous emails may have created. If you have any questions, please let me know.



J82509 INDIGITAL 093009 ATT 5 911 101309 ATT 5 911
ATT 5 911 DP... DPL.doc (153 ... NIM DPL.doc (...)

Lori Colon

Lead Interconnection
Agreements Manager
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