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June 15, 2010

RECEIVED

JUN 15 2010

PUBLIC SERVICE  
COMMISSION

**VIA COURIER**

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

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 Telecommunications 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 Direct Testimony of Deborah Fuentes Niziolek, J. Scott McPhee, and Mark Neinast on behalf of AT&T Kentucky.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Enclosures

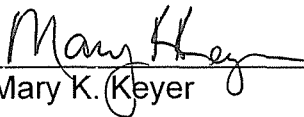
cc: Party of Record

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof via overnight mail, this 15th day of the June 2010.

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

COUNTY OF Cook

STATE OF Illinois

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Deborah Fuentes Niziolek, who being by me first duly sworn deposed and said that she is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2009-00438, *In the Matter of: Petition of Communications Venture Corporation d/b/a INdigital Telecom for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996* and if present before the Commission and duly sworn, her statements would be set forth in the annexed direct testimony consisting of 36 pages and 0 exhibits.

  
DEBORAH FUENTES NIZIOLEK

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 10th DAY OF JUNE, 2010

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 9/12/2012

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OFFICIAL SEAL  
DENISE R ROBINSON  
Notary Public - State of Illinois  
My Commission Expires Sep 12, 2012

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AT&T KENTUCKY  
DIRECT TESTIMONY OF DEBORAH FUENTES NIZIOLEK  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
DOCKET NO. 2009-00438  
JUNE 15, 2010

**Issues:**  
Structure Access 1-6  
BFR 1-7  
Collocation 1-2  
UNEs 1-2  
CHCs 1

1 Q. PLEASE STATE YOUR NAME, YOUR POSITION, AND YOUR  
2 BUSINESS ADDRESS.

3 A. My name is Deborah Fuentes Niziolek, and my business address is 350  
4 N. Orleans, Chicago, Illinois. I am employed as an Associate Director –  
5 Wholesale Regulatory Support by Ameritech Services Inc., d/b/a AT&T  
6 Illinois (“AT&T”), which provides services on behalf of AT&T Operations,  
7 Inc. – an authorized agent for the AT&T incumbent local exchange  
8 company subsidiaries (including AT&T Kentucky).

9 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

10 A. I began with Ameritech (now doing business as AT&T Midwest) in 1989 in  
11 the purchasing organization as a buyer for Furnish Only and Engineering  
12 equipment as well as for Controlled Environmental Vaults, Huts, and  
13 Remote Terminals. In May of 1993, I became an Illinois Marketing  
14 Operations Manager, where my responsibilities included product  
15 development, implementation, and marketing strategies for certain  
16 products. In November of that year, I became an Ameritech Regional  
17 Product Manager in the Consumer Business Unit. My responsibilities  
18 included development, implementation, and marketing strategy for the  
19 Consumer Business Unit for the five Ameritech states.

20 In May of 1995, I became a Regional Project Manager working  
21 within the Strategic Supplier Implementation organization. In that position,  
22 I acted as the single point of contact for one of six Ameritech Key  
23 Suppliers. In November 1995, I took over responsibilities as Regional

1 Product Manager of Unbundled Local Switching. My responsibilities  
2 included the development and implementation of Unbundled Local  
3 Switching. In May of 1999, I became Regional Product Manager for  
4 Unbundled Loops. From December of 1999 through June of 2000, I was  
5 also the 13-state Product Manager responsible for the development and  
6 implementation of the Sub-Loop Unbundling product. I moved into my  
7 current role, as Associate Director in Wholesale, in June of 2000.

8 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

9 I received my Master of Science in Integrated Marketing Communications  
10 from Roosevelt University, Chicago, Illinois, and my Bachelor of Arts in  
11 Political Science from Loyola University, Chicago, Illinois.

12 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

13 A. I am responsible for providing regulatory and witness support relative to  
14 various wholesale products and pricing, supporting negotiations of local  
15 interconnection agreements ("ICAs") with competitive local exchange  
16 carriers ("CLECs") and Commercial Mobile Radio Service ("CMRS")  
17 providers, participating in regulatory and judicial proceedings, and guiding  
18 compliance with the Federal Telecommunications Act of 1996 ("Act") and  
19 implementing its rules.

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY AND HOW IS IT**  
21 **ORGANIZED?**

22 A. I will be addressing issues identified in several of the Decision Point Lists  
23 (DPLs) submitted by the Parties. These DPLs reflect issues regarding

1 contract language in the following attachments: Attachment 3, Structure  
2 Access; Attachment 8, Bona Fide Request (BFR); Attachment 12,  
3 Collocation; Attachment 13, 251(c)(3) UNEs; and Attachment 15,  
4 Coordinated Hot Cuts (CHC).

5 Part I of my testimony addresses issues identified in Attachment 3,  
6 Structure Access (Issues 1-6).

7 Part II of my testimony addresses issues identified in Attachment 8,  
8 Bona Fide Request (Issues 1-7).

9 Part III of my testimony addresses issues identified in Attachment  
10 12, Collocation (Issues 1 and 2).

11 Part IV of my testimony addresses issues identified in Attachment  
12 13, 251 (c)(3) UNEs (Issues 1 and 2)

13 Finally, Part V of my testimony addresses issues identified in  
14 Attachment 15, Coordinated Hot Cuts (Issue 1)

15 **I. STRUCTURE ACCESS ISSUES (ATTACHMENT 3)**

16  
17 ***Attachment 3 Issue 1 (Section 6.2.1.1):***

18  
19 ***AT&T: Should AT&T Kentucky absorb costs associated with***  
20 ***research, review and copying of records?***

21  
22 ***INdigital: In addition to paying for the production and mailing of***  
23 ***records relating to structure access, should INdigital Telecom pay***  
24 ***for the cost of employee time spent gathering and copying records?***  
25

26 **Q. WHAT IS THE DISPUTE IN ATTACHMENT 3 ISSUE 1?**

27 A. This issue deals with how much AT&T Kentucky should be compensated  
28 for the time spent by an AT&T Kentucky employee researching, reviewing  
29 and copying records requested by INdigital regarding AT&T Kentucky's



1 facilities. INdigital agrees that AT&T Kentucky should be compensated for  
2 the time spent performing these functions, but wants to qualify its duty to  
3 pay for this work by inserting the word “reasonable.” The contract  
4 provision at issue is Section 6.2.1.1 in Attachment 3, Structure Access,  
5 which states as follows:

6 **AT&T Kentucky** employee Costs based on the ***reasonable*** time  
7 spent researching, reviewing and copying records<sup>1</sup>  
8

9 **Q. WHY DOES AT&T KENTUCKY OBJECT TO INSERTING THE WORD**  
10 **“REASONABLE” INTO SECTION 6.2.1.1?**

11 A. The term “Costs” is a defined term in Section 2.11 of Attachment 3 to  
12 which INdigital has already agreed and provides for AT&T Kentucky to  
13 charge INdigital for work performed by AT&T Kentucky employees “based  
14 on the actual amount of work performed.” Section 2.11 provides as  
15 follows:

16 “Cost” means the charges made by **AT&T Kentucky** to CLEC for  
17 specific work performed, and shall be (a) the actual charges made  
18 by subcontractors to **AT&T Kentucky** for work and/or, (b) *if the*  
19 *work was performed by **AT&T Kentucky** employees, it shall be*  
20 *calculated on an individual case basis, based on the actual*  
21 *amount of work performed.*<sup>2</sup> [Emphasis added]  
22

23 The term “reasonable” is a subjective term that will only lead to  
24 disputes and uncertainty in what should be a straightforward transaction:  
25 INdigital requests information on AT&T Kentucky facilities; AT&T  
26 Kentucky’s employee looks it up and copies it for INdigital; and AT&T

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<sup>1</sup> **Bold/italic/underline** is INdigital proposed language throughout my testimony; **Bold** is AT&T Kentucky proposed language throughout my testimony.

<sup>2</sup> Attachment 3, Section 2.11, Definition of “cost”

1 Kentucky then charges INdigital for that work based on the actual time  
2 spent by the employee, consistent with what the Parties agreed to in  
3 Section 2.11. It is unclear why INdigital would suggest something different  
4 here. Accepting INdigital's language would only create an inconsistency  
5 in the ICA and set the stage for future disputes over what INdigital must  
6 pay.

7 Adopting AT&T Kentucky's proposed language removes any  
8 ambiguity or uncertainty and ensures that AT&T Kentucky will be  
9 compensated based on the actual time an AT&T Kentucky employee  
10 spent doing the work that INdigital requested as provided for in Section  
11 2.11 of Attachment 3.

12 ***Attachment 3 Issue 2 (Section 16.1):***

13 ***Should INdigital Telecom pay for AT&T Kentucky to monitor the***  
14 ***entrance and exit of Facilities?***

15  
16 **Q. WHAT IS THE DISPUTE IN ATTACHMENT 3 ISSUE 2?**

17 A. Attachment 3 Issue 2 relates to whether INdigital should compensate  
18 AT&T Kentucky for monitoring the entrance and exit of INdigital's facilities  
19 in AT&T Kentucky's manholes and at the placement of INdigital's facilities  
20 in AT&T Kentucky's manholes. INdigital agrees that AT&T Kentucky has  
21 the right to perform such monitoring, but does not agree INdigital should  
22 pay for it.

23 **Q. WHAT IS THE CONTRACT LANGUAGE AT ISSUE?**

24 A. The language in Section 16.1 of Attachment 3 states as follows:

1                    **AT&T Kentucky** may monitor, at **AT&T Kentucky's**  
2                    **CLEC's** expense, the entrance and exit of CLEC's  
3                    Facilities into **AT&T Kentucky's** Manholes and the  
4                    placement of CLEC's Facilities in **AT&T Kentucky's**  
5                    Manholes.  
6

7    **Q.    WHEN AND WHAT KIND OF MONITORING DOES AT&T KENTUCKY**  
8                    **DO?**

9    A.    AT&T Kentucky remotely monitors entrances and exits to AT&T Kentucky  
10                    manholes. There is no charge for this remote monitoring. If, however,  
11                    AT&T Kentucky identifies any unusual activity during this remote  
12                    monitoring (for example, alarm notifications, an unprecedented number of  
13                    cover openings/closings, etc.) and this unusual activity cannot be  
14                    corrected or reviewed remotely, then AT&T Kentucky may need to  
15                    dispatch someone to the site in order to address the issue. If, and only if,  
16                    AT&T Kentucky determines that the dispatch was necessary because of  
17                    some action by INdigital, then INdigital should pay the costs of the  
18                    dispatch, because in that situation INdigital is the cost-causer.

19   **Q.    WHAT ARE SOME OF THE CRITERIA USED TO DETERMINE**  
20                    **WHETHER A DISPATCH IS DUE TO THE ACTIONS OF A SPECIFIC**  
21                    **CLEC?**

22   A.    In cases of abnormal activity or disturbances, AT&T Kentucky would use  
23                    such things as tagged materials (e.g. postage labels, packing slips, etc.)  
24                    that are found at the worksite as a means of helping to identify which  
25                    CLEC was working at that particular site. In addition, the identification of  
26                    CLEC contractors and/or employees working at a given location for a

1 specific CLEC is also proof of the CLEC's involvement. Finally, vehicles  
2 with CLEC names and/or logos also provide evidence of the CLEC  
3 presence at a given location.

4 **Q. DOES THE CLEC HAVE ANY MEANS FOR DISPUTING AT&T**  
5 **KENTUCKY FINDINGS?**

6 A. Yes. Under the ICA, a CLEC that wishes to dispute AT&T Kentucky's  
7 findings simply needs to follow the dispute resolution process established  
8 in the GTC Attachment.

9 **Q. WHAT ABOUT INDIGITAL'S CLAIM THAT ATTACHMENT 3 ALREADY**  
10 **DESCRIBES WHAT IS AND IS NOT ALLOWED WITH RESPECT TO**  
11 **MANHOLES AND ESTABLISHES REMEDIES FOR VIOLATIONS.**  
12 **ISN'T THAT ENOUGH?**

13 A. No. It is unclear from INdigital's position statement as to which remedies it  
14 thinks would apply to the monitoring scenario. The only monitoring costs  
15 that AT&T Kentucky seeks to recover are the costs it incurs from  
16 investigating an alarm or some unusual activity where a particular CLEC  
17 caused the need to investigate. It is only appropriate for the CLEC that  
18 causes the costs to pay them.

19 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

20 A. AT&T Kentucky should be allowed to recover its costs incurred due to  
21 monitoring the unusual activity of a particular CLEC – in this case,  
22 INdigital. The Commission should accept AT&T Kentucky's proposed  
23 language.

1 **Attachment 3 Issue 3 (Sections 16.2.1, 16.3.3):**

2  
3 **Should INdigital Telecom pay for the cost of post-construction**  
4 **inspections?**

5  
6 **Q. WHAT IS THE DISPUTE IN ATTACHMENT 3 ISSUE 3?**

7 A. The dispute in Attachment 3 Issue 3 involves cost recovery for AT&T  
8 Kentucky's post-construction inspection of INdigital's attachment of  
9 facilities to AT&T Kentucky's structures. Such inspections are necessary  
10 to determine whether the attachments conform to the occupancy permit  
11 and are conducted only if AT&T Kentucky has cause for concern. AT&T  
12 Kentucky's language makes INdigital responsible for the costs of these  
13 post-construction inspections, but INdigital believes it should not have to  
14 pay anything.

15 **Q. WHAT IS THE CONTRACT LANGUAGE AT ISSUE?**

16 A. The language is in Sections 16.2.1 of Attachment 3:

17 **AT&T KENTUCKY may will, at *its own* the Attaching**  
18 **Party's** expense, conduct a post-construction inspection of  
19 the Attaching Party's attachment of Facilities to **AT&T**  
20 **Kentucky**'s Structures for the purpose of determining the  
21 conformance of the attachments to the occupancy permit.  
22 **AT&T Kentucky** will provide the Attaching Party advance  
23 written Notice of proposed date and time of the post-  
24 construction inspection. The Attaching Party may  
25 accompany **AT&T Kentucky** on the post-construction  
26 inspection.<sup>3</sup>  
27

28

29

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<sup>3</sup> Section 16.3.3 of Attachment 3 is also at issue here, but it merely refers back to Section 16.2.1 and the dispute over which Party should pay for post-construction inspections under Section

1 Q. WHY IS AT&T KENTUCKY’S LANGUAGE MORE APPROPRIATE?

2 A. AT&T Kentucky will only do a post-construction inspection when it has  
3 reason to suspect that the CLEC did not fully comply with the directions  
4 AT&T Kentucky provided in the occupancy permit for installing the CLEC’s  
5 attachments. Because these inspections do not occur all the time, AT&T  
6 Kentucky accepts INdigital’s proposed term “may” and withdraws the term  
7 “will.”

8 A post-construction visit is not planned or scheduled; rather it is the  
9 result of an AT&T Kentucky employee seeing something that gives him or  
10 her cause for concern. For example, if AT&T Kentucky (during the course  
11 of a random drive-by) observes such things as improper attachments,  
12 improperly attached equipment, leftover materials or trash at the job site, a  
13 strand or cable hanging down from a pole, etc., the need for a post-  
14 construction inspection will be triggered. In those situations AT&T  
15 Kentucky must dispatch an AT&T Kentucky employee to a given location  
16 to ensure there is no harm to AT&T Kentucky’s network and associated  
17 facilities. A&T Kentucky would not incur these costs if the CLEC had not  
18 attached equipment to AT&T Kentucky’s structure and had not given  
19 AT&T Kentucky cause for concern about the attachment. Accordingly, the  
20 CLEC should bear the costs of the inspection.

21

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16.2.1 and for monitoring under Section 16.1 (which is addressed under Structure Access Issue 2, above).

1 **Attachment 3 Issue 4 (Section 16.3.5):**

2

3 ***Should the time attributable to make-ready work be included in***  
4 ***INdigital Telecom's time to bring Facilities into compliance?***

5

6 **Q. WHAT IS THE DISPUTE IN ATTACHMENT 3 ISSUE 4?**

7 A. The dispute involves the time allowed for INdigital to bring its facilities into  
8 compliance with the ICA after an inspection reveals that they are not in  
9 compliance.

10 **Q. WHAT IS THE CONTRACT LANGUAGE AT ISSUE?**

11 A. The language is in Section 16.3.5 of Attachment 3:

12 If the inspection reflects that Attaching Party's Facilities are  
13 not in compliance with the terms of this Appendix, Attaching  
14 Party shall bring its Facilities into compliance within thirty  
15 (30) calendar days **(exclusive of any necessary make-**  
16 **ready work)** after being notified of such noncompliance. If  
17 any make ready or modification work to **AT&T Kentucky's**  
18 Structures is required to bring Attaching Party's Facilities into  
19 compliance, the Attaching Party shall provide Notice to  
20 **AT&T Kentucky** and the make ready work or modification  
21 will be treated in the same fashion as make ready work or  
22 modifications for a new request for attachment. If the  
23 violation creates a hazardous condition, Facilities must be  
24 brought into compliance upon notification.

25

26 **Q. WHAT IS MAKE READY WORK?**

27 A. Make-Ready work, as defined in Section 2.20 of Attachment 3, is a list of  
28 actions required to be completed prior to AT&T Kentucky handing over a  
29 facility to a CLEC. This work is done in order to solely accommodate the  
30 CLEC and not as a business need or convenience to AT&T Kentucky.

31

1 Q. WHY IS AT&T KENTUCKY’S LANGUAGE MORE APPROPRIATE?

2 A. Any necessary make-ready work should have been identified and  
3 completed prior to the original facility inspection. Under the terms of the  
4 ICA, INdigital must be in compliance after attaching to AT&T Kentucky’s  
5 Poles, Conduit and Rights of Way, and it should not need extra time (other  
6 than the 30 calendar days the Parties have already agreed upon) for doing  
7 so. The Commission should reject INdigital’s language since it is  
8 unnecessary and provides INdigital with more leniency than is available to  
9 other CLECs in Kentucky.

10 ***Attachment 3 Issue 5 (Section 19.7.1):***

11

12 ***AT&T: Should CLEC pay the costs for storage, in relation to AT&T***  
13 ***Kentucky’s removal of CLEC’s facilities?***

14

15 ***INdigital: Should AT&T Kentucky be permitted to charge INdigital***  
16 ***Telecom for the storage of any removed Facilities?***

17

18 Q. WHAT IS THE DISPUTE IN ATTACHMENT 3 ISSUE 5?

19 A. The dispute in Attachment 3 Issue 5 is whether the word “storage” should  
20 be included in Section 19.7.1. AT&T Kentucky can accept INdigital’s  
21 strike in Section 19.7.1 because INdigital has already agreed to storage  
22 terms in Section 19.6.1, which provides that AT&T Kentucky may remove  
23 facilities that INdigital fails to remove from AT&T Kentucky’s premises and  
24 may store them at INdigital’s expense.

25 ***Attachment 3 Issue 6 (Sections 22.1.3 – 22.1.4, 22.1.6):***

26

27 ***Should the indemnification provisions of the GT&C govern the***  
28 ***structure access, and if not, should the indemnification provisions***  
29 ***relating to damage to Facilities be mutual in nature?***

30



1 **Q. WHAT IS THE DISPUTE IN ATTACHMENT 3 ISSUE 6?**

2 A. The dispute involves whether or not AT&T Kentucky has the right to  
3 expect INdigital, which will utilize AT&T Kentucky's Poles, Conduits and  
4 Rights-of-Way, to indemnify AT&T Kentucky and others for claims and  
5 damages incurred by those companies "as a result of acts by [INdigital], its  
6 employees, agents or contractors." AT&T Kentucky's proposed  
7 indemnification language at issue is contained in Sections 22.1.3, 22.1.4,  
8 and 22.1.6. This is an issue that AT&T Kentucky believes is more of a  
9 legal nature and will be addressed in AT&T Kentucky's post-hearing brief.

10 **II. BONA FIDE REQUEST (BFR) ISSUES (ATTACHMENT 8)**

11 **Q. WHAT IS THE BFR PROCESS?**

12 A. The BFR process is used when a CLEC with an ICA asks AT&T Kentucky  
13 to "provide a new or modified Section 251 or 251(c)(3) element that is not  
14 currently offered by AT&T Kentucky but is required to be made available  
15 via the Act." Attachment 8, Section 1.1.

16 **Q. DO YOU HAVE ANY PRELIMINARY OBSERVATIONS REGARDING**  
17 **THE BFR ISSUES?**

18 A. Yes. AT&T Kentucky's BFR process is well-established and the terms of  
19 this process have been agreed to by CLECs within the AT&T 22-state  
20 region. The process provides a logical timeline with definite steps and  
21 deadlines. And, because a BFR would be performed solely at the behest  
22 of and for the benefit of the requesting CLEC, that CLEC is then the cost-  
23 causer and should be responsible for the costs associated with the BFR

1 process. AT&T Kentucky does not function as a research and  
2 development arm for its CLEC competitors, and therefore if a CLEC  
3 submits a BFR request, AT&T Kentucky should not bear any financial risk  
4 associated with performing that BFR.

5 It is important to remember that a BFR recognizes the defined need  
6 of a specific CLEC. Unlike requests made by a group of CLECs for  
7 industry-wide changes, in which the Change Management Process would  
8 apply, this situation only involves one CLEC, not the entire CLEC  
9 community, and is rarely requested.

10 **Q. PLEASE EXPLAIN THE STEPS IN THE BFR PROCESS.**

11 A. Attachment 8 provides the details of the BFR process, but generally  
12 speaking the BFR process has two phases. First, within 30 business days  
13 after a CLEC submits a complete BFR, AT&T Kentucky will complete a  
14 "preliminary analysis" to determine whether it will or will not provide the  
15 requested element or modified element. The CLEC pays AT&T  
16 Kentucky's costs of the preliminary analysis either by paying a BFR  
17 Deposit (which is set forth in the ICA Pricing Appendix) when it first  
18 submits the BFR or by paying AT&T Kentucky's actual costs of the  
19 preliminary analysis. The one exception to this process is if the BFR will  
20 require an extraordinary allocation of AT&T Kentucky's resources, above  
21 and beyond those normally needed for a BFR. When that occurs, AT&T  
22 Kentucky will inform the CLEC, within 10 business days, of the additional  
23 resources required. If the CLEC still wants AT&T Kentucky to proceed

1 with the BFR, it must pay a Complex Request Evaluation Fee. AT&T  
2 Kentucky will then provide a preliminary analysis within 30 business days  
3 of that fee being paid.

4 Second, after receiving the preliminary analysis, the CLEC would  
5 have 30 business days to decide whether to have AT&T Kentucky  
6 proceed with the BFR. If the CLEC decides to have AT&T Kentucky  
7 proceed, the CLEC must pay the estimated Development Rate, which  
8 reflects AT&T Kentucky's expected costs of completing the BFR and  
9 providing a firm price quote. AT&T Kentucky then has 90 calendar days to  
10 provide the firm price quote, which will include any additional Development  
11 Rates incurred during the process and will also set forth the nonrecurring  
12 and recurring charges for the requested element or modified element,  
13 along with a detailed implementation plan.

14 **Q. INDIGITAL'S POSITION STATEMENT ON THE DPL IS IDENTICAL FOR**  
15 **EVERY BFR ISSUE. SINCE INDIGITAL VIEWS ALL THE ISSUES AS**  
16 **BEING THE SAME, CAN YOU RESPOND TO THAT POSITION AT THE**  
17 **OUTSET?**

18 A. Yes. On every BFR issue, INdigital's position statement on the DPL  
19 asserts that as long as a BFR is submitted in "good faith," AT&T Kentucky  
20 should not be paid for evaluating it. INdigital also states that the only time  
21 it should pay any of AT&T Kentucky's development costs for a BFR is  
22 when INdigital cancels the BFR, in which case it would only agree to pay  
23 costs that it deems -- after the fact -- to be "reasonable."

1           INDigital's position is patently unreasonable. As noted above and  
2 explained in more detail below, AT&T Kentucky is not a free research and  
3 development arm for CLECs. AT&T Kentucky would incur costs in  
4 evaluating and completing a BFR, and those costs would be incurred  
5 solely at the request of and solely for the benefit of the requesting CLEC.  
6 The CLEC therefore would be the cost-causer and must compensate  
7 AT&T Kentucky for those costs. It does not matter that a BFR is  
8 submitted in good faith or whether the BFR is later cancelled, because in  
9 either case AT&T Kentucky's costs to evaluate and complete a good-faith  
10 BFR are still real costs that are caused by INdigital and that INdigital  
11 should pay. The Commission should therefore reject INdigital's position  
12 on every BFR issue.

13 ***Attachment 8 Issue 1 (Sections 2.2, 2.3, 3.1.2):***

14           ***AT&T: Should the language address compensation to AT&T***  
15           ***Kentucky for costs incurred as a result of CLEC's BFR request?***

16           ***INdigital: Should AT&T Kentucky receive fees for evaluating,***  
17           ***cancelling, and implementing bona fide requests for interconnection***  
18           ***services?***

19           **Q.    WHAT IS THE DISPUTE IN BFR ISSUE 1?**

20           **A.**    BFR Issue 1 involves three different contract sections that involve three  
21           different kinds of costs in the BFR process: the BFR Deposit, the  
22           Development Rate, and the Complex Request Evaluation Fee. These  
23           charges exist to ensure that the requesting CLEC is committed to its BFR  
24           and understands the costs it will be facing, and that AT&T Kentucky will be  
25           paid for the work it does.

1           The BFR Deposit is covered in Section 3.1.2, which requires a  
2 CLEC to either pay the BFR Deposit at the time it submits the BFR, or pay  
3 AT&T Kentucky's actual costs of conducting a preliminary evaluation of  
4 the BFR (which can be either more or less than the BFR Deposit):

5           **3.1.2 If the BFR Deposit amount identified in the**  
6           **Pricing Schedule is not made at the time of the**  
7           **BFR Application, CLEC shall be responsible for**  
8           **all preliminary evaluation costs incurred by**  
9           **AT&T Kentucky to complete the preliminary**  
10           **analysis (regardless of whether such costs are**  
11           **greater or lesser than the BFR Deposit amount**  
12           **in the Pricing Schedule). Intentionally deleted.**  
13

14           The Development Rate is covered in Section 2.3 and reflects AT&T  
15 Kentucky's estimated cost of proceeding to complete a BFR after the  
16 preliminary evaluation:

17           **2.3 "Development Rate" means the estimated cost**  
18           **for AT&T Kentucky to develop the new or**  
19           **modified 251(c)(3) element and other network**  
20           **elements. Intentionally deleted.**  
21

22           The Complex Request Evaluation Fee is covered in Section 2.2.  
23 This fee compensates AT&T Kentucky for extraordinary expenses  
24 associated with complex BFRs that require additional AT&T Kentucky  
25 resources, above and beyond those allocated for a typical BFR:

26           **2.2 "Complex Request Evaluation Fee" means an Individual**  
27           **Case Basis (ICB) fee to compensate AT&T Kentucky for**  
28           **the extraordinary expenses directly related to the**  
29           **CLEC's BFR which is a complex request that requires**  
30           **the allocation and engagement of additional resources**  
31           **above the existing allocated resources used on BFR**  
32           **cost development which include, but are not limited to,**  
33           **expenditure of funds to develop feasibility studies,**  
34           **specific resources that are required to determine**  
35           **request requirements (such as operation support**

1 **system analysts, technical managers, software**  
2 **developers), software impact analysis by specific**  
3 **software developers; software architecture**  
4 **development, hardware impact analysis by specific**  
5 **system analysts, etc. Intentionally deleted.**  
6

7 Each of these charges comes into play at a specific point in the  
8 BFR process and has a specific purpose. The BFR Deposit ensures that  
9 the CLEC will be committed to the BFR from the outset and that AT&T  
10 Kentucky will be paid for its work on the preliminary analysis. The  
11 Development Rate ensures that the CLEC remains committed to the BFR  
12 after the preliminary analysis and that AT&T Kentucky will be paid for its  
13 work in completing the BFR and providing a firm price quote. The  
14 Complex Request Evaluation Fee lets the CLEC know that its request is  
15 more complex than usual and will require AT&T Kentucky to incur more  
16 costs than usual, and also ensures that AT&T Kentucky will be  
17 compensated for devoting extraordinary resources to this BFR.

18 **Q. DOES INDIGITAL AGREE TO PAY ANY OF THESE CHARGES?**

19 A. No. INdigital contends that it should not have to pay AT&T Kentucky for  
20 any work that AT&T Kentucky does in order to analyze and evaluate  
21 INdigital's BFRs (unless the BFR is cancelled, which I discuss below  
22 under BFR Issue 7). There is no justification for INdigital's refusal to pay  
23 for work that it specifically asks AT&T Kentucky to do for it, work that  
24 AT&T Kentucky would not otherwise have done.

25 ***Attachment 8 Issue 2 (Section 3.3):***

26  
27 ***AT&T: Should the costs incurred by AT&T Kentucky for a Complex***  
28 ***Evaluation be addressed through the dispute resolution procedures?***

1 ***INdigital: Should AT&T Kentucky receive fees for evaluating,***  
2 ***cancelling, and implementing bona fide requests for interconnection***  
3 ***services?***  
4

5 Q. WHAT IS THE DISPUTE IN BFR ISSUE 2?

6  
7 A. The dispute in BFR Issue 2 involves the Complex Request Evaluation  
8 Fee, which INdigital does not want to pay. Rather, INdigital believes that  
9 whenever AT&T Kentucky requires such a fee, the proper course is for  
10 INdigital to pay nothing and take the matter through the ICA's dispute  
11 resolution process. The specific contract language is in Section 3.3 of  
12 Attachment 8:

13 3.3 For any new or modified Section 251 or 251(c)(3) element  
14 required to be unbundled by Act, if **AT&T Kentucky**  
15 determines that the preliminary analysis of the requested  
16 BFR is of such complexity that it will cause **AT&T Kentucky**  
17 to expend extraordinary resources to evaluate the BFR,  
18 **AT&T Kentucky** shall notify CLEC within ten (10) Business  
19 Days of AT&T Kentucky's receipt of the BFR ***and the***  
20 ***parties may pursue the dispute resolution procedures***  
21 ***provided pursuant to the General Terms and Conditions***  
22 ***of this Agreement*** that a Complex Request Evaluation  
23 Fee will be required prior to the preliminary analysis of  
24 the BFR being performed **by AT&T Kentucky**. If CLEC  
25 accepts the Complex Request Evaluation Fee proposed  
26 by **AT&T Kentucky**, CLEC shall submit such fee within  
27 thirty (30) Business Days of **AT&T Kentucky's** notice  
28 that a Complex Request Evaluation Fee is required.  
29 **AT&T Kentucky** will not be obligated to further process  
30 the BFR until such Complex Request Evaluation Fee is  
31 received by **AT&T Kentucky**. Within thirty (30) Business  
32 Days of **AT&T Kentucky's** receipt of the Complex  
33 Request Evaluation Fee, **AT&T Kentucky** shall respond  
34 to CLEC by providing a preliminary analysis.  
35

36 INdigital's proposal to take complex evaluation requests through the  
37 dispute resolution process is inappropriate and does not apply to this  
38 portion of BFR process.

1 Q. PLEASE EXPLAIN WHY INDIGITAL'S PROPOSAL TO USE THE  
2 DISPUTE RESOLUTION PROCESS IS INAPPROPRIATE.

3 A. As a threshold matter, the dispute resolution process is for disputes  
4 involving elements or wholesale products that already exist (as is, with no  
5 modifications made), or been made available via the terms and conditions  
6 of the ICA, and have been provisioned via the AT&T Kentucky network  
7 (for example, the firm price quote, once provided to the requesting CLEC,  
8 is the price for which A&T Kentucky would provide the BFR as well as the  
9 price which would be included in the pricing schedule of the ICA). A  
10 Complex Request Evaluation Fee is just that, a fee for evaluating the  
11 difficulty of analyzing and developing an unusually complex BFR. It is not  
12 a final firm cost nor does it already exist within the ICA.

13 Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

14 A. The Commission should adopt AT&T Kentucky's language as proposed  
15 for Section 3.3 of the BFR Attachment 8. While the language describes a  
16 situation which may rarely occur, if it is not included, AT&T Kentucky could  
17 bear significant financial risk when responding to a CLEC's BFR. In this  
18 competitive industry, it is not reasonable for AT&T Kentucky to assume all  
19 financial responsibility for such one-off requests. If a CLEC wants  
20 something new or something different from how it is currently offered, then  
21 the CLEC must assume financial responsibility. INdigital's attempt to tie  
22 the dispute resolution process into the BFR process addressing a  
23 Complex Request Evaluation Fee is simply inappropriate.



1 **Attachment 8 Issue 3 (Section 3.4):**

2  
3 ***AT&T: Should AT&T Kentucky be held to a 30-day response time***  
4 ***even if extraordinary situations occur preventing AT&T Kentucky***  
5 ***from completing its evaluation?***

6  
7 ***INdigital: Should AT&T Kentucky receive fees for evaluating,***  
8 ***cancelling, and implementing bona fide requests for interconnection***  
9 ***services?***

10  
11 **Q. WHAT IS THE DISPUTE IN BFR ISSUE 3?**

12 **A.** INdigital's position statement for BFR Issue 3 assumes that the dispute is  
13 about costs, but the contract language at issue here does not involve  
14 costs. The language at issue in Section 3.4 of BFR Attachment 8 provides  
15 as follows:

16 **Notwithstanding any other provision of this attachment, If**  
17 **AT&T Kentucky is not required to expend extraordinary**  
18 **resources to evaluate the BFR as described in Section 3.3**  
19 **above, AT&T Kentucky shall, then within thirty (30) Business**  
20 **Days of *its AT&T Kentucky's* receipt of CLEC's fully complete and**  
21 **valid BFR, AT&T Kentucky shall respond to CLEC by confirming**  
22 **whether AT&T Kentucky providing a preliminary analysis of**  
23 **the new or modified Section 251 or 251(c)(3) element. The**  
24 **preliminary analysis shall confirm either that AT&T Kentucky**  
25 **will or will not offer the new or modified Section 251 or 251(c)(3)**  
26 **element and, if it will offer the new or modified Section 251 or**  
27 **251(c)(3) element, provide a preliminary analysis of such**  
28 **element(s).**

29  
30 The dispute is reflected in the first sentence and concerns timing. AT&T  
31 Kentucky will provide a preliminary analysis of a BFR in 30 business days  
32 of receiving a fully valid and complete BFR, *except* when the BFR is  
33 determined to be "complex," in which case the CLEC must pay the  
34 Complex Request Evaluation Fee before the 30-day clock begins.  
35 INdigital provides no reason why additional time to evaluate a complex

1 BFR is inappropriate or unreasonable, other than INdigital's overall  
2 opposition to paying any kind of fee for a BFR. As shown above,  
3 INdigital's position on the Complex Request Evaluation Fee is  
4 unreasonable and designed only to shift the costs and risks of a BFR  
5 requested by INdigital to AT&T Kentucky. For this and the other reasons  
6 outlined in my testimony, the Commission should adopt AT&T Kentucky's  
7 proposed language for BFR Issue 3.

8 **Attachment 8 Issue 4 (Section 3.5):**  
9

10 ***AT&T: Should AT&T Kentucky be compensated for CLEC's failure to***  
11 ***timely cancel a request when AT&T Kentucky has already expended***  
12 ***resources for the preliminary analysis?***  
13

14 ***INdigital: Should AT&T Kentucky receive fees for evaluating,***  
15 ***cancelling, and implementing bona fide requests for interconnection***  
16 ***services?***  
17

18 **Q. WHAT IS THE DISPUTE IN BFR ISSUE 4?**

19 A. BFR Issue 4 is partly about timing and partly about costs. Section 3.5 of  
20 BFR Attachment 8 states that a CLEC may cancel a BFR within 30  
21 business days of receiving AT&T Kentucky's preliminary analysis, and  
22 that, if the CLEC cancels, AT&T Kentucky will keep either the BFR  
23 Deposit or any Complex Request Evaluation Fee, minus any costs that  
24 AT&T Kentucky did not actually incur. INdigital, by contrast, wants to be  
25 able to cancel a BFR "as soon as commercially practicable" (an undefined  
26 term with no fixed deadline), and opposes paying a BFR Deposit or  
27 Complex Request Evaluation Fee. The disputed language in Section 3.5  
28 states as follows:

1                    **If CLEC desires to cancel a BFR, it shall notify AT&T**  
2                    **Kentucky of that desire as soon as commercially practicable**  
3                    **CLEC may cancel a BFR at any time up until thirty (30)**  
4                    **Business Days after receiving AT&T Kentucky's preliminary**  
5                    **analysis. If CLEC cancels the BFR within thirty (30) Business**  
6                    **Days after receipt of AT&T Kentucky's preliminary analysis,**  
7                    **AT&T Kentucky shall be entitled to retain the BFR Deposit or**  
8                    **any Complex Request Evaluation Fee, minus those costs**  
9                    **that have not been incurred by AT&T Kentucky as of the**  
10                   **date of cancellation.**

11  
12    Q.    **PLEASE RESPOND TO INDIGITAL'S PROPOSAL.**

13    A.    I have already responded to INdigital's position on BFR Deposits and the  
14           Complex Request Evaluation Fee earlier in my testimony. As for the  
15           deadline to cancel a BFR, INdigital has already agreed to language in  
16           BFR Section 3.6 (set forth under BFR Issue 4, below) stating that a BFR  
17           will be deemed cancelled if the CLEC does not accept the preliminary  
18           analysis and pay the Development Rate within 30 business days of  
19           receiving the preliminary analysis. Accordingly, as a practical matter  
20           INdigital has already agreed to language that requires it to cancel the BFR  
21           within 30 business days of receiving the preliminary evaluation, so I do not  
22           understand why it opposes the 30 business-day cancellation period in  
23           Section 3.5. In addition, it is perfectly reasonable for AT&T Kentucky to  
24           expect a CLEC to respond to a preliminary analysis within 30 business  
25           days. After all, it is the CLEC that submitted the BFR and requested this  
26           analysis, so presumably the CLEC will be interested in reviewing it  
27           promptly and deciding whether to go forward. Thirty business days is six  
28           business weeks, which should be ample time.

29

1 **Attachment 8 Issue 5 (Section 3.6):**

2  
3 ***AT&T: Should CLEC be required to provide payment of an estimated***  
4 ***Development Rate for a new or modified network element?***

5  
6 ***INdigital: Should AT&T Kentucky receive fees for evaluating,***  
7 ***cancelling, and implementing bona fide requests for interconnection***  
8 ***services?***

9  
10 **Q. WHAT IS THE DISPUTE IN BFR ISSUE 5?**

11 A. BFR Issue 5 is similar to the other BFR issues that I have previously  
12 addressed -- INdigital does not want to pay the Development Rate for a  
13 BFR. The Development Rate reflects the estimated cost of completing a  
14 BFR if INdigital elects to proceed after reviewing AT&T Kentucky's  
15 preliminary analysis. The disputed language at issue is in Section 3.6 of  
16 BFR Attachment 8:

17 CLEC will have thirty (30) Business Days from receipt of the  
18 preliminary analysis to accept the preliminary analysis. CLEC must  
19 provide acceptance of the preliminary analysis in writing **and**  
20 **provide the payment of the estimated Development Rate for**  
21 **the new or modified network element quoted in the preliminary**  
22 **analysis.** If CLEC fails to respond within this thirty (30) Business  
23 Day period, the BFR will be deemed cancelled.

24  
25 INdigital has not proposed any counter language. If a CLEC wants to  
26 proceed with a BFR after the preliminary analysis, then it is the CLEC that  
27 is causing AT&T Kentucky to incur the additional development costs, and  
28 should pay AT&T Kentucky for those costs.

29 **Q HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

30 A. AT&T Kentucky has proposed language which allows it to be  
31 compensated for work being done at the request of the CLEC when the  
32 CLEC accepts the BFR. If the CLEC is serious about continuing with the

1 development of its request, then it should be expected to pay all of the  
2 associated costs required in various parts of the process. The  
3 Commission should therefore adopt AT&T Kentucky's language.

4 **Attachment 8 Issue 6 (Section 3.7):**

5  
6 ***AT&T: Should CLEC be obligated to commit to accepting the***  
7 ***preliminary analysis and pay an estimated Development Rate prior to***  
8 ***AT&T Kentucky's moving forward?***

9  
10 ***INdigital: Should AT&T Kentucky receive fees for evaluating,***  
11 ***cancelling, and implementing bona fide requests for interconnection***  
12 ***services?***

13  
14 **Q. WHAT IS THE DISPUTE IN BFR ISSUE 6?**

15 **A.** BFR Issue 6 is effectively the same issue as in BFR Issues 1 and 5.

16 INdigital is opposed to any language regarding a Development Rate for a  
17 BFR. There is also a timing issue raised by INdigital's language that  
18 INdigital has not addressed. The disputed provision, Section 3.7 of BFR  
19 Attachment 8, states:

20 As soon as feasible, but not more than ninety (90) calendar days  
21 after **AT&T Kentucky's** receipt of CLEC's **BFR written**  
22 **acceptance of the preliminary analysis and payment of the**  
23 **estimated Development Rate, AT&T Kentucky** shall provide to  
24 CLEC a firm price quote **for the requested element(s)**. The firm  
25 price quote will include **any additional Development Rates**, the  
26 nonrecurring rate and the recurring rate, and a detailed  
27 implementation plan. **The firm nonrecurring rate will not include**  
28 **any of the Development Rate or the Complex Request**  
29 **Evaluation Fee, if required, in the calculation of this rate.**

30  
31 **Q. WHY IS AT&T KENTUCKY'S LANGUAGE NECESSARY TO SECTION**  
32 **3.7 OF THE BFR ATTACHMENT 8?**

33 **A.** AT&T Kentucky's language regarding the Development Rate is necessary  
34 for the reasons I have already discussed in my testimony. Additionally,

1 the timing issue involves the specific time for the clock to start ticking for  
2 AT&T Kentucky to provide a firm price quote. AT&T Kentucky would start  
3 the 90 calendar-day clock when it receives the CLEC's "**written**  
4 **acceptance of the preliminary analysis and payment of the estimated**  
5 **Development Rate.**" INdigital would start the clock when AT&T Kentucky  
6 first receives INdigital's BFR.

7 The problem with INdigital's proposal is that the initial BFR may not  
8 be valid, may not be complete, or may later be augmented or amended.  
9 INdigital also ignores the time needed to first complete the preliminary  
10 analysis, which is a separate phase of the BFR process with its own  
11 separate timeline. AT&T Kentucky must first have up to 30 business days  
12 to complete a preliminary analysis, and the CLEC then has up to 30  
13 business days to accept the preliminary analysis and authorize further  
14 work. Only then does the 90 calendar-day clock start to work toward a  
15 final price quote. INdigital's proposal, however, ignores those first two 30  
16 business-day periods and includes them in the 90 calendar-day period.  
17 By doing so, INdigital's proposal overlooks the structure of the BFR  
18 process, which calls for a preliminary analysis as the first step in order to  
19 let the CLEC know, early on, whether the BFR is feasible and what the  
20 approximate development costs will be. INdigital's proposal is also  
21 unworkable as a practical matter. The first two steps in the BFR process -  
22 - to conduct a preliminary analysis and have the CLEC accept it -- could  
23 take up to 60 business days, which is approximately 77 calendar days --

1 leaving just 13 calendar days for AT&T Kentucky to complete a firm price  
2 quote under INdigital's timeline. That simply is not realistic.

3 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

4 A. The Commission should accept AT&T Kentucky's language in Section 3.7  
5 of BFR Attachment 8 because it places the responsibility for costs incurred  
6 in that portion of the BFR process on the cost causer, in this case  
7 INdigital. It is INdigital that is specifically requesting the development of a  
8 new Section 251 or 251(c)(3) element or the modification of an existing  
9 one and not any other CLEC who comes in later. If the Commission  
10 accepted INdigital's proposed language, it will in fact be placing a financial  
11 burden on AT&T Kentucky by removing any chance AT&T Kentucky would  
12 have of recovering any of the costs incurred for the  
13 development/implementation of the BFR.

14 ***Attachment 8 Issue 7 (Section 3.8):***

15  
16 ***AT&T: Should AT&T be compensated for necessary work that is***  
17 ***required to complete the CLEC's request?***

18  
19 ***INdigital: Should AT&T Kentucky receive fees for evaluating,***  
20 ***cancelling, and implementing bona fide requests for interconnection***  
21 ***services?***

22  
23 **Q. WHAT IS THE DISPUTE IN BFR ISSUE 7?**

24 A. The dispute in BFR Issue 7 involves INdigital's unwillingness to pay  
25 additional Development Rates, which are part of the Development Rate at  
26 issue in BFR Issue 1 that I have already discussed, and INdigital's  
27 proposal to pay only what it deems to be "reasonable" costs if it cancels a  
28 BFR. The language at issue is in Section 3.8 of BFR Attachment 8:

1 CLEC shall have thirty (30) Business Days from receipt of the firm  
2 price quote to accept or deny the firm price quote in writing and  
3 submit any **additional Development Rates or** nonrecurring rates  
4 quoted in the firm price quote. If **AT&T Kentucky** does not receive  
5 Notice of any of the foregoing within such thirty (30) Business Day  
6 period, the BFR shall be deemed canceled. CLEC shall be  
7 responsible to reimburse **AT&T Kentucky** for its **reasonable** costs  
8 incurred up to the date of cancellation (whether affirmatively  
9 canceled or deemed canceled by **AT&T Kentucky**).

10  
11 **Q. WHY IS AT&T KENTUCKY’S LANGUAGE NECESSARY TO SECTION**  
12 **3.8 OF THE BFR ATTACHMENT?**

13 A. By including “**additional Development Rates or**” AT&T Kentucky is  
14 taking into account any unexpected, but necessary, costs that may be  
15 incurred for the completion and implementation of the BFR. One example  
16 of an unexpected but necessary cost would be if the CLEC chose to  
17 change or edit its original BFR after the Developmental Rate had been  
18 established by AT&T Kentucky. If the language proposed by AT&T  
19 Kentucky were not included, AT&T Kentucky could potentially come up  
20 against a roadblock with the CLEC when AT&T Kentucky tried to bill and  
21 collect monies owed by the CLEC for the additional development costs  
22 incurred as a result of the CLEC’s changes to the original BFR.

23 **Q. WHY DOES AT&T KENTUCKY OBJECT TO INDIGITAL’S PROPOSAL**  
24 **REGARDING COSTS ON A CANCELLED BFR?**

25 A. INdigital seeks to pay only those costs on a cancelled BFR that it  
26 unilaterally deems – after the fact -- to be “reasonable.” That qualifier,  
27 however, is subjective and likely to lead to disputes. It also unfairly shifts  
28 the risk of a cancelled BFR to AT&T Kentucky. If INdigital can authorize



1 AT&T Kentucky to go forward on a BFR (for which AT&T Kentucky incurs  
2 costs), but then cancel the BFR and only compensate AT&T Kentucky for  
3 costs that INdigital decides, in hindsight, were “reasonable,” then AT&T  
4 Kentucky could easily be left to bear most or all of the costs of BFR work  
5 that it would never have done but for INdigital’s request. AT&T Kentucky’s  
6 language, by contrast, requires INdigital to make a commitment to the  
7 BFR process in advance, by paying the Development Rate, to avoid this  
8 kind of situation.

9 **III. COLLOCATION ISSUES (ATTACHMENT 12)**

10 ***Attachment 12 Issue 1 (Section 4.4):***

11

12 ***AT&T: Can the CLEC limit the damage liability to AT&T Kentucky***  
13 ***and other CLECs resulting from the installation, operation, or***  
14 ***maintenance of the CLEC’s equipment, including but not limited to***  
15 ***from any defect in CLEC’s equipment or its installation, operation, or***  
16 ***maintenance, or resulting from the actions or inaction, willful, or***  
17 ***negligent, of the CLEC’s employees, suppliers, or contractors?***

18

19 ***INdigital: Should INdigital Telecom be liable to AT&T Kentucky for***  
20 ***consequential, incidental, or punitive damages related to damage at***  
21 ***a co-location facility?***

22

23 **Q. *WHAT IS THE DISPUTE IN COLLOCATION ISSUE 1?***

24 **A.** Collocation Issue 1 involves INdigital’s addition of a sentence to Section  
25 4.4 of Collocation Attachment 12 that addresses INdigital’s liability to  
26 AT&T Kentucky or other CLECs for damage caused by “the installation,  
27 operation, or maintenance of the CLEC’s [collocated] equipment” or  
28 “resulting from the actions or inaction, willful, or negligent, of the CLEC’s  
29 employees, suppliers, or contractors.” INdigital agrees with AT&T  
30 Kentucky’s language in Section 4.4 but seeks to specifically exclude from

1 such liability consequential, incidental, or punitive damages. AT&T  
2 Kentucky views this issue as one more of a legal nature and will address it  
3 in its brief.

4 **Attachment 12 Issue 2 (Section 10.2):**

5  
6 **AT&T: Does AT&T Kentucky have the right to review and agree to**  
7 **the exceptions CLEC has listed during the acceptance walk-through?**

8  
9 **INdigital: Should AT&T Kentucky have sole discretion to determine**  
10 **whether material deviations from the specifications of a mutually**  
11 **agreed co-location Application constitute exceptions subject to**  
12 **correction by a mutually agreed upon date?**

13  
14 **Q. WHAT IS THE DISPUTE IN COLLOCATION ISSUE 2?**

15 A. The dispute involves language regarding an acceptance walk-through of a  
16 collocation arrangement by INdigital and any exceptions identified by  
17 INdigital as a result of that walk-through. The Parties disagree on whether  
18 exceptions to mutually agreed Application specifications should be  
19 mutually agreed upon to be considered exceptions that AT&T Kentucky  
20 must correct at its expense.

21 **Q. WHAT IS AN ACCEPTANCE WALK-THROUGH AND WHAT ARE**  
22 **EXCEPTIONS?**

23 A. An acceptance walk-through gives the CLEC the option to accept the site  
24 with or without exceptions, and then, if necessary, set a new space ready  
25 date. The new space ready date provides time for AT&T Kentucky to  
26 complete or fix what had been identified as an exception. The walk-  
27 through occurs just prior to AT&T Kentucky handing over the collocation  
28 arrangement to the CLEC, and the CLEC accepting the space.

1           An exception is anything that has been identified as not completed  
2 according to the “mutually agreed Application specifications.” In other  
3 words, those actions in which AT&T Kentucky is responsible for  
4 completing within INdigital’s physical collocation arrangement.

5 **Q. WHAT CONTRACT LANGUAGE IS AT ISSUE?**

6 A. The language at issue is in Section 10.2 of Attachment 12 – Collocation  
7 and states:

8           10.2 After the Physical Collocator’s receipt of such notice, the  
9 Physical Collocator shall request within fifteen (15) calendar days  
10 an acceptance walk-through of the Collocation space with **AT&T**  
11 **Kentucky**. The acceptance walk-through will be scheduled on a  
12 mutually agreed upon date. Any material deviations from mutually  
13 agreed Application specifications may be noted by the Physical  
14 Collocator as exceptions, **which to qualify as exceptions, must**  
15 **be agreed to as exceptions by AT&T Kentucky**. The **agreed**  
16 **upon** exceptions shall be corrected by **AT&T Kentucky** by a  
17 mutually agreed upon date. The correction of these exceptions  
18 shall be at **AT&T Kentucky**’s expense. **AT&T Kentucky** will then  
19 establish a new Space Ready Date

20  
21 **Q. WHY DOES AT&T KENTUCKY PROPOSE THIS LANGUAGE?**

22 A. As the owner of the premise where the collocation arrangement is located,  
23 AT&T Kentucky is the Party responsible for remedying those identified  
24 exceptions. Therefore, AT&T Kentucky’s language contemplates that the  
25 Parties will mutually agree on the exceptions and AT&T Kentucky will  
26 correct them at its cost if the exceptions are due to A&T Kentucky error. If  
27 a dispute arises then either Party can follow the Dispute Resolution  
28 process as defined within the GTC section of the ICA.

29

1 Q. WHY DOES INDIGITAL OPPOSE AT&T KENTUCKY’S LANGUAGE?

2 A. INdigital’s position statement on the DPL indicates that it is concerned that  
3 AT&T Kentucky would unilaterally claim that “material deviations from a  
4 mutually agreed co-location Application do not qualify as exceptions.” As I  
5 stated above, however, AT&T Kentucky’s language contemplates *mutual*  
6 *agreement* on exceptions, and it is INdigital that is seeking a unilateral  
7 right to determine exceptions and what constitutes a “material deviation”  
8 from the collocation Application.

9 Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

10 A. AT&T Kentucky’s proposed language asks for the ability to confirm that  
11 the exceptions are truly exceptions and part of AT&T Kentucky’s  
12 responsibility. AT&T Kentucky also asks that those exceptions be agreed  
13 upon by both Parties in order to resolve the issue. The Commission  
14 should accept AT&T Kentucky’s proposed language because it takes both  
15 Parties’ positions into consideration and requires mutual agreement of the  
16 Parties.

17 IV. UNE ISSUES (ATTACHMENT 13)

18 ***Attachment 13 Issue 1 (Section 1.4):***

19

20 ***AT&T: Should the language clearly indicate that the provisions of***  
21 ***the underlying agreement are subject to declassification?***

22

23 ***Whose language should appear in the ICA?***

24

25 ***INdigital: Should Attachment 13 override intervening law or changes***  
26 ***in law?***

27

28

1 Q. WHAT IS THE DISPUTE IN UNE ISSUE 1?

2 A. It is possible that, in the future after the ICA is executed, the FCC may  
3 “declassify” certain elements and remove them from the list of UNEs that  
4 ILECs must provide under Section 251(c)(3) of the 1996 Act. The issue  
5 here is what terms of the ICA should apply in that situation. AT&T  
6 Kentucky proposes that the transition process set forth in Section 3.5 of  
7 UNE Attachment 13, which is specifically designed to deal with  
8 declassified UNEs, should apply. INdigital proposes that the Intervening  
9 Law provision in Section 23 of the General Terms and Conditions, should  
10 apply.

11 The following language for Section 1.4 of the UNE Attachment 13 is  
12 what is in dispute:

13 **Subject Notwithstanding any other provision of this**  
14 **Agreement or any Amendment to this Agreement, including**  
15 **but not limited** to intervening law, change in law or other  
16 substantively similar provision in the Agreement or any  
17 Amendment, if an element described as an Unbundled Network  
18 Element or 251(c)(3) UNE in this Agreement is Declassified or is  
19 otherwise no longer a 251(c)(3) UNE, then the Transition  
20 Procedure defined in Section 3.5 below, shall govern

21  
22 AT&T Kentucky believes this issue is one more of a legal nature and will  
23 address it in its post-hearing brief.

24 ***Attachment 13 Issue 2 (Section 16.4):***

25  
26 ***AT&T: Should AT&T Kentucky be allowed to disconnect or convert***  
27 ***services?***

28  
29 ***INdigital: Should AT&T be permitted to disconnect circuits when the***  
30 ***parties have been unable to reach agreement for substitute service***  
31 ***arrangements or elements?***

32

1 Q. WHAT IS THE DISPUTE IN UNE ISSUE 2?

2 A. UNE Issue 1 dealt with a UNE that the FCC declassifies. UNE Issue 2  
3 deals with the situation where a wire center meets the FCC standards for  
4 non-impairment, so some network elements in that particular wire center  
5 no longer have to be unbundled. Specifically, AT&T Kentucky is  
6 proposing language in Section 16.4 of Attachment 13 that allows AT&T  
7 Kentucky to disconnect UNEs or UNE Combinations which it is no longer  
8 obligated to provide when a Wire Center has been designated as non-  
9 impaired under the FCC's rules. AT&T Kentucky is proposing the  
10 following language:

11 Notwithstanding anything to the contrary in the Agreement,  
12 including any amendments to this Agreement, at the end of the  
13 applicable transitional period, unless CLEC has submitted a  
14 disconnect/discontinuance LSR or ASR, as applicable, under  
15 Section 14.1.1 above of this Agreement, and if CLEC and **AT&T**  
16 **Kentucky** have failed to reach agreement under Section 14.4.1  
17 above of this Agreement as to a substitute service arrangement or  
18 element, then **AT&T Kentucky** may, **at its sole option,**  
19 **disconnect DS1/DS3 UNE Loops, DS1/DS3 Dedicated**  
20 **Transport or Dark Fiber Dedicated Transport, whether**  
21 **previously provided alone or in combination with or as part of**  
22 **any other arrangement, or** convert the subject element(s),  
23 whether alone or in combination with or as part of any other  
24 arrangement to an analogous resale or access service, if available,  
25 at rates applicable to such analogous service or arrangement.

26  
27 INdigital has not provided any counter language, and takes the  
28 position that "AT&T Kentucky should not be permitted to disconnect  
29 circuits just because the parties have been unable to reach agreement as  
30 to appropriate substitute arrangements for the subject circuits." AT&T

1 Kentucky believes this issue is one more of a legal nature and will address  
2 it in its post-hearing brief.

3 **V. COORDINATED HOT CUTS ISSUE (ATTACHMENT 15)**

4 ***Attachment 15 Issue 1 (Section 3.5):***

5  
6 ***AT&T: Should language be included to enable AT&T to suspend***  
7 ***CHC/OC activity due to unanticipated heavy work loads/activity***  
8 ***periods?***

9  
10 ***INdigital:***  
11 ***Should AT&T be required to work cooperatively with INdigital prior to***  
12 ***suspending CHC/OC service?***

13  
14 **Q. WHAT IS THE DISPUTE REGARDING COORDINATED HOT CUTS**  
15 **(CHC)?**

16 A. The issue pertains to whether or not AT&T Kentucky should have the  
17 ability to determine the availability of CHCs based upon current AT&T  
18 Kentucky workload. INdigital's language does not allow AT&T Kentucky  
19 the freedom to make that decision.

20 **Q. WHY IS AT&T KENTUCKY'S LANGUAGE NECESSARY TO SECTION**  
21 **3.5 OF THE CHC ATTACHMENT?**

22 A. AT&T Kentucky is proposing language that would allow AT&T Kentucky to  
23 continue to work not only with INdigital, but also with other CLECs, on a  
24 non-discriminatory basis to perform CHCs during periods of heavy  
25 demand.

26 The language at issue for Section 3.5 of the CHC Attachment  
27 is provided below:

28  
29

1                    **AT&T Kentucky shall work cooperatively with CLEC regarding**  
2                    **reserves the right to suspend** the availability of CHC/OC service  
3                    during unanticipated heavy workload/activity periods. Heavy  
4                    workload includes any unanticipated volume of work that impacts  
5                    **AT&T Kentucky's** ability to provide its baseline service. Where  
6                    time permits, **AT&T Kentucky** will make every effort to notify CLEC  
7                    when such unanticipated activities occur  
8

9                    AT&T Kentucky's proposed language accurately reflects the fact that,  
10                    whether AT&T Kentucky is performing work for itself, for INdigital, or for  
11                    another customer, the scheduling for any particular activity is subject to  
12                    certain workload constraints. INdigital is not the only CLEC with which AT&T  
13                    Kentucky has a business relationship. And it is AT&T Kentucky's obligation  
14                    to make sure all CLECs are treated equally. In other words, if AT&T  
15                    Kentucky can do something to work with a CLEC to get a job scheduled, it  
16                    will; however, working cooperatively with the CLEC does not mean AT&T  
17                    Kentucky can waive its rights to suspend the process if necessary. If, for  
18                    whatever reason the Parties cannot reach agreement, then AT&T Kentucky  
19                    needs to have the opportunity to rethink the situation and possibly suspend  
20                    CHC/OC activities for a given period of time. This applies to all CLECs, not  
21                    just INdigital. Therefore, I believe the Commission should adopt AT&T  
22                    Kentucky's proposed language to allow for these contingencies.

23    **Q.    DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

24    **A.    Yes it does.**

25

26

27    821855



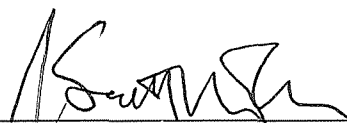


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KENTUCKY PUBLIC SERVICE COMMISSION

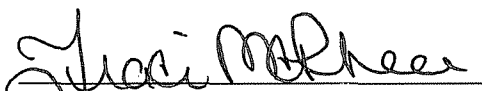
COUNTY OF CONTRA COSTA

STATE OF CALIFORNIA

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared J. Scott McPhee, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2009-00438, *In the Matter of: Petition of Communications Venture Corporation d/b/a INdigital Telecom for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996* and if present before the Commission and duly sworn, his statements would be set forth in the annexed direct testimony consisting of 31 pages and 0 exhibits.

  
\_\_\_\_\_  
J. Scott McPhee

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 8th DAY OF JUNE, 2010

  
\_\_\_\_\_  
Notary Public



My Commission Expires: November 6, 2013

1 AT&T KENTUCKY  
2 DIRECT TESTIMONY OF J. SCOTT MCPHEE  
3 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 2009-00438  
5 JUNE 15, 2010

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**Issues:**  
GTC Issues 1-7;  
Alternate Attachment 5 Issues 1-2, 6-7

1 I. INTRODUCTION AND PURPOSE

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon,  
4 San Ramon, California 94583.

5 Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

6 A. I am an Associate Director – Wholesale Regulatory Support. I am employed by  
7 Pacific Bell Telephone Company d/b/a AT&T California, which provides services  
8 on behalf of AT&T Operations, Inc., an authorized agent for the AT&T incumbent  
9 local exchange company subsidiaries (including AT&T Kentucky). I am  
10 responsible for providing regulatory and witness support relative to various  
11 wholesale products and pricing, supporting negotiations of local interconnection  
12 agreements (“ICAs”) with competitive local exchange carriers (“CLECs”) and  
13 Commercial Mobile Radio Service providers, participating in regulatory and  
14 judicial proceedings, and guiding compliance with the Federal  
15 Telecommunications Act of 1996 (“Act”) and its implementing rules.

16 Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.

17 A. I began employment with SBC in 2000 in the Wholesale Marketing – Industry  
18 Markets organization as Product Manager for Reciprocal Compensation  
19 throughout SBC’s 13-state region. My responsibilities included identifying policy  
20 and product issues to assist negotiations and witnesses addressing SBC’s  
21 reciprocal compensation and interconnection arrangements, as well as SBC’s  
22 transit traffic offering. In June of 2003, I moved into my current role as an  
23 Associate Director in the Wholesale Marketing Product Regulatory organization.

1 In this position, my responsibilities include helping define AT&T's positions on  
2 certain issues for Wholesale Marketing, and ensuring that those positions are  
3 consistently articulated in proceedings before state commissions. Prior to joining  
4 SBC, I spent nine and a half years working in the insurance industry, primarily as  
5 an underwriter of worker's compensation insurance.

6 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

7 A. I received my Bachelor of Arts degree with a double major in Economics and  
8 Political Science from the University of California at Davis.

9 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY**  
10 **COMMISSIONS?**

11 A. Yes, I have filed testimony and/or appeared in regulatory proceedings in 12 of  
12 the 13 former SBC states where AT&T provides local service, as well as in the  
13 states of Alabama, Georgia, Kentucky, Louisiana, North Carolina and South  
14 Carolina. I have previously testified before the Kentucky Public Service  
15 Commission ("Commission") in Case No. 2006-00546, *In the Matter of: BellSouth*  
16 *Telecommunications, Inc. v. Brandenburg Telephone Company.*

17 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

18 A. My testimony discusses AT&T Kentucky's position with respect to disputed  
19 issues in the General Terms and Conditions ("GTCs") of the Parties' proposed  
20 Interconnection Agreement ("ICA"), as well as certain disputed provisions  
21 contained in the "Alternate Attachment 05 – 911/E911 (Service Provider)"  
22 appendix ("Alternate Attachment 5"). Specifically, I will address GTC Issues 1-7  
23 and Alternate Attachment 5 Issues 1-2 and 6-7. These issues involve ICA terms

1 addressing how the Parties should treat billing disputes, the expiration of the ICA,  
2 and appropriate rates, terms, and conditions for the provision of 911/E911  
3 services.

4 **II. GTC ISSUES**

5 ***Joint GTC Issue 1 (Section 2.168):***

6 ***Should Disputed Charges constitute Unpaid Charges?***

7 **Q. CAN YOU EXPLAIN WHAT THE DISAGREEMENT IS IN GTC ISSUE 1?**

8 A. Yes. The issue is whether “Disputed Amounts”<sup>1</sup> should be included as part of  
9 “Unpaid Charges,” which is defined in Section 2.168 of the GTCs. The Parties  
10 agree to the definition of “Unpaid Charges” below, except the last sentence,  
11 where INdigital wants to add language to exclude Disputed Amounts:

12 “Unpaid Charges” means any charges billed to the Non-Paying  
13 Party that the Non-Paying Party did not render full payment to the  
14 Billing Party by the Bill Due Date, including where funds were not  
15 accessible. **Disputed Amounts are not Unpaid Charges.**

16  
17 Thus, the issue is whether “Disputed Amounts” should be treated as part of  
18 “Unpaid Charges.” For the reasons outlined in my testimony, the answer is  
19 “Yes,” all unpaid charges, including disputed charges, should be included within  
20 the definition of “Unpaid Charges.”

21 **Q. WHY IS IT APPROPRIATE TO CONSIDER DISPUTED AMOUNTS AS**  
22 **“UNPAID CHARGES?”**

23 A. The reason is simple. The Parties have already agreed to define “Disputed  
24 Amounts” as amounts that the disputing Party contends have been incorrectly  
25 billed to it. The Parties have also agreed, in Section 11.8 of the GTCs, that bona

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<sup>1</sup> “Disputed Amounts” are defined in Section 2.78 of the GTCs as “the amount that the Disputing Party contends is incorrectly billed.”

1        fide disputed amounts do not have to be paid to the billing Party until the dispute  
2        is resolved in favor of the billing Party. Thus, a “Disputed Amount” is by definition  
3        a charge that has not been paid – that is, an unpaid charge. (As discussed in  
4        GTC Issue 5 below, a disputing Party should pay the disputed amount into an  
5        interest-bearing escrow account while the dispute proceeds, but in the meantime  
6        the charge remains unpaid to the billing Party.) Because Disputed Amounts are  
7        unpaid charges, they should be included in the definition of “Unpaid Charges.”

8        **Q.    IF THAT IS THE CASE, WHY DOES INDIGITAL WANT TO EXCLUDE**  
9        **DISPUTED CHARGES FROM THE DEFINITION OF UNPAID CHARGES?**

10      A.    INdigital has not explained its position other than to state in the Decision Point  
11      List (DPL) for the GTCs that the extra language will be “helpful to non-lawyers”  
12      trying to operate under the ICA, but I do not understand why that would be so.  
13      INdigital’s proposed language would actually be harmful rather than helpful in  
14      trying to administer the terms of the ICA because it will create conflict and  
15      confusion with other terms in the ICA. I believe INdigital may be trying to target  
16      two issues – late payment charges and disconnection of services – in its  
17      language. INdigital’s language, however, is neither appropriate nor necessary for  
18      either purpose.

19

1 Q. WHAT DO YOU THINK INDIGITAL MAY BE TRYING TO ADDRESS IN ITS  
2 LANGUAGE WITH REGARD TO LATE PAYMENT CHARGES AND WHY DO  
3 YOU BELIEVE THE LANGUAGE IS NEITHER APPROPRIATE NOR  
4 NECESSARY?

5 A. I suspect that INdigital, by excluding Disputed Amounts from the definition of  
6 Unpaid Charges, wants to try to shift its costs and risks of late payments on  
7 disputed amounts to AT&T Kentucky. Specifically, “Unpaid Charges” are subject  
8 to late payment charges pursuant to Section 11.2 of the GTCs.<sup>2</sup> INdigital’s  
9 attempt to exclude disputed charges from the scope of Unpaid Charges therefore  
10 appears to be an attempt to avoid any responsibility for late payment charges on  
11 disputed amounts – *even when those charges are later found to be legitimately*  
12 *due and owing to AT&T Kentucky*. INdigital has agreed, however, to language in  
13 Section 11.10 of the GTCs that makes Disputed Amounts subject to late payment  
14 charges<sup>3</sup> so to exclude Disputed Amounts from the definition of “Unpaid  
15 Charges” would create an inherent and unnecessary conflict between Section

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<sup>2</sup> “11.2 A Late Payment Charge will be assessed for all Past Due payments as provided below, as applicable.

11.2.1 If any portion of the payment is not received by AT&T Kentucky on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T Kentucky in funds that are not immediately available to AT&T Kentucky, then a late payment and/c. interest charge shall be due to AT&T Kentucky. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in the applicable state tariff, or, if no applicable state tariff exists, as set forth in the Guide Book as published on the AT&T CLEC Online website, or pursuant to the applicable state law as determined by AT&T Kentucky. In addition to any applicable late payment and/or interest charges, CLEC may be charged a fee for all returned checks at the rate set forth in the applicable state tariff, or, if no applicable tariff exists, as set forth in the Guide Book or pursuant to the applicable state law.”

<sup>3</sup> INdigital’s proposed language in Section 11.10 is “Disputed Amounts ***that are resolved in favor of the Billing Party*** will be subject to Late Payment Charges as set forth in Section 11.2 above,” while AT&T Kentucky’s proposed language in Section 11.10 is “Disputed Amounts that are **in escrow** will be subject to Late Payment Charges as set forth in Section 11.2 above.” Both agree that Disputed Amounts are subject to Late Payment Charges. The differences in the language are addressed in my testimony regarding Joint GTC Issue 5.



1 11.10 and Section 11.2 of the GTCs. That is not only inappropriate and unfair to  
2 AT&T Kentucky, but it potentially creates an incentive for INdigital to dispute  
3 charges in order to delay payment with no financial risk from doing so. If  
4 INdigital's language were allowed, INdigital (and other CLECs that adopt  
5 INdigital's ICA or want similar language in their ICAs) could, by merely disputing  
6 a charge, attempt to argue that it was absolved of any duty to pay late-payment  
7 charges, and could continually dispute charges merely as a means of delaying  
8 payment.

9 **Q. WHAT DO YOU THINK INDIGITAL MAY BE TRYING TO ADDRESS IN ITS**  
10 **LANGUAGE WITH REGARD TO DISCONNECTION OF SERVICES AND WHY**  
11 **DO YOU BELIEVE THE LANGUAGE IS NEITHER APPROPRIATE NOR**  
12 **NECESSARY?**

13 A. I believe INdigital may be concerned about the risk that its services could be  
14 disconnected if it fails to pay charges that are disputed. That concern is  
15 unfounded. Section 12 of the GTCs addresses "Nonpayment and Procedures for  
16 Disconnection." Section 12.4 addresses disputed charges, and sets forth the  
17 steps a non-paying party must follow in order to avoid disconnection for non-  
18 payment, namely, (1) notify the billing party in writing which portions of the  
19 unpaid charges it disputes, and (2) pay the undisputed amounts to the billing  
20 party. Thus, INdigital will not be disconnected for failure to pay disputed amounts  
21 as long as it notifies AT&T Kentucky in writing of the unpaid charges it is  
22 disputing and pays AT&T Kentucky all undisputed amounts. There is a third  
23 criterion for separating and identifying disputed amounts, which the Parties are

1 disputing in this proceeding under GTC Issue 5, which I address separately in my  
2 testimony.

3 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

4 A. The Commission should reject INdigital's proposed additional language, which  
5 may be intended to improperly absolve INdigital from late payment charges that it  
6 agreed to pay elsewhere in the GTCs and which would create an improper  
7 financial incentive to dispute charges, and at best would create confusion and  
8 inconsistency within the ICA by treating an unpaid charge as something other  
9 than an unpaid charge.

10 ***GTC Issue 2 (Section 3.7.2):***

11 ***AT&T:*** ***Should the Severability provision be reflected in such a***  
12 ***manner that the distinct provisions of this agreement***  
13 ***are treated in their totality?***

14  
15 ***INdigital:*** ***Should the ICA be non-severable?***

16 **Q. CAN YOU EXPLAIN WHAT THE DISPUTE IS IN GTC ISSUE 2?**

17 A. Yes. The Parties have agreed that the ICA should be treated in its totality. That  
18 is, all of the various provisions - and Attachments - are to be treated as one  
19 inclusive agreement. In the event there is a provision within the agreement that  
20 is "rejected or held to be illegal, invalid or unenforceable," the Parties agree that  
21 such finding on a particular provision does not impact or invalidate the rest of the  
22 ICA. Instead, the Parties agree to allow such a provision to be enforced to the  
23 extent possible, or the Parties will renegotiate to amend the provision with  
24 enforceable language, without altering the original agreed-upon intent of the  
25 Parties. This is formalized in the agreed-upon language of GTC Section 3.7.2:

1 If any provision of this Agreement is rejected or held to be illegal,  
2 invalid or unenforceable, each Party agrees that such provision  
3 shall be enforced to the maximum extent permissible so as to effect  
4 the intent of the Parties, and the validity, legality and enforceability  
5 of the remaining provisions of this Agreement shall not in any way  
6 be affected or impaired thereby. If necessary to affect the intent of  
7 the Parties, the Parties shall negotiate in good faith to amend this  
8 Agreement to replace the unenforceable language with enforceable  
9 language that reflects such intent as closely as possible.

10 In addition to the above agreed language, AT&T Kentucky has proposed an  
11 additional sentence that clarifies the Parties' intent with respect to the entire  
12 agreement being considered as a whole. AT&T Kentucky proposes to add the  
13 following: **"Consistent with the foregoing in this subsection, the Parties**  
14 **negotiated the terms and conditions of this Agreement for Interconnection**  
15 **Services as a total arrangement and it is intended that any adoption of this**  
16 **Agreement contain all of the terms and conditions."**

17 **Q. WHY DOES INDIGITAL DISPUTE THIS ADDITIONAL SENTENCE?**

18 A. While I won't know for sure until I hear INdigital's testimony on the issue, its  
19 stated position in the Parties' DPL indicates that INdigital does not want AT&T  
20 Kentucky to use the provision as a means to invalidate the entire ICA.

21 **Q. DOES AT&T KENTUCKY'S PROVISION HAVE THE EFFECT OF**  
22 **INVALIDATING THE ENTIRE ICA IF A SPECIFIC PROVISION IS FOUND TO**  
23 **BE ILLEGAL, INVALID, OR UNENFORCEABLE?**

24 A. No, not at all. AT&T Kentucky's proposed additional language merely makes  
25 clear that any provision subject to revision under Section 3.7.2 does *not* alter the  
26 original intent of the Parties to treat the ICA and all of its Attachments as one  
27 complete agreement and that any CLEC that seeks to adopt this ICA under a

1 Most Favored Nations (“MFN”) provision of the Act must take the ICA - including  
2 any amended provisions within it - in its entirety.

3 **Joint GTC Issue 3 (Section 8.2.1):**

4 ***Should the ICA contain an “evergreen” clause?***

5 **Q. WHAT IS AN “EVERGREEN” CLAUSE?**

6 A. An “evergreen” clause is generally a clause by which an agreement may  
7 continue to exist beyond its expiration date until one of the parties provides  
8 formal notification to the other that that party wants to either terminate the  
9 agreement or enter into new contract terms.

10 **Q. WILL THE ICA CONTAIN A SET EXPIRATION DATE?**

11 A. Yes. Per Section 8.2.1, the Parties will agree upon a set date as the effective  
12 expiration of the ICA. AT&T Kentucky proposes that the expiration date be three  
13 years from the effective date of the approved ICA, which INdigital has not  
14 opposed. Though the actual date is not in Section 8.2.1 because the Parties do  
15 not yet know the inception date of the approved ICA, the Parties have agreed on  
16 the following in Section 8.2.1: “Unless terminated for breach (including  
17 nonpayment), the term of this Agreement shall commence upon the Effective  
18 Date of this Agreement and shall expire on \_\_\_\_\_ (the “Initial  
19 Term”).”

20 **Q. WHEN AN ICA EXPIRES, IS IT COMMON FOR THE PARTIES TO CONTINUE  
21 TO OPERATE UNDER THE EXPIRED ICA?**

22 A. Yes, but not indefinitely and not in the manner INdigital proposes. There are  
23 generally three different conditions under which parties continue to operate under  
24 an ICA that has expired. The first is when the parties are in the process of

1 negotiating a successor ICA when the agreement expires. In that case, the  
2 parties will continue to operate under the terms and conditions of an expired ICA  
3 while they negotiate a successor ICA. Once the successor ICA is implemented  
4 and approved, the parties cease operating under the terms and conditions of the  
5 expired ICA, and operate on a going-forward basis under the successor ICA.  
6 This practice allows for the parties to continue to exchange traffic as well as to  
7 bill each other until such time as new contract terms are in place. By abiding by  
8 the terms and conditions of the expired ICA while working to replace it with a new  
9 agreement, the parties ensure continuity of service for their respective end users.

10 The second condition under which carriers continue to operate under an  
11 expired ICA is when they negotiate and mutually agree to extend the expiration  
12 date. In such a case, the ICA is amended by mutual agreement to recognize the  
13 new expiration date.

14 A third way carriers may continue to operate under the terms of an expired  
15 ICA is via an "evergreen" clause contained in the ICA. An evergreen clause  
16 typically allows for an ICA to continue, on a monthly basis, in perpetuity until  
17 either of the parties provides formal notification to the other that that party wants  
18 to terminate the ICA and enter into new contract terms.

19 **Q. WHAT DOES AT&T KENTUCKY PROPOSE WITH RESPECT TO OPERATING**  
20 **AFTER THE ICA EXPIRATION DATE?**

21 A. AT&T Kentucky proposes that the ICA simply contain an expiration date, with the  
22 reasoning that a contract is set to be in place for a specific period of time. In the  
23 telecommunications environment, technology evolves at a relatively fast pace.

1 Rules and regulations also change. After three years, the telecommunications  
2 environment changes sufficiently to often make older ICAs “stale” and out-dated.  
3 The ICA’s three-year expiration date is the appropriate time for a contract to be in  
4 place prior to allowing either Party the ability to re-examine the terms and  
5 conditions of the ICA, and to therefore update, re-write or replace the provisions  
6 as necessary.

7 **Q. DOES THE PARTIES’ ICA LANGUAGE ALLOW FOR THE PARTIES TO**  
8 **CONTINUE TO OPERATE UNDER THE EXPIRED AGREEMENT WHILE A**  
9 **SUCCESSOR ICA IS NEGOTIATED OR ARBITRATED?**

10 A. Yes. The Parties have agreed to language in GTC Section 8.4.4 that  
11 contemplates the Parties continuing to operate under an expired ICA while  
12 successor ICA negotiations take place:

13 If the Parties are in “Active Negotiations” (negotiations *prior to the*  
14 *expiration of the arbitration timeframe* established in the Act under Section  
15 252(b)) or have filed for arbitration with the Commission upon expiration  
16 date of the Agreement AT&T Kentucky shall continue to offer services to  
17 CLEC pursuant to the rates, terms and conditions set forth in this  
18 Agreement until a successor agreement becomes effective between the  
19 Parties. AT&T Kentucky’s obligation to provide services under this  
20 Agreement beyond the expiration date conditions upon the Parties  
21 adherence to the timeframes established within Section 252(b) of the Act.  
22 If CLEC does not adhere to said timeframes or CLEC withdraws its  
23 arbitration or seeks an extension of time or continuance of such arbitration  
24 with AT&T Kentucky’s consent, AT&T Kentucky may provide Notice to  
25 CLEC that all services provided thereafter shall be pursuant to the rates,  
26 terms and conditions set forth in AT&T Kentucky’s then current standard  
27 interconnection agreement (“Generic”) as found on AT&T’s CLEC Online  
28 website. (*emphasis included in original*)

29 There are also provisions in GTC Section 8.4 that contemplate other scenarios  
30 which may occur when the ICA expires, such as if INdigital no longer purchases  
31 services under the ICA; if either Party seeks to terminate the ICA without making

1 arrangements for the negotiation of a replacement agreement; or if the ICA  
2 expires and the Parties have not entered into a new agreement or are not in  
3 active negotiations. Though the Parties have agreed to all of the language in  
4 GTC Section 8.4, which governs treatment of the ICA after it expires, INdigital's  
5 proposed evergreen clause language in Section 8.2.1 usurps these provisions.

6 **Q. WHAT DOES INDIGITAL PROPOSE FOR THE TERM OF THE AGREEMENT?**

7 A. INdigital agrees with AT&T Kentucky that the term of the agreement should  
8 include a set expiration date. In addition, however, INdigital proposes language  
9 to provide an evergreen clause that would allow the ICA to continue beyond the  
10 expiration date. The evergreen clause would provide for automatic annual  
11 renewal of the ICA and gives INdigital *unilateral* authority to decide when to  
12 terminate the ICA:

13 **Following the expiration of the Initial Term, the Agreement shall**  
14 **automatically renew for successive one (1) year terms (each, a**  
15 **"Renewal Term") unless CLEC provides no less than thirty (30) days**  
16 **prior written Notice of its intent to terminate the Agreement at the**  
17 **end of the Initial Term or any Renewal Term.**

18  
19 **Q. DOES AT&T KENTUCKY AGREE WITH INDIGITAL'S PROPOSAL?**

20 A. No. As proposed by INdigital, AT&T Kentucky would have absolutely no control  
21 over the actual termination of the ICA. Whereas evergreen clauses typically  
22 allow for *either* carrier to provide written notice of its intent to terminate the  
23 agreement, INdigital's proposed language does not allow for such reciprocity.  
24 Instead, INdigital inappropriately proposes language that would allow *only*  
25 *INdigital* to terminate the agreement. Such a unilateral provision would

1 effectively bar AT&T Kentucky from ever being able to advocate for a successor  
2 ICA without INdigital's specific agreement and blessing.

3 **Q. ARE THERE OTHER CONCERNS AT&T KENTUCKY HAS WITH INDIGITAL'S**  
4 **PROPOSED EVERGREEN CLAUSE?**

5 A. Yes. The ICA under INdigital's proposed evergreen clause would "automatically  
6 renew for successive one year terms." In the telecommunications industry, new  
7 technologies have evolved quickly, and will likely continue to do so. Rules and  
8 regulations can also change quickly. Such changes often make older ICAs  
9 "stale" and outdated, making it appropriate to establish new ICA terms (or to re-  
10 examine the existing ICA terms if both parties agree a total re-write of the ICA is  
11 not necessary) every three years in order to keep the terms and conditions of the  
12 agreement current and up to date with technology, rules and the marketplace.  
13 The initial three-year term is a sufficient period of time for an ICA to be in effect  
14 before additional updates and revisions are necessary to keep the terms and  
15 conditions current with the marketplace.

16 INdigital has proposed language that solely benefits INdigital while at the  
17 same time disadvantages AT&T Kentucky by giving INdigital absolute, unilateral  
18 control over the term of the ICA. Such a provision would hamper AT&T Kentucky  
19 from updating its agreements to keep pace with the rest of the industry in  
20 Kentucky. Furthermore, such an arrangement would make this agreement, with  
21 potentially outdated terms and conditions, available for adoption by other  
22 Kentucky CLECs. INdigital's unrealistic and inequitable evergreen provision  
23 should be rejected.



1 Q. WOULDNT THE ICA'S CHANGE OF LAW PROVISIONS ALLOW FOR THE  
2 ICA TO REMAIN UP TO DATE, EVEN AFTER ICA EXPIRATION?

3 A. No. The change of law provision in GTC Section 23, "Intervening Law," is  
4 specific to "enforcement of laws or regulations that were the basis or rationale for  
5 any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement."  
6 Intervening law only applies if "any action by any state or federal regulatory or  
7 legislative body or court of competent jurisdiction invalidates, modifies, or stays"  
8 such enforcement. While this provision may allow updating of certain provisions  
9 of the ICA on a strictly legal basis, it does *not* allow for the updating of the ICA to  
10 conform to other aspects of change, such as new technologies that are  
11 developed and contemplated since the inception of the ICA, or for new industry  
12 standards that may be developed, such as for recording and billing of intercarrier  
13 traffic.

14 Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

15 A. The Commission should reject INdigital's proposed evergreen language, which is  
16 one-sided, unreasonable, and fails to recognize the need to modify, update, and  
17 replace ICAs as the industry changes.

18 ***Joint GTC Issue 4 (Sections 10.2.1 - 10.2.2):***

19 ***Should INdigital Telecom be required to provide a deposit in the event***  
20 ***AT&T Kentucky determines there has been a general impairment of***  
21 ***INdigital Telecom's financial stability?***

22  
23 ***If so, which deposit language should be used in Section 10.2.2?***  
24  
25

1 **Q. WHAT IS THE ISSUE REGARDING DEPOSITS?**

2 A. AT&T Kentucky has proposed ICA language that would require INdigital to  
3 provide a deposit if INdigital either has not established a good payment record or  
4 has a history of late payments.

5 Deposits are a necessity in today's telecommunications industry. Though  
6 I do not have information specific to AT&T's Southeast (BellSouth) region which  
7 includes the Commonwealth of Kentucky, I have researched and found that since  
8 2000, approximately 500 CLEC customers have ceased operations in AT&T's  
9 former SBC 13-state territory. Since 2000, the same 13-state region saw 160  
10 CLECs file for bankruptcy, with amounts owing to AT&T of \$695 million. This  
11 demonstrates that CLEC customers can and often do represent unacceptably  
12 high credit risks. Moreover, requiring deposits from trade creditors is a standard  
13 commercial business practice. In fact, this Commission allows deposit  
14 requirements for AT&T Kentucky's retail customers that pose a credit risk.  
15 However, deposits are even more important for CLECs, since AT&T Kentucky  
16 cannot deny service to a CLEC customer for lack of good credit and CLECs can  
17 run up significant bills for their wholesale services. In the normal business world,  
18 companies have the option to decline to sell products and services to certain  
19 high-risk customers on open credit terms and instead demand cash in advance  
20 from those customers. Since high-risk CLEC customers must receive open  
21 credit terms, requiring the CLEC to make a reasonable deposit is one of the few  
22 safeguards AT&T Kentucky has against the risk of payment default.

23

1 **Q. WHAT IS THE PURPOSE OF REQUIRING A SECURITY DEPOSIT?**

2 A. The purpose of requiring a deposit is to protect AT&T Kentucky against losses it  
3 incurs when providing services to a CLEC that fails to pay undisputed charges.  
4 AT&T Kentucky's proposed deposit provision is a reasonable measure to reduce  
5 AT&T Kentucky's risk of loss from the non-payment of undisputed bills.

6 **Q. WHAT ARE THE DIFFERENCES BETWEEN AT&T KENTUCKY'S AND**  
7 **INDIGITAL'S DEPOSIT PROVISIONS IN THE ICA?**

8 A. The disagreement concerns the triggers that determine when a deposit must be  
9 paid. AT&T Kentucky proposes in Section 10.2 that deposit requirements be  
10 triggered if (a) there is an impairment of the financial health or creditworthiness of  
11 INdigital; (b) INdigital fails to timely pay a bill rendered to it, excluding disputed  
12 amounts in compliance with Dispute Resolution Procedures set forth in the ICA;  
13 (c) INdigital's gross monthly billing has increased by greater than 10 percent, in  
14 which case AT&T Kentucky reserves the right to request additional security (or to  
15 require a security deposit if none was previously requested); or (d) INdigital  
16 admits its inability to pay debts as they become due through the commencement  
17 of a voluntary case (or has had an involuntary case commenced against it) under  
18 the U. S. Bankruptcy Code or any other law relating to insolvency,  
19 reorganization, winding up, composition or adjustment of debts or the like, or has  
20 made an assignment for the benefit of creditors, or is subject to a receivership or  
21 similar proceeding.

22 INdigital disputes the first trigger because INdigital believes the only  
23 appropriate trigger for requiring a deposit is INdigital's failure to timely pay its

1 bills; and the second trigger because INdigital believes it should be allowed to  
2 miss two payments rather than one, as proposed by AT&T Kentucky, before a  
3 deposit should be required.

4 **Q. WHY DOES AT&T KENTUCKY BELIEVE IMPAIRMENT OF THE FINANCIAL**  
5 **HEALTH OR CREDITWORTHINESS OF INDIGITAL IS AN APPROPRIATE**  
6 **TRIGGER BY WHICH TO DETERMINE IF INDIGITAL SHOULD PROVIDE A**  
7 **DEPOSIT?**

8 A. AT&T Kentucky believes it is both appropriate and reasonable because AT&T  
9 Kentucky's determination of INdigital's impaired creditworthiness is based on  
10 concrete, clearly defined and objective criteria. For example, impaired  
11 creditworthiness will be assessed with reference to the investment grade credit  
12 ratings issued by independent credit rating agencies such as Moody's or  
13 Standard & Poor's. This proposed trigger seeks to proactively protect AT&T  
14 Kentucky from unnecessary exposure due to the impairment of its customers'  
15 financial health. Credit ratings are a key, objective measure of a company's  
16 ability to pay its bills. Further, companies with credit ratings below investment  
17 grade have historically high default rates. MCI is a perfect example of this, as its  
18 downgrade to "below investment grade" status in April 2002 foreshadowed its  
19 eventual July 2002 bankruptcy filing.

20 Without this provision, INdigital's financial health could be badly impaired  
21 but AT&T Kentucky would not be able to require a deposit until AT&T Kentucky  
22 received a late payment. AT&T Kentucky has already been through the real-life  
23 experience of CLECs filing for bankruptcy and the possibility certainly exists that

1 it could happen again. It is unreasonable to deny AT&T Kentucky the right to  
2 make reasonable efforts to reduce its potential losses, especially if it is apparent  
3 that a CLEC's credit is impaired or if the CLEC is simply refusing to make  
4 payments under the ICA.

5 **Q. WHY DOES INDIGITAL DISPUTE AT&T KENTUCKY'S PROPOSED DEPOSIT**  
6 **TRIGGER REGARDING TIMELY PAYMENTS?**

7 A. AT&T Kentucky proposes that it may request assurance of payment if INdigital  
8 fails to timely pay a bill rendered to it by AT&T Kentucky. INdigital objects to this  
9 provision and, instead, proposes this provision only trigger after "at least two  
10 bills" are not paid timely. INdigital's proposal would mean that INdigital could wait  
11 a full 90 days after the invoice date before paying its bill without triggering the  
12 deposit requirement. Considering the 30-day payment terms AT&T Kentucky  
13 offers, INdigital's proposal is inappropriate and unworkable. On the one hand,  
14 INdigital proposes a two-month deposit, but on the other hand, it wants three  
15 months to pay its bill before it would have to pay a deposit. Even if INdigital were  
16 required to pay a deposit under its proposal, it would be paying a two-month  
17 deposit while simultaneously having three months of unpaid charges outstanding.  
18 INdigital's proposal is simply unworkable.

19 **GTC Issue 5 (Sections 11.8 11.9 – 11.9.2.5.3, 11.10, 11.12 – 11.12..4, 12.4 – 12.4.4,**  
20 **12.6 – 12.6.2, 13.4.4, 40.1)**

21  
22 **AT&T: *Is it reasonable to require CLEC to pay disputed charges***  
23 ***into an escrow account while the disputed amounts are***  
24 ***being resolved through the dispute process?***  
25

1           **INdigital:**                    **Should INdigital Telecom be required to escrow**  
2   **amounts subject to dispute? (GTC, Sections 11.8 11.9 –**  
3   **11.9.2.5.3, 11.10, 11.12 – 11.12..4, 12.4 – 12.4.4, 12.6 –**  
4   **12.6.2, 13.4.4, 40.1)**

5   **Q.    WHAT IS THE ISSUE REGARDING ESCROW OF DISPUTED CHARGES?**

6   A.    AT&T Kentucky proposes that either party disputing its bills be required to place  
7           into an escrow account with a third party an amount equal to the disputed  
8           charges. INdigital opposes any escrow requirement, proposing instead that it  
9           should be able to dispute its bills and withhold payment from AT&T Kentucky  
10          without setting any money aside in the event the dispute is resolved in favor of  
11          AT&T Kentucky.

12   **Q.    AT WHAT POINT IN THE BILL CYCLE DOES AT&T KENTUCKY PROPOSE**  
13           **INDIGITAL SHOULD BE REQUIRED TO ESCROW THE DISPUTED**  
14           **AMOUNTS?**

15   A.    INdigital should be required to notify AT&T Kentucky if it disputes an amount  
16          owed and deposit the disputed amounts into escrow by the Bill Due Date. Any  
17          requirement that permits INdigital to delay depositing a disputed amount into  
18          escrow would present an unacceptable risk to AT&T Kentucky. After the Bill Due  
19          Date, additional billed charges would accumulate and AT&T Kentucky would face  
20          increased exposure to even more uncollectible amounts as the dispute  
21          continues.

22   **Q.    PLEASE EXPLAIN THE OPERATION OF THE ESCROW PROVISIONS**  
23           **PROPOSED BY AT&T KENTUCKY.**

24   A.    The proposed escrow language in Sections 11.8 and 11.9 defines the process a  
25          billed party is to follow when a billing dispute occurs. The escrow provisions call

1 for the party disputing the charges to place the disputed amounts into an interest-  
2 bearing escrow account with a mutually agreeable third-party escrow agent. To  
3 avoid disputes, the proposed language in Sections 11.9.1 and 11.9.2 sets forth  
4 specific criteria for the selection of the escrow agent and the characteristics of  
5 the escrow account, and Section 11.12 describes the disbursement of funds following  
6 resolution of the parties' dispute.

7 **Q. WHAT CRITERIA APPLY TO THE SELECTION OF A THIRD-PARTY**  
8 **ESCROW AGENT?**

9 A. The escrow agent criteria are straightforward. The escrow agent must be a  
10 financial institution in the continental U.S. that is not affiliated with INdigital or  
11 AT&T Kentucky and is authorized to handle Automatic Clearing House ("ACH")  
12 transactions.

13 **Q. WHAT CRITERIA GOVERN THE ESCROW ACCOUNT?**

14 A. Again, these are straightforward and consistent with normal business practices.  
15 The account must be interest-bearing. Bank charges may not be charged to the  
16 account, but must be borne by the disputing party. Interest earned on the  
17 account will be disbursed to the parties in the same proportion as the principal.

18 **Q. WHAT ARE THE DISBURSEMENT CRITERIA?**

19 A. In order to disburse funds, the escrow agent must have the written permission of  
20 both parties following a final determination of the dispute.

21 **Q. WHY IS AN ESCROW PROVISION IMPORTANT?**

22 A. As I noted above, the purpose of an escrow arrangement is to ensure that  
23 necessary funds are available to pay the billing party if the billing dispute is

1 resolved in its favor. Given the current economic environment, AT&T Kentucky  
2 has a legitimate concern that financially challenged carriers without escrow  
3 provisions in their ICAs could dispute legitimate AT&T Kentucky bills and leave  
4 AT&T Kentucky without recourse, even when the disputes are resolved in AT&T  
5 Kentucky's favor.

6 An escrow provision ensures that AT&T Kentucky is paid if, *and only if*, the  
7 dispute is resolved in AT&T Kentucky's favor. It also ensures that if the dispute  
8 is resolved in INdigital's favor, INdigital will have its money returned plus the  
9 interest it accumulated while in the escrow account.

10 **Q. IS THAT A REALISTIC CONCERN?**

11 A. Yes. Since 2000, AT&T has lost millions of dollars to carriers that have failed to  
12 pay their bills. While I don't have particular data on the number of CLECs that  
13 have ceased operations in the former 9-state BellSouth region, I do have data  
14 that indicates that since 2000, approximately 500 CLECs have ceased  
15 operations in AT&T's 13-state territory. Thus, based on AT&T's historical  
16 experience, there is a real risk that a CLEC will be unable to pay AT&T Kentucky  
17 for the services AT&T Kentucky has rendered to it. In some instances, including  
18 when they are in financial distress, CLECs may raise disputes just to avoid  
19 having to pay for services rendered. This delay tactic results in higher  
20 uncollectible receivables for AT&T Kentucky, and it permits unscrupulous CLECs  
21 to gain an unfair competitive advantage over honest CLECs. Escrow provisions  
22 help ensure appropriate payments for service rendered will be made by requiring  
23 a CLEC to set aside money even as disputed charges are being hashed out.



1 This is the only reasonable way to ensure that money will be available for a  
2 CLEC to pay disputed charges if it is ultimately decided that the charges are  
3 legitimate.

4 Unfortunately, the dispute resolution process common to most ICAs can  
5 take a significant amount of time, sometimes as long as a full year or longer  
6 where litigation may be involved. By the time a dispute is resolved, a carrier may  
7 have either left the business or incurred some other financial burden so that it is  
8 unable to pay AT&T Kentucky what it owes. Now with the country gripped in the  
9 most severe recession in years, the risk of substantial defaults are even more  
10 significant than they were in the past. For example, AT&T California recently had  
11 a dispute with a CLEC in California that refused to escrow money to pay disputed  
12 charges, ran up a disputed amount of \$1.3 million, and then, after the dispute  
13 was decided in AT&T's favor, tried to obtain an injunction to prevent AT&T from  
14 collecting on the overdue amount, claiming that having to pay the \$1.3 million  
15 would be an undue burden. If that CLEC had simply put money in escrow as the  
16 dispute went along, its ability to pay would never have been an issue. A similar  
17 case in Kentucky involving SouthEast Telephone, a CLEC that had no escrow  
18 provision in its ICA, left AT&T Kentucky with a very large balance owed by  
19 SouthEast Telephone prior to its filing for bankruptcy protection on September  
20 28, 2009. An escrow requirement would have been beneficial in that situation.

21 ***AT&T GTC Issue 6 (Sections 14.1, 14.8):***

22 ***AT&T: What is an appropriate error threshold for the right to***  
23 ***conduct follow-up audits?***

24

1 **INdigital:** **What is an appropriate error threshold error for the right**  
2 **to conduct follow-up audits?**  
3

4 **Q. CAN YOU EXPLAIN WHAT GTC ISSUE 6 IS ALL ABOUT?**

5 A. Yes. This issue addresses the audit provisions in Sections 14.1 and 14.8 of the  
6 GTCs. AT&T Kentucky has proposed language in Section 14.1 that provides for  
7 an initial audit once a year with a follow-up audit(s) if there is an error with an  
8 aggregate value of at least five percent (5%) of the amounts payable by the  
9 auditing party for the audit time frame. AT&T Kentucky has also proposed  
10 language in Section 14.8 for reimbursement by the audited Party of one-quarter  
11 of the auditor's fees and expenses if the audit finds, on an annualized basis, an  
12 error greater than five percent (5%) of the aggregate charges for the audited  
13 services during the period covered by the audit. INdigital's proposal is for a 20%  
14 variance before a follow-up audit will be performed and before reimbursement is  
15 allowed.

16 **Q. WHY SHOULD THE PARTIES USE A 5% THRESHOLD FOR TRIGGERING A**  
17 **FOLLOW-UP AUDIT?**

18 A. The purpose of the terms contained within the ICA are intended for the Parties to  
19 invoice and bill each other accurately. Any error incidence of billing above a 5%  
20 threshold likely signifies meaningful errors in the billing Party's practices, and  
21 therefore merits an additional check by the auditing Party to ensure the billing  
22 Party has corrected the billing errors and remains in compliance with the audit  
23 going forward. Since errors detected from previous audits will be corrected, it is  
24 anticipated that the incidence of ongoing problems should be minimized if not  
25 eliminated altogether. AT&T Kentucky believes audits should not be conducted

1 on a whim or without sufficient cause, but that follow-up audits are warranted if  
2 there is an error with an aggregate value of at least five percent (5%) of the  
3 amounts payable by the auditing party for the audit time frame. To adopt a 20%  
4 variance before a follow-up audit is performed would be to allow up to 20% in  
5 billing errors to continue unchanged. From a reasonable business perspective,  
6 this is unacceptable.

7 **Q. WHY SHOULD THE PARTIES USE A 5% VARIANCE FOR TRIGGERING**  
8 **PARTIAL AUDIT REIMBURSEMENT UNDER SECTION 14.8?**

9 A. Both INdigital and AT&T Kentucky have agreed in Section 14.8 that the auditing  
10 party is responsible for the expense of the audit, but disagree as to when the  
11 auditing party may be entitled to a partial reimbursement for the expense of the  
12 audit. AT&T Kentucky proposes that if there is a variance in charges paid or  
13 payable by the auditing party of an amount, on an annualized basis, greater than  
14 5% of the aggregate charges for the audited services for the period covered by  
15 the audit, then the auditing party is eligible for partial reimbursement from the  
16 audited party in the amount of one-quarter of any independent auditor's fees and  
17 expenses. INdigital disagrees with AT&T Kentucky's 5% threshold, and instead  
18 proposes a 20% variance for reimbursement purposes under Section 14.8.

19 AT&T Kentucky believes a five percent (5%) error measure is more  
20 appropriate because it better incents the Parties to invoice and bill each other  
21 accurately pursuant to the terms of the ICA. To adopt a 20% variance before  
22 reimbursement is required would not as effectively incent invoice and billing

1 accuracy and may actually incent billing errors to continue. Such inaccuracies  
2 should not be allowed.

**Overall Alternate Attachment 05 – 911/E911 NIM (Service Provider) (“Alt 911”)**

3 **Alt 911 Issue 1**

4 **AT&T:** ***Does INdigital have the right to interconnect with AT&T***  
5 ***under Section 251(c) of the Act for INdigital’s provision***  
6 ***of competitive 911/E911 services to PSAPs? If so, what***  
7 ***is the appropriate language that should be included in***  
8 ***the interconnection agreement?***

9  
10 **INdigital:** ***Should this attachment be designated “(Service***  
11 ***Provider)?”***

12 **Q. WHAT IS THE DISPUTE IN ALT 911 ISSUE 1?**

13 A. This issue centers around the fundamental disagreement concerning appropriate  
14 terms and conditions addressing 911 services for inclusion in this ICA. AT&T  
15 Kentucky’s position is that the 911 service that INdigital intends to provide does  
16 not meet the definition of “telephone exchange service” as set forth in 47 U.S.C.  
17 153(47) because the service will not provide the ability to both originate and  
18 terminate calls and, therefore, should not be included in a Section 251(c)  
19 agreement. AT&T Kentucky is, and has been, available to negotiate a  
20 commercial agreement for INdigital’s 911 services.<sup>4</sup>

21 In light of the Commission’s April 9, 2010, ruling rejecting AT&T  
22 Kentucky’s position on this threshold issue, however, AT&T Kentucky proposes  
23 that in the alternative, and without waiving its right to appeal that decision, the

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<sup>4</sup> The Commission rejected AT&T Kentucky’s argument in its April 9, 2010, decision on this threshold issue; therefore, AT&T Kentucky, while maintaining its belief that it is not required to provide interconnection pursuant to the provisions set forth in Section 251(c) and preserving its right to appeal the Commission’s decision, is proposing alternate language to be placed in the ICA pursuant to this arbitration. Should AT&T Kentucky appeal this issue and prevail, the language set forth in Generic ATT 05 – 911/E911 (CLEC) in the issues matrix attached as Exhibit A to AT&T Kentucky’s Response to INdigital’s Arbitration Petition is the language AT&T Kentucky would propose be adopted.

1 language in Alternate Attachment 05 – 911/E911 (Service Provider)<sup>5</sup> should be  
2 adopted. My testimony addresses the language that the Parties dispute in  
3 Alternate Attachment 05.

4 **Alt 911 Issue 2 (Section 1.2):**

5 **AT&T:** ***Should only the 911/E911 System Network providers be***  
6 ***identified as part of this agreement?***

7  
8 **INdigital:** ***Should this attachment account for the possibility that***  
9 ***there may be more than one E911 service provider in a***  
10 ***territory?***

11 **Q. WHAT IS THE DISPUTE CONCERNING SECTION 1.2 OF ALTERNATE**  
12 **ATTACHMENT 911/E911?**

13 A. The Parties disagree as to how to characterize *who* will be providing 911/E911  
14 Service under this Alternate Attachment, and how the Parties will be  
15 characterized. The sentence in dispute in Section 1.2 reads as follows, with  
16 agreed-upon language in normal typeface, AT&T Kentucky proposed language  
17 that is disputed by INdigital in **bold**, and INdigital proposed language that AT&T  
18 Kentucky disputes in **bold italics underline**:

19 The Parties acknowledge and agree that the Parties can **only** provide  
20 911/E911 Service in a territory where the Party is **an the E911 service**  
21 **network** provider, and then only that E911 Service configuration as  
22 purchased by the E911 Customer.

23 This ICA and Alternate Attachment 911 only apply to the territory where  
24 AT&T Kentucky is an incumbent local exchange carrier and then only where  
25 AT&T Kentucky provides 911/E911 Service. AT&T Kentucky's language is  
26 appropriate as this Alternate Attachment 911 is specifically focused on network  
27 interconnection and how the parties react at the network level. In addition, AT&T

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<sup>5</sup> See Exhibit A to AT&T Kentucky's Response to INdigital's Arbitration Petition. This same attachment is referred to in the issues matrix attached to INdigital's Petition as Alt. ATT 05A - 911/E911 NIM.

1 Kentucky's proposed use of the definitive term "the" in lieu of "an" indicates that  
2 the specific E911 network provider being discussed has been positively identified  
3 as a designated provider by the appropriate E911 authority in a specific territory.  
4 INdigital's proposed language, on the other hand, is ambiguous and vague as to  
5 where a party may (or may not) provide some semblance of E911 service. The  
6 purpose of this ICA is to provide clear and unambiguous terms under which the  
7 parties will interconnect and exchange traffic; ambiguity as to when and where a  
8 party may be "an" E911 network provider may invite dispute in the future. AT&T  
9 Kentucky's proposed language in Section 1.2 is appropriately specific.

10 ***Alt 911 Issue 6 (Section 10.1):***

11 ***AT&T: Should the ICA include rates for CLEC services?***

12  
13 ***INdigital: Should 911/E911 rates be benchmarked at AT&T***  
14 ***Kentucky's tariffed rate?***

15 **Q. CAN YOU DESCRIBE THE ISSUE IN ALT 911 ISSUE 6?**

16 A. The issue involves the rates AT&T Kentucky and INdigital would charge each  
17 other for access to 911 and E911 databases and trunking and call routing for  
18 E911 call completion to a Public Safety Answering Point ("PSAP"). AT&T  
19 Kentucky believes that the rates should be reciprocal since each Party would be  
20 providing the same service to the other Party. Since AT&T Kentucky is the only  
21 Party with existing, approved rates for the 911-related services, those are the  
22 rates that should apply, and they should be applied on a reciprocal basis.  
23 INdigital, however, apparently seeks to reserve the right to later charge higher  
24 rates to AT&T Kentucky than AT&T Kentucky charges INdigital for the same  
25 services.

1 Q. ARE YOU AWARE OF ANY CIRCUMSTANCES WHERE ONE CARRIER  
2 MIGHT CHARGE A DIFFERENT RATE FOR THE SAME PRODUCT OR  
3 SERVICE THAN THE OTHER CARRIER UNDER AN ICA?

4 A. I am only aware of this in one very limited circumstance. The Code of Federal  
5 Regulations allows a carrier to charge asymmetrical rates for the termination of  
6 traffic subject to local reciprocal compensation if the non-ILEC entity submits a  
7 cost study:

8 A state commission may establish asymmetrical rates for transport and  
9 termination of telecommunications traffic only if the carrier other than the  
10 incumbent LEC (or the smaller of two incumbent LECs) proves to the state  
11 commission on the basis of a cost study using the forward-looking  
12 economic cost based pricing methodology described in §§51.505 and  
13 51.511, that the forward-looking costs for a network efficiently configured  
14 and operated by the carrier other than the incumbent LEC (or the smaller  
15 of two incumbent LECs), exceed the costs incurred by the incumbent LEC  
16 (or the larger incumbent LEC), and, consequently, that such that a higher  
17 rate is justified. C.F.R. § 51.711(b).

18  
19 Under such circumstances, a CLEC is allowed to establish a reciprocal  
20 compensation rate that differs from the ILEC's rate, but only if such rate is  
21 justified by a cost study and approved by a state commission. Absent a cost  
22 study justifying a different reciprocal compensation rate, the ILEC's cost-based  
23 rates would apply to both parties for local reciprocal compensation.<sup>6</sup> Beyond the  
24 aforementioned rule allowing for an asymmetrical reciprocal compensation rate, I  
25 am not aware of any circumstances where a rate contained in an ICA would be  
26 different depending upon which carrier is applying the rate to its billings.

27

---

<sup>6</sup>An exception to the application of cost-based reciprocal compensation rates occurs for intercarrier compensation of locally-dialed ISP-Bound traffic.

1 Q. HAS INDIGITAL PRESENTED A COST STUDY FOR ITS 911/E911  
2 SERVICES?

3 A. No. INdigital has not proposed any pricing for whatever 911/E911 services it  
4 intends to offer, nor does INdigital have a tariff describing what its services may  
5 provide or cost. Consistent with all other provisions contained within an ICA, it is  
6 reasonable – especially with the extremely limited knowledge of INdigital’s  
7 products and services – to price like services at like rates. INdigital’s pricing for  
8 similar 911/E911 services should contain the same rates as similar services  
9 offered by AT&T Kentucky.

10 Q. DO YOU KNOW WHY INDIGITAL BELIEVES IT SHOULD BE ALLOWED TO  
11 CHARGE AT&T KENTUCKY A DIFFERENT RATE?

12 A. INdigital’s position statement in the DPL merely states that “AT&T Kentucky has  
13 an undoubtedly lower cost structure than INdigital.” That is sheer speculation.  
14 Indeed, as a newer entrant to the market for 911 services, INdigital may well be  
15 using different equipment or systems than AT&T Kentucky, and may in fact have  
16 a lower cost structure.

17 Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

18 A. The Commission should adopt AT&T Kentucky’s language, which applies  
19 reciprocal rates to reciprocal services.

20 ***GTC Issue 7 (Section 16.7):***

21 ***AT&T: What is the appropriate language to be included in***  
22 ***Section 16.7 of the interconnection agreement?***

23  
24 ***INdigital: Should the limitation of liability related to 911 service***  
25 ***be mutual?***  
26



1 **Joint Alt 911 Issue 7 (Sections 11.5, 11.6):**

2

3 ***Should the parties have mutual indemnity obligations with respect to***  
4 ***claims arising from access to or use of each party's respective 911/E911***  
5 ***systems?***

6 **Q. WHAT IS THE DISPUTE CONCERNING SECTION 16.7 OF THE GTCs AND**  
7 **SECTIONS 11.5 AND 11.6 OF ALTERNATE ATTACHMENT 05 – 911/E911?**

8 A. The dispute centers on appropriate limitation of liability language in Section 16.7  
9 of the GTCs and the appropriate indemnification language in Sections 11.5 and  
10 11.6 of Alt 911. This is an issue that AT&T Kentucky believes is more of a legal  
11 nature and will be addressed in AT&T Kentucky's post-hearing brief.

12 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

13 A. Yes.

14

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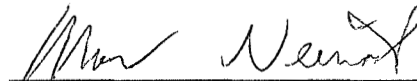
COMMONWEALTH OF KENTUCKY

KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF Collin

STATE OF Texas

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Mark Neinast, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2009-00438, *In the Matter of: Petition of Communications Venture Corporation d/b/a INdigital Telecom for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996* and if present before the Commission and duly sworn, his statements would be set forth in the annexed direct testimony consisting of 12 pages and 0 exhibits.

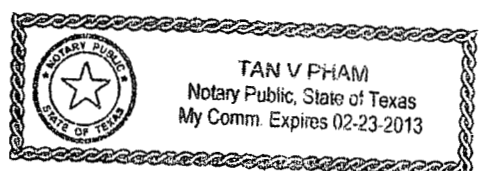
  
\_\_\_\_\_  
Mark Neinast

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 10 DAY OF JUNE, 2010

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 2/23/2013

820617



1 AT&T KENTUCKY

2 DIRECT TESTIMONY OF MARK NEINAST

3 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

4 DOCKET NO. 2009-00438

5 JUNE 15, 2010

6  
7 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

8 A. My name is Mark Neinast. My business address is 308 S. Akard, Dallas, Texas  
9 75202.

10 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

11 A. I am employed by AT&T Services, Inc. as an Associate Director – Network  
12 Regulatory in AT&T's Network Planning and Engineering Department. My  
13 primary responsibility is to represent AT&T's various operating companies,  
14 including BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T  
15 Kentucky") in the development of network policies, procedures, and plans from  
16 both a technical and regulatory perspective.

17 **Q. WHAT ARE YOUR RESPONSIBILITIES?**

18 A. I assist in developing corporate strategy associated with 9-1-1, interconnection,  
19 switching, Signaling System 7 ("SS7"), call-related databases, and emerging  
20 technologies such as Internet Protocol ("IP")-based technologies and services. I  
21 am also responsible for representing the company's network organization in  
22 negotiations, arbitrations, and disputes with Competitive Local Exchange Carriers  
23 ("CLECs") and Wireless Carriers.

1 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

2 A. I have a Bachelor of Science degree in Business Administration from the  
3 University of Texas at Dallas, with a double major in Management Information  
4 Systems and Behavioral Management. I have also attended numerous training  
5 classes, including:

- 6 — 1/1AESS, 2/2BESS, 3ESS, 5ESS, DMS100, Ericsson AXE Switching
- 7 — Translations Routing and Charging
- 8 — Access Signaling System 7
- 9 — AIN Network Operations and Maintenance
- 10 — LNP Local Number Portability Operations
- 11 — DSC STP Basic Methods of Operation
- 12 — Principles of Digital Transmission
- 13 — Network Fundamentals

14 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

15 A. I have been employed by AT&T for over 34 years, primarily in the network  
16 organization. This includes seven years in non-management positions in Central  
17 Offices as a technician. I also spent two years as a training instructor for  
18 electronic switching systems and then four years managing technicians in  
19 Central Offices and a Network Operations Center (“NOC”). I worked as a staff  
20 manager for the North Texas Network Operations Division for five years. In that  
21 role, I supported NOC functions and managed major switching system projects.  
22 Subsequently, as an Area Manager in a NOC Translations Center for over seven  
23 years, I was responsible for managing the switch translations for over 100  
24 switches. I also successfully managed many other major network projects,  
25 including over 60 analog-digital switching dial-to-dial and 16 analog-digital 911  
26 conversions, as well as the implementation of Local Number Portability (“LNP”) in  
27 all of these switching systems.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY**  
2 **COMMISSIONS?**

3 A. I have offered expert testimony on matters involving network design and network  
4 operations in numerous cases at state regulatory commissions including the  
5 Arkansas Public Service Commission, California Public Utilities Commission,  
6 Connecticut Department of Public Utility Control, Florida Public Service  
7 Commission, Illinois Commerce Commission, Indiana Utility Regulatory  
8 Commission, Kansas Corporation Commission, Kentucky Public Service  
9 Commission, Public Utilities Commission of Ohio, Oklahoma Corporation  
10 Commission, Texas Public Utility Commission, Washington State Utilities and  
11 Transportation Commission, and the Federal Communications Commission.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. In my testimony, I explain the network and technical aspects relating to the  
14 issues in Alternate Attachment 05 911/E911 (Service Provider) between INdigital  
15 and AT&T Kentucky. Due to the previous Commission ruling on the threshold  
16 issue of whether INdigital's 911 service qualifies as "telephone exchange service"  
17 or "exchange access," the issues associated with Generic Attachment 05  
18 911/E911 (CLEC) are not being addressed here, because that Attachment is  
19 designed specifically and only for the situation where the interconnecting CLEC  
20 provides normal CLEC service and sends all of its end-users' 911 calls to AT&T  
21 Kentucky for delivery to a Public Safety Answering Point (PSAP) served by AT&T  
22 Kentucky. INdigital does not purport to provide that kind of service where it  
23 simply needs to hand-off 911 calls to AT&T Kentucky, but rather says it will

1 provide 911 service directly to PSAPs. The Attachment to the Parties'  
2 Interconnection Agreement (“ICA”) proposed by AT&T Kentucky for INdigital’s  
3 situation is Alternate Attachment 05 911/E911 (Service Provider) contained in  
4 AT&T Kentucky’s Issue Matrix (Exhibit A) filed with its response to INdigital’s  
5 petition for arbitration. Accordingly, in light of INdigital’s unique position and the  
6 Commission’s ruling on the threshold issue (which AT&T Kentucky reserves the  
7 right to appeal), I will be discussing Alternate Attachment 05 911/E911 (Service  
8 Provider) Issues 3, 4, and 5 as defined in AT&T Kentucky’s Issues Matrix. I  
9 assume INdigital will also limit its testimony to the issue in Alternate Attachment  
10 05, but I reserve the right to respond to any issues INdigital may raise with regard  
11 to Generic Attachment 05 911/E911 (CLEC).

12 **ALTERNATE ATTACHMENT 05 911/E911:**

13 ***AT&T Issue 3: How should the “primary” provider of selective routing be***  
14 ***determined? (Sections 4.1.1.1 and 6.1.1.1)***

15  
16 ***INdigital Issue 4: How should the “primary” provider of selective routing***  
17 ***be determined? (Section 6.1.1.1)***

18  
19 **Q. WHAT IS THE DISPUTE IN ALTERNATE ATTACHMENT 05 AT&T ISSUE 3**  
20 **AND INDIGITAL ISSUE 4?**

21 A. The dispute centers around how to decide which carrier’s selective router  
22 performs the “primary” selective router function when there is a “split wire center.”  
23 AT&T Kentucky proposes that the primary selective router be determined either  
24 by mutual agreement with INdigital or, if that fails, by using the established  
25 system based on which carrier serves the majority of network access lines in the  
26 wire center. INdigital proposes that the primary selective router be determined

1 based on “the E911 Customer’s stated preference” – that is, the PSAP’s stated  
2 preference, though it does not specify which PSAP. If no preference is  
3 expressed, INdigital would agree to use the established system based on which  
4 carrier serves the majority of access lines in the wire center.

5 **Q. WHAT IS A SPLIT WIRE CENTER?**

6 A. A “split wire center” is a wire center that includes two or more overlapping PSAP  
7 jurisdictions, where the PSAPs are served by different 911 system service  
8 providers (e.g., one PSAP served by AT&T Kentucky and one PSAP served by  
9 INdigital). Situations with split wire centers occur infrequently today because  
10 the incumbent local exchange carriers (“ILECs”) are typically the 911 system  
11 service providers, so these situations arise only when PSAPs are served by two  
12 different ILECs which happen to serve parts of the same wire center. In the  
13 event of 911 system service provider competition, I would expect split wire  
14 centers to become more prevalent.

15 **Q. HOW ARE 911 CALLS DIRECTED TO THE PROPER PSAP IN A SPLIT WIRE**  
16 **CENTER?**

17 A. ILECs have long used a primary/secondary Selective Router system to route 911  
18 calls in split wire centers. Under this system, all 911 calls in a split wire center go  
19 to the “primary” selective router, which then either routes the calls directly to a  
20 PSAP served by that router or, if necessary, sends the calls to the “secondary”  
21 selective router (the one owned by the other carrier serving a PSAP for that wire  
22 center), which then sends the calls to the PSAP served by that router. The  
23 determination of which carrier’s selective router is primary and which is



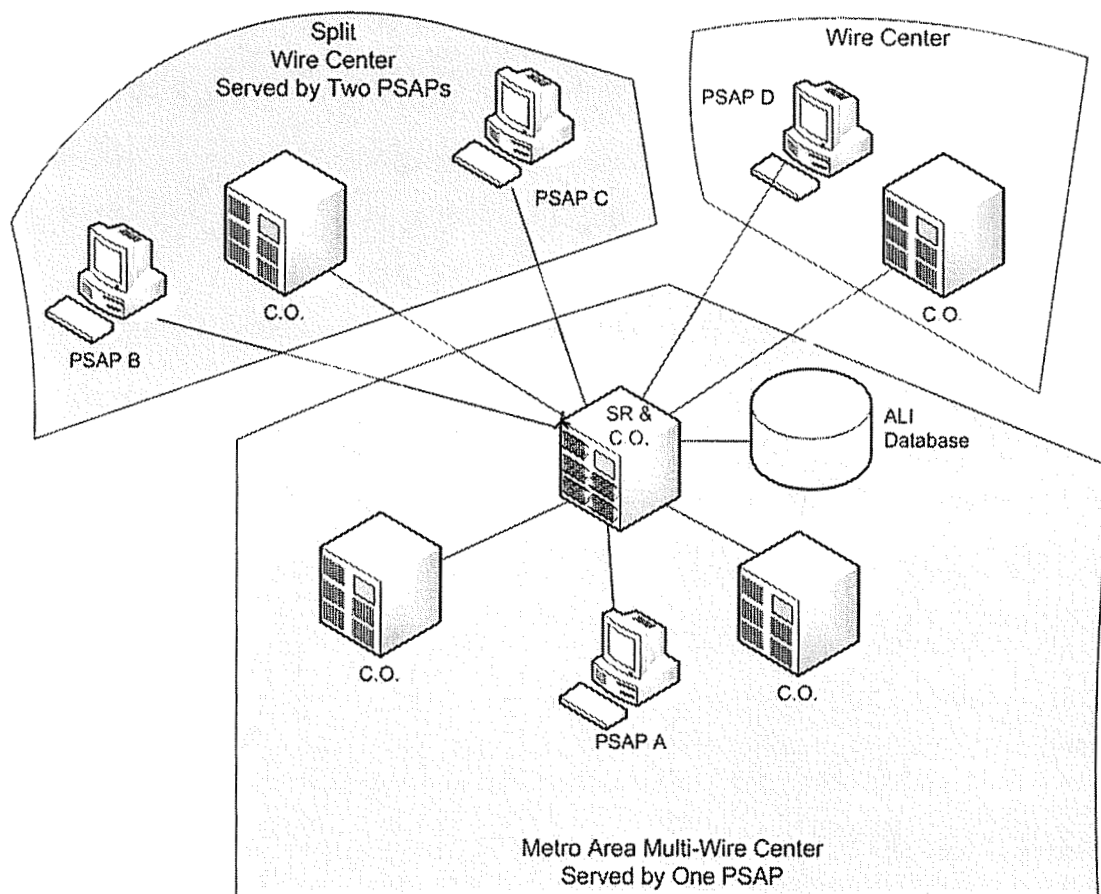
1 secondary has typically been based on which router serves the PSAP that serves  
2 the clear majority of access lines in the wire center. This is the fairest, most  
3 logical, and most efficient method for routing 911 calls in split wire centers and is  
4 the method that carriers in the industry continue to use today. AT&T Kentucky  
5 and INdigital have agreed to continue using that well-established system, as  
6 reflected in Sections 4.1.1.1 and 6.1.1.1, as a default position. The only  
7 disagreement concerns how to determine which carrier will be the primary  
8 selective router in the first instance.

9 For reference, below is a diagram that shows how one central office  
10 serving PSAPs B and C are split.<sup>1</sup> In the diagram, a selective router serves  
11 PSAP A in a major metropolitan area with multiple wire centers, PSAPs B and C  
12 serve a split wire center, and PSAP D serves an individual wire center.

13  
14  
15  
16 **[DIAGRAM ON FOLLOWING PAGE]**  
17  
18  
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20

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<sup>1</sup> A wire center boundary follows the local loop cable footprint serving a specific geographic area and may or may not overlap municipal jurisdictions. Since PSAPs typically follow municipal or other governmental jurisdictions, a wire center may encompass the territory of two or more PSAPs that are served by different carriers (e.g., in this case, one by AT&T Kentucky and one by INdigital) and thus be “split.”



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**Q. HOW DOES AT&T KENTUCKY PROPOSE TO DETERMINE THE PRIMARY AND SECONDARY SELECTIVE ROUTERS IN WIRE CENTERS SPLIT WITH INDIGITAL?**

A. As the proposed ICA language shows, AT&T Kentucky would select the primary selective router either by mutual agreement with INdigital or, if that fails, by using the established system based on which carrier serves the PSAP(s) that serves the majority of network access lines in the wire center. The disputed ICA language states as follows (AT&T Kentucky proposed language in bold, INdigital proposed language in bold italics):

4.1.1.1 Where ***an*** 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)

1 to establish call routing and/or call handoff arrangements, (ii) to establish  
2 which E911 Service provider will serve as the “primary” Selective Routing  
3 provider for direct trunking from the split wire center, determined by the  
4 **E911 Customer’s stated preference or, if no preference is expressed,**  
5 **mutual agreement by the 911 systems service providers, or** a clear  
6 majority of end users, based on the Number of Network Access Lines  
7 (NALs) served by the Designated Primary Wireline Service Provider; and  
8 (iii) to establish which 911/E911 Service provider will serve as the  
9 “secondary” Selective Routing provider receiving a call hand-off from the  
10 primary Selective Routing provider.

11 ...  
12 6.1.1.1Where an End Office serves End Users both within and outside of  
13 the CLEC network serving area, AT&T Kentucky shall work cooperatively  
14 with CLEC and the affected E911 Customer(s) (i) to establish call routing  
15 and/or call handoff arrangements, (ii) to establish which E911 Service  
16 provider will serve as the “primary” Selective Routing provider for direct  
17 trunking from the split wire center, determined by the E911 Customer’s  
18 **stated preference or, if no preference is expressed, as mutually**  
19 **agreed to by the 911 systems service providers, or** a clear majority of  
20 end users, based on the Number of Access Lines (NALs) served by the  
21 Designated Primary Wireline Service Provider; and (iii) to establish which  
22 911/E911 Service provider will serve as the “secondary” Selective Routing  
23 provider receiving a call hand-off from the primary Selective Routing  
24 provider.

25  
26 **Q. HOW DOES INDIGITAL PROPOSE TO DETERMINE THE PRIMARY**  
27 **SELECTIVE ROUTER??**

28 A. INdigital would determine the primary selective router based on “the E911  
29 Customer’s stated preference” – that is, the PSAP’s stated preference. If no  
30 preference is expressed, INdigital would agree to use the established systems  
31 based on which carrier serves the majority of access lines.

32 **Q. WHY SHOULD INDIGITAL’S PROPOSAL NOT BE ACCEPTED?**

33 A. INdigital’s proposal has two main flaws. First, in any split wire center there will  
34 be at least *two* PSAPs involved, and INdigital’s language does not state which  
35 carrier’s PSAP Customer would get to select the primary selective router.  
36 Second, the selection of the primary selective router is really a network

1 arrangement that affects the two carriers serving the PSAPs, not the PSAPs  
2 themselves. Thus, the carriers themselves, not the PSAPs, should first attempt  
3 to agree between themselves which of them will be the primary selective router,  
4 as provided in AT&T Kentucky's proposed language. Then, if they cannot agree,  
5 it should be determined by an objective measure based on the number of access  
6 lines served.

7 **ALTERNATIVE ATTACHMENT 05 911/E911 ISSUE 4 (Section 6.1.1):**

8 ***AT&T: Does the word "route" in Section 6.1.1 appropriately determine the***  
9 ***method of transporting calls between the parties of this agreement?***

10  
11 ***INdigital: Should 911 calls from AT&T Kentucky End Offices be processed***  
12 ***by AT&T Kentucky's selective router prior to delivery to INdigital Telecom***  
13 ***for ultimate delivery to the 911/E911 Customer?***

14  
15 **Q. WHAT IS THE DISPUTE IN ALTERNATE ATTACHMENT 05 ISSUE 4?**

16 A. It is not clear what the dispute is in Issue 4. The only disputed language is in the  
17 sentence of Section 6.1.1 that deals with split wire centers. That sentence states  
18 as follows:

19 In the event **AT&T Kentucky's** End Office has End Users served  
20 by more than one E911 Selective Router network, **AT&T Kentucky**  
21 will **transport route** 911 calls **from its End Offices** to the  
22 appropriate E911 Selective Router location consistent with the  
23 terms of section 6.1.1.1, below.  
24

25 AT&T Kentucky's language says that in a split wire center AT&T Kentucky will  
26 "route 911 calls from its End Offices to the appropriate E911 Selective Router  
27 location consistent with the terms of section 6.1.1.1, below." As discussed  
28 above, Section 6.1.1 reflects the Parties' agreement to use the  
29 primary/secondary selective router system in split wire centers, so AT&T  
30 Kentucky's language really just says that in a split wire center it will route 911

1 calls to the appropriate selective router, consistent with the primary/secondary  
2 selective router system. INdigital, by contrast, proposes language saying that  
3 “AT&T Kentucky will transport 911 calls” to the proper selective router consistent  
4 with the primary/secondary selective router system.

5 **Q. DO YOU KNOW WHY INDIGITAL WANTS TO USE THE WORD**  
6 **“TRANSPORT” INSTEAD OF “ROUTE” AND TO EXCLUDE THE WORDS**  
7 **“FROM [AT&T KENTUCKY’S] END OFFICES”?**

8 A. No. As I noted above, INdigital has agreed to use the primary/secondary  
9 selective router system in split wire centers. Under that system, all 911 calls in  
10 the wire center go first to the primary selective router. If AT&T Kentucky  
11 operates the primary selective router, it will use that selective *router* to “*route*” the  
12 911 calls to the proper PSAP – either by sending them directly to the PSAP  
13 served by AT&T Kentucky or sending them to INdigital’s selective router (the  
14 secondary selective router) for delivery to the PSAP served by INdigital. In my  
15 experience, the terms “route” or “routing” refer to the switching of a call, which is  
16 what the primary selective router does. Given this, I do not understand why  
17 INdigital would want to substitute the term “transport” instead. Similarly, since  
18 AT&T Kentucky’s selective routers will be located at its end offices, I do not  
19 understand why INdigital opposes the phrase “from its End Offices.”

20 **Q. INDIGITAL’S POSITION STATEMENT IN THE DPL ON THIS ISSUE SAYS**  
21 **THAT THE “ONLY REASONS AT&T KENTUCKY MIGHT WANT TO ROUTE**  
22 **THE TRAFFIC FIRST ARE TO INCREASE ITS REVENUE FROM INDIGITAL**

1 TELECOM AND TO THEREBY DRIVE UP THE COST OF INDIGITAL  
2 TELECOM'S 911 OFFERINGS . . . ." IS THAT CORRECT?

3 A. Absolutely not. It does not even make sense. As I have explained, the only  
4 situation in which AT&T Kentucky would switch (route) a call at its selective  
5 router before sending it to INdigital would be in a split wire center situation where  
6 AT&T Kentucky serves as the primary selective router. AT&T Kentucky *does not*  
7 *charge INdigital for this switching (routing)* (just as INdigital will not charge AT&T  
8 Kentucky for such switching (routing) when INdigital is the primary selective  
9 router). Thus, the idea that AT&T Kentucky is seeking to squeeze revenue from  
10 INdigital or drive up INdigital's costs is completely unfounded.

11 **ALTERNATIVE ATTACHMENT 05 ISSUE 5 (Section 7.3.2):**

12 **AT&T: Is the term "customer" properly stated in Section 7.3.2?**

13  
14 **INdigital: Should AT&T Kentucky's 911/E911 Customer support tandem-to-**  
15 **tandem transfer when such PSAP-to-PSAP call transfer is requested with**  
16 **an INdigital Telecom 911/E911 Customer?**

17  
18 **Q. WHAT IS THE DISPUTE IN ALTERNATIVE ATTACHMENT 05 ISSUE 5?**

19 A. The issue involves PSAP-to-PSAP call transfers when AT&T Kentucky and  
20 INdigital serve PSAPs in contiguous areas. The PSAP-to-PSAP call transfer  
21 feature is implemented when both PSAPs agree to transfer and receive 911 calls  
22 to/from each other and request that AT&T Kentucky and INdigital implement that  
23 capability. Based upon further review, AT&T Kentucky can accept INdigital's  
24 proposed language. Issue 5 in Alternate Attachment 05, PSAP-to-PSAP call  
25 transfers should be resolved.

26

1 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

2 A. Yes.

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