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July 14, 2010

**VIA COURIER**

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

**RECEIVED**  
JUL 14 2010  
PUBLIC SERVICE  
COMMISSION

Re: Petition of Communications Venture Corporation,  
d/b/a INdigital Telecom for Arbitration of Certain  
Terms and Conditions of Proposed Interconnection  
Agreement with BellSouth Telecommunications, Inc.  
d/b/a AT&T Kentucky, Pursuant to the Communications  
Act of 1934, as Amended by the Telecommunications Act of 1996  
KPSC 2009-00438

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of Rebuttal 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

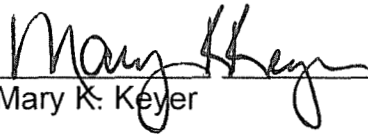
cc: Party of Record

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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 14th day of July 2010.

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

  
Mary K. Keyer



COMMONWEALTH OF KENTUCKY

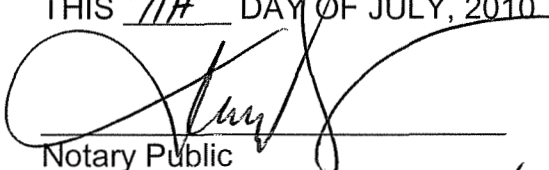
BEFORE THE PUBLIC SERVICE COMMISSION

COUNTY OF Cook  
STATE OF Illinois

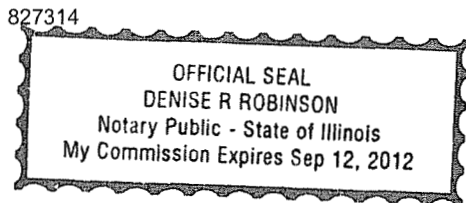
BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Deborah Fuentes Niziolek, who being by me first duly sworn deposed and said that she is appearing as a witness on behalf of BellSouth Telecommunications, Inc. 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 rebuttal testimony consisting of 13 pages and 0 exhibits.

  
DEBORAH FUENTES NIZIOLEK

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 17th DAY OF JULY, 2010

  
Notary Public

My Commission Expires: 9/12/2012



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AT&T KENTUCKY  
REBUTTAL TESTIMONY OF DEBORAH FUENTES NIZIOLEK  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
DOCKET NO. 2009-00438

JULY 14, 2010

**Issues:**  
Structure Access Issues 2, 3, 5, and 6;  
BFR  
Issues; Collocation Issue 2;  
UNE Issues;  
CHC Issue

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. ARE YOU THE SAME DEBORAH FUENTES NIZIOLEK WHO  
10 PREVIOUSLY FILED DIRECT TESTIMONY?

11 A. Yes, I am.

12 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY AND  
13 HOW IS IT ORGANIZED?

14 A. I will be addressing certain issues identified in the direct testimony of  
15 INdigital witness Brent Cummings.

16 Part I of my testimony addresses issues identified in Attachment 3,  
17 Structure Access.

18 Part II of my testimony addresses issues identified in Attachment 8,  
19 Bona Fide Request.

20 Part III of my testimony addresses issues identified in Attachment  
21 12, Collocation.

22 Part IV of my testimony addresses issues identified in Attachment  
23 13, 251(c)(3) UNEs.

1                   Finally, Part V of my testimony addresses issues identified in  
2 Attachment 15, Coordinated Hot Cuts.

3                   There are several issues that I addressed in my direct testimony  
4 that neither INdigital witness addressed in his testimony. Since INdigital  
5 did not address those issues in testimony, I will not address them further  
6 in my rebuttal testimony.

7 **Q.   WHAT ARE THE ISSUES THAT WERE NOT ADDRESSED IN**  
8 **INDIGITAL'S DIRECT TESTIMONY?**

9 A.    The disputed issues that INdigital chose not to address in testimony are:

10 ***Structure Access, Issue 1 (Section 6.2.1.1):***

11  
12                   *AT&T: Should AT&T Kentucky absorb costs associated with research,*  
13                   *review and copying of records?*

14  
15                   *INdigital: In addition to paying for the production and mailing of records*  
16                   *relating to structure access, should INdigital Telecom pay for the cost of*  
17                   *employee time spent gathering and copying records?*

18  
19 ***Structure Access, Issue 3 (Section 16.1)***

20  
21                   *AT&T/INdigital: Should INdigital Telecom pay for the cost of post-*  
22                   *construction inspections?*

23  
24 ***Structure Access Issue 4 (Section 16.3.5):***

25  
26                   *AT&T/INdigital: Should the time attributable to make-ready work be*  
27                   *included in INdigital Telecom's time to bring Facilities into compliance?*

28  
29                   INdigital also chose not to address any of the seven different BFR issues  
30 specifically.

31

32

33

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

2 Q. **WHAT IS YOUR OVERALL RESPONSE TO MR. CUMMINGS'S DIRECT**  
3 **TESTIMONY REGARDING STRUCTURE ACCESS, ATTACHMENT 3?**

4 A. Mr. Cummings has chosen to only provide a high level discussion of what  
5 he claims are the two issues at hand for Attachment 3, the first issue being  
6 AT&T Kentucky's ability to charge INdigital for work done by AT&T  
7 Kentucky (Structure Access Issues 2, 3, and 5) and the second issue  
8 relating to indemnification (Structure Access Issue 6).

9 Unlike Mr. Cummings's direct testimony, my direct testimony  
10 specifically addressed, in detail, each of the issues identified as  
11 unresolved on the jointly filed Decision Point List ("DPL"). My rebuttal  
12 testimony, however, will only address Mr. Cummings's high level  
13 discussion.

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

15  
16 *Should INdigital Telecom pay for AT&T Kentucky to monitor the entrance*  
17 *and exit of Facilities?*  
18

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

20  
21 *Should INdigital Telecom pay for the cost of post-construction*  
22 *Inspections?*  
23

24 ***Attachment 3 Issue 5 (Section 19.7.1): AT&T:***

25  
26 *Should CLEC pay the costs for storage, in relation to AT&T Kentucky's*  
27 *removal of CLEC's facilities?*  
28

29 Q. **CAN YOU GENERALLY DESCRIBE WHAT THE DISPUTES ARE IN**  
30 **ATTACHMENT 3 ISSUES 2, 3, AND 5?**



1 A. Generally, Structure Access Issues 2 and 3 involve costs for AT&T  
2 Kentucky to monitor and inspect its facilities where INdigital has access to  
3 those facilities and has done something to require an inspection or extra  
4 monitoring. Issue 5 addresses storage costs, which AT&T Kentucky  
5 considers to be resolved by INdigital's agreement to language in Section  
6 19.6.1 of Attachment 3 that requires INdigital to pay the storage costs at  
7 issue.

8 **Q. MR. CUMMINGS CLAIMS (AT 14-15) THAT AT&T KENTUCKY IS**  
9 **TRYING TO MAKE INDIGITAL PAY FOR ACTIVITIES THAT AT&T**  
10 **KENTUCKY PERFORMS "AT ITS OWN DISCRETION" AND IS**  
11 **MERELY TRYING TO "INCREASE INDIGITAL'S OPERATING COSTS."**  
12 **IS THAT ACCURATE?**

13 A. No. Mr. Cummings points to Sections 16.1, 16.2.1, and 19.7.1 as  
14 examples of charges that AT&T Kentucky "would like to pass off on  
15 INdigital."<sup>1</sup> As I explained in my direct testimony, however, INdigital would  
16 only have to pay the charges identified in Sections 16.1 and 16.2.1 if (a)  
17 INdigital has done something that warrants a dispatch by AT&T Kentucky,<sup>2</sup>  
18 and (b) if AT&T Kentucky has a legitimate cause for concern and a site  
19 visit is necessary.<sup>3</sup> In either situation, AT&T Kentucky should be able to  
20 charge the cost-causer (in this case, INdigital) for either the dispatch or  
21 the post-construction visit (whichever applies in the given situation).

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<sup>1</sup> Direct Testimony of Brent Cummings, page 14, line 11.

<sup>2</sup> Direct Testimony of Deborah Fuentes Niziolek, page 7, lines 15-18.

<sup>3</sup> *Id.*, page 10, lines 8-10.

1 Q. MR. CUMMINGS ALSO CLAIMS (AT 14) THAT ATTACHMENT 3  
2 ALREADY “PROVIDES REMEDIES FOR FAILURE TO ABIDE BY ITS  
3 TERMS AND CONDITIONS,” SO THE PROVISIONS AT ISSUE HERE  
4 ARE NOT NECESSARY. IS HE CORRECT?

5 A. No. Mr. Cummings does not identify what remedy provisions he is talking  
6 about, nor does he explain how those provisions address Issues 2 and 3,  
7 or why they should absolve INdigital from paying for monitoring and  
8 inspection costs that INdigital causes. None of the remedy provisions in  
9 Attachment 3 covers the kinds of monitoring and inspection costs at issue  
10 in this arbitration.

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

12  
13 *Should the indemnification provisions of the GT&C govern the structure*  
14 *access, and if not, should the indemnification provisions relating to*  
15 *damage to Facilities be mutual in nature?*  
16

17 Q. MR. CUMMINGS ALSO ADDRESSES (AT 15) THE SPECIFIC  
18 INDEMNIFICATION PROVISIONS PROPOSED BY AT&T KENTUCKY  
19 FOR ATTACHMENT 3, WHICH IS THE SUBJECT OF STRUCTURE  
20 ACCESS ISSUE 6. HOW DO YOU RESPOND?

21 A. As I stated in my direct testimony,<sup>4</sup> AT&T Kentucky will address this issue  
22 in its post-hearing briefs.

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

24 Q. DO YOU HAVE ANY PRELIMINARY OBSERVATIONS REGARDING  
25 THE BFR ISSUES?

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<sup>4</sup> *Id.*, page 13.

1 A. AT&T Kentucky's BFR process has been in place and included in  
2 interconnection agreements for a long time, and has always included  
3 provisions requiring the CLEC that requests the BFR to pay for AT&T  
4 Kentucky's costs of addressing the BFR. Mr. Cummings does not discuss  
5 any of the specific BFR issues that INdigital asked to arbitrate, but rather  
6 provides only a high level discussion of whether AT&T Kentucky should be  
7 allowed to charge anything for the work it would perform and the costs it  
8 would incur in evaluating any BFR submitted by INdigital.

9 **Q HOW DO YOU RESPOND TO MR. CUMMINGS'S CLAIMS (AT 16)**  
10 **THAT IN THE BFR PROVISIONS AT ISSUE, AT&T KENTUCKY IS**  
11 **MERELY TRYING TO "PASS ALONG CERTAIN COSTS AND/OR**  
12 **EXPENSES TO INDIGITAL"?**

13 A. Mr. Cummings is looking at things backwards. It is not as if AT&T  
14 Kentucky incurs BFR costs on its own initiative and then tries to pass  
15 those costs onto a CLEC. Rather, when AT&T Kentucky incurs costs for  
16 evaluating or completing a BFR, it will only be because INdigital came to  
17 AT&T Kentucky and specifically requested that AT&T Kentucky evaluate  
18 and complete the BFR. Were it not for INdigital's specific BFR, AT&T  
19 Kentucky would not incur any of the costs at issue. As the cost-causer,  
20 INdigital is responsible for those costs.

21 **Q. MR. CUMMINGS ALSO SAYS (AT 16) THAT INDIGITAL SHOULD NOT**  
22 **HAVE TO PAY ANY COSTS FOR "A STATUTORILY QUALIFIED BONA**  
23 **FIDE REQUEST." PLEASE RESPOND.**

1 A. I do not understand what Mr. Cummings is referring to, and he appears to  
2 misunderstand the purpose of the BFR process. A CLEC uses the BFR  
3 process to request elements that do not currently exist in the CLEC's  
4 contract. This includes new unbundled elements or modifications to  
5 previously identified network elements. AT&T uses the BFR process to  
6 determine technical feasibility of interconnection or the provisioning of  
7 unbundled network elements. For those items found to be technically  
8 feasible, the BFR process is used to provide the terms and timetable for  
9 providing the requested items. All of this is done, however, at the request  
10 of INdigital, and therefore it is appropriate that INdigital compensate AT&T  
11 Kentucky. By contrast, when AT&T Kentucky is implementing a new  
12 product or service that it must provide on an industry-wide basis to  
13 CLECs, it does so outside the BFR process.

14 **Q. MR. CUMMINGS ALSO ARGUES (AT16) THAT INDIGITAL SHOULD**  
15 **NOT PAY ANY BFR COSTS AS LONG AS IT SUBMITS THE BFR IN**  
16 **GOOD FAITH. IS THAT RELEVANT?**

17 A. No. AT&T Kentucky hopes that CLECs will always submit BFRs in good  
18 faith, but that does not relieve them from paying the costs of the BFR.  
19 AT&T Kentucky is not required to research and develop, free of charge,  
20 new products and services at the request or whim of a CLEC. AT&T  
21 Kentucky incurs costs for evaluating and completing BFRs, and it does not  
22 matter that a BFR is submitted in good faith or whether the BFR is later  
23 cancelled, because in either case, AT&T Kentucky's costs to evaluate and

1 complete a good-faith BFR are still real costs that are caused by INdigital  
2 and INdigital should be required to pay them.

3 **Q. IN HIS DIRECT TESTIMONY, MR. CUMMINGS POINTS TO SECTION**  
4 **3.8 AND STATES THAT INDIGITAL “WILL BE RESPONSIBLE FOR**  
5 **PAYING ALL REASONABLE COSTS INCURRED BY AT&T**  
6 **KENTUCKY UP TO THE DATE OF CANCELLATION.” DO YOU HAVE**  
7 **ANY COMMENTS?**

8 A. I have already addressed this in my direct testimony at pages 27-29. To  
9 reiterate, INdigital, as the cost-causer, should pay the actual costs of  
10 evaluating and completing the BFR regardless of whether it cancels the  
11 BFR. The only difference cancellation makes is that INdigital would only  
12 have to pay AT&T Kentucky’s costs incurred up to the date of cancellation.  
13 If that occurs, INdigital must pay the actual costs AT&T Kentucky has  
14 incurred – not just the costs that INdigital decides, after the fact, were  
15 “reasonable.” AT&T Kentucky will incur documented costs for the work  
16 done at INdigital’s request, and AT&T Kentucky should be compensated  
17 at those documented costs. AT&T Kentucky should not be left to bear  
18 most or all of the cost of the BFR work just because INdigital decides to  
19 cancel the BFR and then dispute which costs were reasonable.

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

21 **Q. WHAT IS YOUR OVERALL RESPONSE TO MR. CUMMINGS’S DIRECT**  
22 **TESTIMONY REGARDING COLLOCATION, ATTACHMENT 12?**

1 A. Mr. Cummings identifies two issues pertaining to Collocation. The first  
2 (Collocation Issue 1) concerns limitation of liability. The second issue  
3 (Collocation Issue 2) concerns a difference of opinion between the Parties  
4 relating to exceptions and material deviations from a collocation  
5 application. Consistent with my direct testimony, AT&T Kentucky believes  
6 the issue relating to limitation of liability is of a legal nature and will  
7 address it in its post-hearing briefs.

8 **Attachment 12 Issue 2 (Section 10.2):**  
9

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

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

17  
18 **Q. WHAT IS THE DISPUTE IN COLLOCATION ISSUE 2?**

19 A. The dispute involves language regarding an acceptance walk-through of a  
20 collocation arrangement by INdigital and any “exceptions” identified as a  
21 result of that walk-through. AT&T Kentucky is responsible for fixing any  
22 exceptions at its cost.

23 **Q. MR. CUMMINGS CLAIMS (AT 18) THAT AT&T KENTUCKY WANTS**  
24 **UNILATERAL AUTHORITY TO DECIDE WHAT QUALIFIES AS AN**  
25 **EXCEPTION, WHEREAS INDIGITAL ‘SIMPLY WANTS A LEVEL**  
26 **PLAYING FIELD AND TO BE TREATED LIKE AN EQUAL PARTY.’ IS**  
27 **THAT ACCURATE?**

1 A. No, it is backwards. It is INdigital's proposed language in Section 10.2 of  
2 Attachment 12 that would give INdigital unilateral authority to decide what  
3 qualifies as an "exception" that AT&T Kentucky must fix at its own cost.  
4 AT&T Kentucky's proposed language in Section 10.2, by contrast, merely  
5 requires mutual agreement by the Parties on what qualifies as an  
6 exception. Given that AT&T Kentucky will bear the cost to remedy any  
7 exception, this mutuality requirement makes perfect sense.

8 **Q. WHAT WOULD HAPPEN IF THE PARTIES COULD NOT AGREE ON**  
9 **WHETHER SOMETHING QUALIFIED AS AN "EXCEPTION"?**

10 A. Either Party could raise the issue under the interconnection agreement's  
11 dispute resolution provisions. Thus, INdigital will not be left without a  
12 remedy.

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

14 A. The Commission should accept AT&T Kentucky's proposed language  
15 because it takes both Parties' positions into consideration and requires  
16 mutual agreement of the Parties.

17 **IV. UNE ISSUES (ATTACHMENT 13)**

18 **Q. WHAT IS YOUR OVERALL RESPONSE TO MR. CUMMINGS'S DIRECT**  
19 **TESTIMONY REGARDING ATTACHMENT 13, UNES?**

20 A. Consistent with my direct testimony, AT&T Kentucky believes this issue is  
21 of a legal nature and will address it in its post-hearing briefs.

22

23

1 V. COORDINATED HOT CUTS ISSUE (ATTACHMENT 15)

2 Q IN HIS DIRECT TESTIMONY (AT 20), MR. CUMMINGS STATES THAT  
3 “INDIGITAL HAS PROPOSED A SINGLE, REASONABLE CHANGE TO  
4 ONE SECTION THAT WOULD SIMPLY REQUIRE THAT AT&T  
5 KENTUCKY WORK COOPERATIVELY WITH INDIGITAL, AS  
6 OPPOSED TO BEING ABLE TO MAKE A UNILATERAL DECISION TO  
7 SUSPEND COORDINATED HOT CUTS... .” HE THEN DISCUSSES  
8 UNEXPECTED OUT-OF-SERVICE AS DETRIMENTS TO INDIGITAL’S  
9 911/E911 SERVICE. WOULD YOU CARE TO RESPOND?

10 A. Yes, I would. First, Mr. Cummings is mixing apples and oranges, in that  
11 he is confusing the function of one service with the functions of another.  
12 CHCs are not designed for deploying 911/E911 facilities, but rather, as the  
13 language in Section 3.2 states, to allow

14 ...the Parties to **coordinate the installation of the SL2 Loops,**  
15 **Unbundled Digital Loops and other Loops** where CHC/OC may  
16 be purchased as an option, to CLEC’s facilities in order to limit the  
17 time an End User may be without service. CHC/OC is available  
18 when the Loop is provisioned over an existing circuit that is  
19 currently providing service to the End User. AT&T Kentucky will  
20 cooperate with CLEC to schedule CHC/OC for physical  
21 conversions at **AT&T Kentucky’s** reasonable discretion during  
22 normal working hours on the committed due date. [Emphasis  
23 added.]

24  
25 Nowhere does the language support or provide for the deployment  
26 of 911/E911 facilities, so Mr. Cummings and INdigital are simply wrong in  
27 objecting to AT&T Kentucky’s language in Section 3.5 of Attachment 15.  
28 Nevertheless, AT&T Kentucky will work cooperatively with INdigital on  
29 CHCs but must retain its ability to suspend work if necessary.



1                   AT&T Kentucky's witness Mark Neinast further discusses the  
2                   special project process used for deploying 911/E911 within the AT&T  
3                   Kentucky network, which will provide Mr. Cummings with a better  
4                   understanding of the AT&T Kentucky method for deploying 911/E911  
5                   facilities.

6   **Q.    DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

7   **A.    Yes, it does.**

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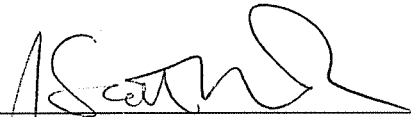


COMMONWEALTH OF KENTUCKY  
KENTUCKY PUBLIC SERVICE COMMISSION

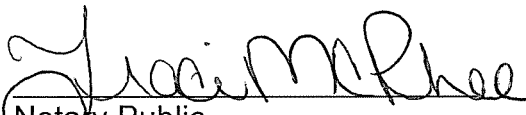
COUNTY OF CONTRA COSTA

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 rebuttal testimony consisting of 20 pages and 3 exhibits.

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

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 7th DAY OF JULY, 2010

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



My Commission Expires: 11/10/2013

1 AT&T KENTUCKY  
2 REBUTTAL TESTIMONY OF J. SCOTT MCPHEE  
3 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 2009-00438  
5 JULY 14, 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. ARE YOU THE SAME SCOTT MCPHEE WHO SUBMITTED DIRECT**  
6 **TESTIMONY IN THIS PROCEEDING?**

7 A. Yes, I am.

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 A. My rebuttal testimony will respond to several assertions made by INdigital  
10 Telecom witness Brent Cummings in his prefiled direct testimony submitted June  
11 15, 2010, in this proceeding.<sup>1</sup> Mr. Cummings avers that INdigital's proposed  
12 language is "more balanced, and thus more reasonable,"<sup>2</sup> yet makes this  
13 assertion in light of unilateral proposals by INdigital that would unreasonably shift  
14 costs and risk to AT&T Kentucky, as I discussed in my direct testimony. INdigital  
15 also opposes language that it agreed to not long ago in Indiana.

16 **Q. ARE THERE ARBITRATION ISSUES THAT WERE NOT ADDRESSED IN**  
17 **INDIGITAL'S DIRECT TESTIMONY?**

18 A. Yes. INdigital provided testimony on only a limited number of disputed issues,  
19 but elected not to submit any testimony on the following issues that I addressed  
20 in my direct testimony:

21

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<sup>1</sup> INdigital's other witness, Mark Grady, did not address any of the specific disputed issues contained in the Parties' Decision Point Lists (DPLs).

<sup>2</sup> Direct Testimony of Brent Cummings, filed June 15, 2010. p. 5, l. 23 ("Cummings Direct").

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

2  
3 *Should Disputed Charges constitute Unpaid Charges?*

4  
5 **GTC Issue 2 (Section 3.7.2):**

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

8  
9 *INdigital: Should the ICA be non-severable?*

10  
11 **GTC Issue 6 (Sections 14.1, 14.8):**

12  
13 *AT&T: What is an appropriate error threshold for the right to conduct follow-up*  
14 *audits?*

15  
16 *INdigital: What is an appropriate error threshold error for the right to conduct*  
17 *follow-up audits?*

18  
19 **GTC Issue 7 (Section 16.7):**

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

22  
23 *INdigital: Should the limitation of liability related to 911 service be mutual?*

24  
25 **Alt 911 Issue 1**

26  
27 *AT&T: Does INdigital have the right to interconnect with AT&T under Section*  
28 *251(c) of the Act for INdigital's provision of competitive 911/E911 services*  
29 *to PSAPs? If so, what is the appropriate language that should be*  
30 *included in the interconnection agreement?*

31  
32 *INdigital: Should this attachment be designated "(Service Provider)?"*

33  
34 **Alt 911 Issue 2 (Section 1.2):**

35  
36 *AT&T: Should only the 911/E911 System Network providers be identified as part*  
37 *of this agreement?*

38  
39 *INdigital: Should this attachment account for the possibility that there may be*  
40 *more than one E911 service provider in a territory?*

1 In my rebuttal testimony below, I will respond only to the issues for which  
2 INdigital provided testimony.

3 **II. GENERAL TERMS AND CONDITIONS (GTC) ISSUES**

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

5  
6 *Should the ICA contain an “evergreen” clause?*

7  
8 **Q. MR. CUMMINGS STATES (AT 13) THAT AT&T KENTUCKY’S PROPOSED**  
9 **TERMINATION LANGUAGE IN GTC SECTION 8 “WOULD REQUIRE THAT**  
10 **THE ICA COME TO AN ABRUPT END UPON THE EXPIRATION OF THE**  
11 **TERM.” IS THIS TRUE?**

12 **A.** No. The Parties have already agreed upon practically all of the terms in Section  
13 8 regarding the “Effective Date, Term and Termination.” Thus, where Mr.  
14 Cummings characterizes the language as “AT&T Kentucky’s,” it is in reality **both**  
15 Parties’ language. As I discussed in my direct testimony, INdigital and AT&T  
16 Kentucky have agreed on language in GTC Section 8.4 (“Termination of  
17 Agreement after Initial Term or Renewal Term Expiration”) that provides for either  
18 termination of the ICA or continuous operation between the Parties after the  
19 initial ICA expiration date. Several scenarios are described in Sections 8.4.1  
20 through 8.4.5 that describe how the Parties would operate in certain  
21 circumstances, including (i) if INdigital and AT&T Kentucky are in active  
22 negotiations to determine successor terms; (ii) if INdigital no longer purchases  
23 services under the ICA; (iii) if either Party seeks to terminate the ICA without  
24 making arrangements for the negotiation of a replacement agreement; and (iv) if  
25 the ICA expires and the Parties have not entered into a new agreement or are

1 not in active negotiations. Under none of those circumstances would the ICA  
2 “come to an abrupt end upon expiration of the term.”

3 **Q. HOW DO YOU RESPOND TO MR. CUMMINGS’S CLAIM THAT GTC SECTION**  
4 **8 “MAKES NO PROVISION FOR THE POSSIBILITY OF RENEWAL, BUT**  
5 **RATHER WOULD REQUIRE THE PARTIES TO AGAIN GO THROUGH THE**  
6 **SUBSTANTIAL TIME AND EXPENSE OF NEGOTIATING A NEW ICA FROM**  
7 **SCRATCH”?**<sup>3</sup>

8 A. The Parties have already agreed to all of the language in Section 8 with the  
9 exception of one sentence proposed by INdigital. Included in the agreed-upon  
10 language are GTC Sections 8.4 through 8.4.5, which I just described and which  
11 provide various scenarios for how the Parties will operate once the ICA expires.  
12 None of these provisions calls for an “abrupt stop” to the terms of the ICA.  
13 Rather, all provisions require appropriate notification between the Parties as to  
14 one or the other Party’s intention of moving forward. Furthermore, there is no  
15 requirement – either implicit or explicit – that would “require” the Parties to  
16 “negotiate a new ICA from scratch.” Nothing in the agreed-upon language would  
17 prohibit the Parties mutually agreeing to either extend the expired ICA, or to  
18 update the ICA by revising only some of its provisions. The issue here is  
19 whether INdigital should have *unilateral* authority to decide how long the current  
20 ICA terms stay in place, rather than giving both Parties a mutual say in that  
21 decision.

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<sup>3</sup> Cummings Direct, p. 13, ll. 15-18.



1 Q. MR. CUMMINGS CLAIMS (AT 13) THAT “THE “EVERGREEN CLAUSE DOES  
2 NOTHING MORE THAN ALLOW *THE PARTIES* TO AUTOMATICALLY  
3 RENEW THE ICA FOR SUCCESSIVE ONE YEAR TERMS.” (EMPHASIS  
4 ADDED). IS THAT TRUE?

5 A. No. Although INdigital has agreed to almost the entirety of GTC Section 8,  
6 INdigital proposes the following addition to Section 8.2.1:

7 *Following the expiration of the Initial Term, the Agreement shall*  
8 *automatically renew for successive one (1) year terms (each, a*  
9 *“Renewal Term”) unless CLEC provides no less than thirty (30) days*  
10 *prior written Notice of its intent to terminate the Agreement at the*  
11 *end of the Initial Term or any Renewal Term.*  
12

13 This language would effectively give INdigital unilateral control to decide whether  
14 or when the ICA would terminate. AT&T Kentucky would have absolutely no  
15 control over the actual termination of the ICA. Whereas evergreen clauses  
16 typically allow for *either* carrier to provide written notice of its intent to terminate  
17 the agreement, INdigital’s proposed language is one-sided and does not allow for  
18 such reciprocity.

19 Q. MR. CUMMINGS STATES (AT 13) THAT INDIGITAL’S PROPOSAL  
20 “PROVIDES AN ‘EVERGREEN’ CLAUSE SIMILAR TO THE SAME TYPE OF  
21 CLAUSE THAT IS IN INDIGITAL’S INDIANA ICA WITH AT&T INDIANA.” IS  
22 THIS ACCURATE?

23 A. No.

24 Q. DOES INDIGITAL’S ICA WITH AT&T INDIANA CONTAIN AN AUTOMATIC  
25 ANNUAL EXTENSION AS INDIGITAL HAS PROPOSED FOR USE IN ITS  
26 AT&T KENTUCKY ICA?

1 A. No. The terms concerning the effective date, term and termination of the AT&T  
2 Indiana/INdigital ICA in Indiana are quite different than what INdigital has  
3 proposed in Kentucky. While the Indiana ICA has provisions to allow for the ICA  
4 to continue after expiration, it also contains provisions to allow **either party** to  
5 terminate the agreement after delivering written notice to the other party of its  
6 intention to terminate the ICA, **at any time** after ICA expiration. The Indiana  
7 provisions are markedly different than INdigital's unilateral proposal in this  
8 proceeding, and provide no support for INdigital's unreasonable attempt to have  
9 exclusive control over the expiration of the ICA. See **Exhibit JSM-1**,  
10 INdigital/AT&T Indiana ICA General Terms and Conditions, Sections 5.3 and 5.4.

11 **Q. HOW DO YOU RESPOND TO MR. CUMMINGS'S STATEMENT THAT**  
12 **INDIGITAL'S PROPOSAL WOULD "AT THE VERY LEAST, ALLOW THE**  
13 **PARTIES TO KEEP THE STATUS QUO UNTIL NEW TERMS AND**  
14 **CONDITIONS CAN BE NEGOTIATED."**<sup>4</sup>

15 A. The Parties have already agreed that the expired ICA would remain in place  
16 while active negotiations are taking place, so Mr. Cummings's statement has no  
17 validity. As I discussed in my direct testimony, the Parties have agreed upon the  
18 following language in GTC Section 8.4.4:

19 If the Parties are in "Active Negotiations" (negotiations *prior to the*  
20 *expiration of the arbitration timeframe* established in the Act under Section  
21 252(b)) or have filed for arbitration with the Commission upon expiration  
22 date of the Agreement AT&T Kentucky shall continue to offer services to  
23 CLEC pursuant to the rates, terms and conditions set forth in this  
24 Agreement until a successor agreement becomes effective between the  
25 Parties. AT&T Kentucky's obligation to provide services under this  
26 Agreement beyond the expiration date conditions upon the Parties  
27 adherence to the timeframes established within Section 252(b) of the Act.

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<sup>4</sup> Cummings Direct, p. 14, l. 1-2.

1 If CLEC does not adhere to said timeframes or CLEC withdraws its  
2 arbitration or seeks an extension of time or continuance of such arbitration  
3 with AT&T Kentucky's consent, AT&T Kentucky may provide Notice to  
4 CLEC that all services provided thereafter shall be pursuant to the rates,  
5 terms and conditions set forth in AT&T Kentucky's then current standard  
6 interconnection agreement ("Generic") as found on AT&T's CLEC Online  
7 website. [Emphasis in original]

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

9 A. The Commission should reject INdigital's proposed evergreen language, which is  
10 one-sided, unreasonable, and usurps previously-agreed provisions which  
11 address how the Parties will operate after ICA expiration.

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

13  
14 *Should INdigital Telecom be required to provide a deposit in the event AT&T*  
15 *Kentucky determines there has been a general impairment of INdigital Telecom's*  
16 *financial stability?*

17  
18 *If so, which deposit language should be used in Section 10.2.2?*

19  
20 **Q. WHAT IS THE ISSUE REGARDING DEPOSITS?**

21 A. AT&T Kentucky has proposed ICA language in GTC Section 10.2.1 that would  
22 allow it to require INdigital to provide a deposit if INdigital either has not  
23 established a good payment record or has a history of late payments. INdigital  
24 opposes such language. Without providing any details to support his claim, Mr.  
25 Cummings asserts that such a provision, along with AT&T Kentucky's proposal in  
26 GTC Section 10.2.2 that a deposit may be requested after INdigital is late with a  
27 payment, "create[s] an expensive threshold for new entrants in a competitive  
28 market to cross."<sup>5</sup>

29  

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<sup>5</sup> Cummings Direct, p. 11, ll. 22-23.

1 Q. MR. CUMMINGS STATES THAT ONLY PAYMENT HISTORY SHOULD BE  
2 USED FOR PURPOSES OF DETERMINING WHETHER A DEPOSIT MAY BE  
3 REQUIRED.<sup>6</sup> IS IT REASONABLE – AND SOUND BUSINESS PRACTICE –  
4 TO CONSIDER INDIGITAL’S OVERALL FINANCIAL HEALTH WHEN  
5 CONSIDERING WHEN A DEPOSIT MAY BE NECESSARY?

6 A. Absolutely. As I discussed in my direct testimony, AT&T has lost hundreds of  
7 millions of dollars after CLEC customers have ceased operations, and requiring  
8 deposits from trade creditors is a standard commercial business practice. In light  
9 of industry history and common practice, deposits are even more important for  
10 CLECs, since AT&T Kentucky cannot deny service to a CLEC customer for lack  
11 of good credit and CLECs can run up significant bills for their wholesale services.  
12 In the normal business world, companies have the option to decline to sell  
13 products and services to certain high-risk customers on open credit terms and  
14 instead demand cash in advance from those customers. Since high-risk CLEC  
15 customers must receive open credit terms, requiring the CLEC to make a  
16 reasonable deposit is one of the few safeguards AT&T Kentucky has against the  
17 risk of payment default.

18 Q. MR. CUMMINGS STATES (AT 11, LINE 5) THAT IT IS UNCLEAR HOW AT&T  
19 KENTUCKY WOULD PERFORM ITS CREDIT ANALYSIS, AND THAT AT&T  
20 KENTUCKY HAS “WITHHELD THE CRITERIA IT USES” FOR SUCH  
21 ANALYSIS. IS THIS TRUE?  
22

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<sup>6</sup> Cummings Direct, p. 11, l. 23 – p. 12, l. 2.

1 A. No, it is not true. Mr. Cummings points to AT&T Kentucky's Response to Initial  
2 Data Request No. 8 to support his contention, yet a review of AT&T Kentucky's  
3 response shows Mr. Cummings allegation is unfounded. Though AT&T  
4 Kentucky objects to the request, AT&T Kentucky's response provided a copy of  
5 the Confidential Credit Application template and said that other information would  
6 be provided upon execution of a proprietary agreement.

7 INdigital did not ask for this confidential material until it sent a draft  
8 proprietary agreement to AT&T Kentucky on the afternoon of June 14, 2010, the  
9 day before INdigital's direct testimony was due. INdigital and AT&T Kentucky  
10 signed a proprietary agreement on July 8, 2010, and AT&T Kentucky forwarded  
11 the proprietary documentation to INdigital on July 9, 2010. The issue is not that  
12 AT&T Kentucky was withholding information from INdigital, but rather the Parties  
13 had not entered into the appropriate Protective Agreement protecting AT&T  
14 Kentucky's proprietary information prior to it being produced to INdigital.

15 **Q. WITH REGARD TO THE APPROPRIATE NUMBER OF LATE PAYMENTS**  
16 **BEFORE AT&T KENTUCKY MAY REQUEST A DEPOSIT, MR. CUMMINGS**  
17 **CITES ON PAGE 11 TO THE POSSIBILITY OF A LATE PAYMENT CAUSED**  
18 **BY AN ADMINISTRATIVE ERROR ON THE PART OF EITHER INDIGITAL OR**  
19 **AT&T KENTUCKY TRIGGERING AT&T KENTUCKY "TO DEMAND**  
20 **ASSURANCE OF PAYMENT." DOES THE PROPOSED PROVISION IN**  
21 **SECTION 10.2.2 REQUIRE A DEPOSIT AFTER ONE LATE PAYMENT?**

22

1 A. No. For each of the four triggers providing for deposit, language preceding the  
2 triggers states “Assurance of payment **may** be requested by AT&T Kentucky.”<sup>7</sup>  
3 (Emphasis added). The wording therefore allows for the possibility of unforeseen  
4 circumstances, such as a billing error, to be overlooked in lieu of AT&T Kentucky  
5 requesting a deposit, yet still affords AT&T Kentucky the reasonable protection to  
6 request a deposit from INdigital if there are not extenuating circumstances  
7 surrounding a late payment.

8 **Q. THOUGH CHARACTERIZED AS “ONEROUS” BY INDIGITAL HERE, HAS**  
9 **INDIGITAL PREVIOUSLY AGREED TO AT&T’S PROPOSED TRIGGER**  
10 **PROVISIONS?**

11 A. Yes. INdigital and AT&T Indiana have an effective ICA in Indiana which includes  
12 language requiring a deposit if there is an impairment of the credit, financial  
13 health, or credit worthiness of INdigital. Furthermore, the same Indiana ICA  
14 allows that AT&T may request assurance of payment if INdigital fails to timely  
15 pay a bill rendered to it by AT&T. See **Exhibit JSM-2**, INdigital/AT&T Indiana  
16 ICA General Terms and Conditions, Section 7.2.

17 **Q. HAS AT&T EVER REQUESTED A DEPOSIT FROM INDIGITAL?**

18 A. No. The provisions have been in place since AT&T Indiana and INdigital entered  
19 into an ICA in Indiana on February 28, 2005, and to date, none of the deposit  
20 triggers has prompted AT&T to request an assurance of payment from INdigital.  
21 Contrary to Mr. Cummings’s view, the deposit provisions afford appropriate  
22 protections to AT&T if necessary, and at the same time do not provide an  
23 onerous barrier to entry for INdigital with respect to its operations. The

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<sup>7</sup> GTC Section 10.2.

1 provisions proposed by AT&T Kentucky in this proceeding are as reasonable for  
2 use in Kentucky as they were and are in Indiana.

3 **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,**  
4 **12.6 – 12.6.2, 13.4.4, 40.1)**

5  
6 *AT&T: Is it reasonable to require CLEC to pay disputed charges into an escrow*  
7 *account while the disputed amounts are being resolved through the dispute*  
8 *process?*

9  
10 *INdigital: Should INdigital Telecom be required to escrow amounts subject to*  
11 *dispute? (GTC, Sections 11.8 11.9 – 11.9.2.5.3, 11.10, 11.12 – 11.12..4, 12.4 –*  
12 *12.4.4, 12.6 – 12.6.2, 13.4.4, 40.1)*

13  
14 **Q. DOES INDIGITAL PROVIDE ANY REASONABLE RATIONALE TO OBJECT**  
15 **TO AT&T KENTUCKY’S PROPOSED ESCROW REQUIREMENTS?**

16 A. No. Mr. Cummings simply laments, on page 12 of his direct testimony, that  
17 escrow provisions tie up money that could be put to better “capital uses in the  
18 interim period” by INdigital. Furthermore, Mr. Cummings expresses (at 12) fear  
19 that “there is nothing to prevent AT&T Kentucky from creating a billing dispute  
20 (due to a lack of incentive to keep its billing mechanisms accurate) for the sole  
21 purpose of forcing new entrants like INdigital out of the market.” Such unfounded  
22 and inflammatory statements provide no basis for INdigital’s opposition to the  
23 sound business practice of putting disputed payments into escrow while the  
24 dispute is being resolved. If INdigital is relying on monies from disputed charges  
25 for its capital investment, then that appears to provide yet another reason to have  
26 those monies placed in an escrow account until the dispute is resolved.  
27 Otherwise, if the dispute is resolved in AT&T Kentucky’s favor, based on Mr.  
28 Cummings’s testimony, there is a good chance the money for those charges will  
29 have already been spent.

1 Q. HOW DO YOU RESPOND TO MR. CUMMINGS’S COMMENTS THAT AN  
2 ESCROW ACCOUNT “HAS THE SAME EFFECT AS TAKING [THE  
3 DISPUTED AMOUNTS] AWAY FROM THE ESCROWING PARTY, INSOFAR  
4 AS THE FUNDS ARE NOT AVAILABLE FOR OTHER CAPITAL USES IN THE  
5 INTERIM PERIOD?”<sup>8</sup>

6 A. I think Mr. Cummings is missing the point of what an escrow account is designed  
7 to do under the proposed terms of the ICA. When a Party, such as INdigital,  
8 purchases services from another Party such as AT&T Kentucky, AT&T Kentucky  
9 has a right to be paid for such services, consistent with the terms under which  
10 such services were rendered. The escrow account is used only when a Party –  
11 INdigital in this case – disputes the applicability of the charges. Therefore, one  
12 Party believes the charges are appropriate while the other Party does not believe  
13 so. The escrow account provides an appropriate, neutral, interest-bearing  
14 vehicle where the disputed monies are “parked” until the dispute is resolved.  
15 Such a mechanism ensures that whichever Party prevails on the disputed issue  
16 will remain whole. That INdigital would apparently rather have the disputed  
17 amounts in its possession “for other capital uses” merely raises a red flag that  
18 INdigital may not choose to meet its payment obligations once a dispute is  
19 settled: If money is set aside in escrow while the dispute is being resolved, it will  
20 be there when the dispute is done, but if money is not put in escrow, and AT&T  
21 Kentucky prevails in the dispute, it could face a much more difficult path to being  
22 paid if INdigital already spent the disputed funds on its own capital projects.  
23 Furthermore, such a position would seem to *incent* INdigital to dispute legitimate

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<sup>8</sup> Cummings Direct, p.12, l.10 -12.



1 charges such that it could withhold monies “for other capital uses.” It seems that  
2 Mr. Cummings’s rationale for withholding monies from AT&T Kentucky is simply  
3 “AT&T is big, they can afford it.”<sup>9</sup> The issue here is not whether AT&T Kentucky  
4 can afford to assume the risk of not being paid for services rendered (it cannot), it  
5 is about ensuring proper payment for services rendered. INdigital should not be  
6 excused from reasonable measures to ensure it will be able to meet its payment  
7 obligations.

8 **Q. SPEAKING OF INCENTIVES FOR “CREATING A BILLING DISPUTE,” IS**  
9 **THERE ANY INCENTIVE FOR AT&T KENTUCKY TO CREATE EITHER**  
10 **DISPUTES OR OTHER BILLING PROBLEMS?**

11 A. No, not at all. AT&T Kentucky deals with numerous other carriers on a daily  
12 basis, billing and paying for services exchanged between AT&T Kentucky and  
13 other carriers. Though there may be examples of incorrect billing among the  
14 thousands of various transactions that take place on a daily basis, I am unaware  
15 of any instances of AT&T Kentucky “creating a billing dispute.” Further, Mr.  
16 Cummings provides no evidence of such a fabrication – much less any evidence  
17 that AT&T Kentucky has “a lack of incentive to keep its billing mechanisms  
18 accurate.” I would submit just the opposite: AT&T Kentucky has thousands of  
19 incentives for keep its billing mechanisms accurate – each and every transaction  
20 that AT&T Kentucky engages in on a daily basis.

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<sup>9</sup> Cummings Direct, p. 12, l. 15.

1 Q. DO YOU AGREE WITH MR. CUMMINGS'S STATEMENT THAT, BECAUSE  
2 AT&T KENTUCKY HAS PREVIOUSLY ENTERED INTO SOME ICAS  
3 WITHOUT ESCROW PROVISIONS THAT SUCH AN ADMISSION SUPPORTS  
4 INDIGITAL'S CONTENTION THAT ESCROW PROVISIONS ARE  
5 "UNREASONABLE AND OVERLY BURDENSOME."<sup>10</sup>

6 A. No. As I previously discussed in my direct testimony concerning the expiration of  
7 the ICA under GTC Issue 3, the telecommunications environment changes  
8 sufficiently over the course of a few years to often make older ICAs "stale" and  
9 out-dated. Over time, new issues within the industry may arise, and some may  
10 even cease to exist. As an example, the advent of Voice over Internet Protocol  
11 ("VoIP") technology has made it necessary for newer ICAs to address the  
12 existence of traffic originated in IP format, whereas older ICAs are silent on the  
13 subject. Such an example illustrates why it is appropriate to establish new ICA  
14 terms (or to re-examine the existing ICA terms if both parties agree a total re-  
15 write of the ICA is not necessary) every three years in order to keep the terms  
16 and conditions of the agreement current and up to date with technology, rules,  
17 and the marketplace.

18 Such updating of the ICA is appropriate for inclusion of escrow provisions.  
19 As I previously discussed in my direct testimony, since 2000, approximately 500  
20 CLEC customers have ceased operations in AT&T's legacy (pre-BellSouth) 13-  
21 state territory, including 160 CLECs that filed for bankruptcy, with amounts owing  
22 to AT&T of \$695 million. Due to such trends, it is reasonable to implement

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<sup>10</sup> Cummins Direct, p. 13, ll. 8 – 9.

1 updated ICA terms in the form of escrow provisions to attempt to reduce the  
2 amount of bad debt AT&T Kentucky incurs for legitimately-earned charges.

3 **Q. DESPITE MR. CUMMINGS'S ASSERTIONS THAT AT&T KENTUCKY'S**  
4 **PROPOSED ESCROW PROVISIONS ARE UNREASONABLE AND OVERLY**  
5 **BURDENSOME, HAS INDIGITAL VOLUNTARILY AGREED TO ESCROW**  
6 **PROVISIONS WITH AT&T IN OTHER STATES?**

7 A. Yes. INdigital's ICA with AT&T Indiana contains voluntarily agreed-upon  
8 language with the same escrow provisions that INdigital is opposing in Kentucky.  
9 See **Exhibit JSM-3**, INdigital/AT&T Indiana ICA General Terms and Conditions,  
10 Sections 8.4 to 8.7, 9.3, 9.5, and 10.4.

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

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

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

17  
18 **Q. CAN YOU DESCRIBE THE ISSUE IN ALT 911 ISSUE 6?**

19 A. The issue involves the rates AT&T Kentucky and INdigital would charge each  
20 other for access to 911 and E911 databases and trunking and call routing for  
21 E911 call completion to a Public Safety Answering Point ("PSAP"). AT&T  
22 Kentucky believes that the rates should be reciprocal since each Party would be  
23 providing the same service to the other Party under the terms of the ICA.

24

1 Q. MR. CUMMINGS STATES IT IS UNREASONABLE TO “REQUIRE INDIGITAL  
2 TO MIRROR AT&T KENTUCKY’S RATES FOR ACCESS TO 911/E911  
3 DATABASES, TRUNKING AND CALL ROUTING, EVEN WHERE INDIGITAL  
4 HAS ITS OWN COMMISSION-APPROVED TARIFF IN PLACE GOVERNING  
5 THE PROVISION OF THESE ELEMENTS.”<sup>11</sup> DOES INDIGITAL HAVE A  
6 COMMISSION-APPROVED TARIFF IN PLACE GOVERNING THE PROVISION  
7 OF THESE ELEMENTS?

8 A. No.

9 Q. HAS INDIGITAL PROPOSED RATES IN THIS PROCEEDING FOR ANY OF  
10 THESE ELEMENTS?

11 A. No.

12 Q. HAS INDIGITAL MADE ANY SHOWING TO SUPPORT ITS CONTENTION  
13 THAT “AT&T KENTUCKY HAS AN UNDOUBTEDLY DIFFERENT COST  
14 STRUCTURE”<sup>12</sup> THAN INDIGITAL FOR THE PROVISIONING AND PRICING  
15 OF 911/E911 ELEMENTS?

16 A. No. There is no evidence one way or the other to support what INdigital’s costs  
17 may be with respect to its 911/E911 services. As I discussed in my direct  
18 testimony, INdigital has not proposed any pricing whatsoever for whatever  
19 911/E911 services it intends to offer under the terms of this ICA, nor does  
20 INdigital have a tariff describing what its services may provide or what they may  
21 cost. As a newer entrant to the market for 911 services, INdigital may well be  
22 using different equipment or systems than AT&T Kentucky, and may in fact have

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<sup>11</sup> Cummins Direct, p. 8, ll. 19 – 20 (emphasis in original).

<sup>12</sup> *Id.*, p. 8, ll. 22 – 23.

1 a lower cost structure. Still, this assumption is unknown simply because INdigital  
2 has not provided any information with respect to its proposed services.

3 **Q. WHY IS IT INAPPROPRIATE TO ALLOW FOR INDIGITAL’S PROPOSED AS-**  
4 **YET UNKNOWN TARIFF REFERENCE IN THE ICA?**

5 A. There are a couple of reasons why it is inappropriate to incorporate INdigital’s  
6 proposed ICA language in ALT 911 Section 10.1. The first is that one purpose of  
7 a Section 252 Interconnection Agreement<sup>13</sup> is to provide the parties entering into  
8 the agreement contractual certainty with respect to how they will operate for an  
9 established period of time. INdigital’s reference to some unknown service and  
10 pricing mechanism, which INdigital may seek to invoke and implement at some  
11 unknown time during the duration of the ICA clearly usurps the premise of  
12 contractual and pricing certainty.

13 Second, when applicable, Section 251(c)(1) of the Act requires AT&T  
14 Kentucky to negotiate in good faith. Section 251(c)(1) also states “[t]he  
15 requesting telecommunications carrier also has a duty to negotiate in good faith  
16 the terms and conditions of such agreements.” AT&T Kentucky has proposed  
17 appropriate rates for 911 services, and INdigital has not, even though INdigital  
18 also has a duty to negotiate. AT&T Kentucky’s rates should be approved for use  
19 by both Parties.

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<sup>13</sup> As previously stated, AT&T Kentucky does not agree that competitive 911 Services are appropriately contemplated under Section 251 of the Telecommunications Act, and as such it respectfully reserves its right to contest this Commission’s determination that such services be contained in the ICA. Based on, and in light of, this Commission’s determination in the Threshold Issue Order of April 9, 2010, AT&T Kentucky argues here how such services should be incorporated into this specific ICA, including the incorporation of specific rates.

1 A third reason it is not appropriate to incorporate unknown rates and terms  
2 pursuant to INdigital's proposed language is because this Commission has  
3 directed otherwise. The Commission considered INdigital's request to  
4 incorporate 911 services into this ICA:

5 The threshold issue is whether the 911/E911 service to be furnished by  
6 a competitive carrier for Public Safety Answering Point ("PSAP") end-  
7 users qualifies for interconnection to an incumbent carrier under 47  
8 U.S.C. § 251(c)(2) and whether the ***inclusion of the terms, rates, and***  
9 ***conditions of such interconnection must be within an agreement***  
10 established pursuant to 47 U.S.C. § 252.<sup>14</sup>

11  
12 Through its Order, the Commission provided specific direction to the Parties  
13 regarding the incorporation of 911 services in the ICA:

14 Having reviewed the arguments of the parties and applicable law, the  
15 Commission finds that competitive access to 911/E911 services must  
16 be provided by AT&T Kentucky to INdigital pursuant to 47 U.S.C. §  
17 251(c), ***as outlined herein, and the rates, terms, and conditions for***  
18 ***competitive access must be outlined within an arbitrated***  
19 ***interconnection agreement*** pursuant to 47 U.S.C. § 252(b).<sup>15</sup>

20  
21 It is disingenuous of INdigital to argue on the one hand that competitive 911  
22 services should be contained within a Section 252 ICA – which requires that the  
23 rates terms and conditions be specified – but then argue on the other hand for  
24 use of an indeterminate “placeholder” in lieu of specific rates. In order to ensure  
25 contractual clarity and completeness consistent with Section 252 of the Act, this  
26 Commission should approve the only rates proposed by either Party for the  
27 provisioning of 911/E911 services. Those rates are contained in AT&T  
28 Kentucky's approved tariff.

29  

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<sup>14</sup> Order dated April 9, 2010, Case No. 2009-00438, pp. 1- 2 (emphasis added).

<sup>15</sup> *Id.*, p. 16 (emphasis added).

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

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

4  
5 *INdigital: Should the limitation of liability related to 911 service be mutual?*  
6

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

8  
9 *Should the parties have mutual indemnity obligations with respect to claims*  
10 *arising from access to or use of each party's respective 911/E911 systems?*  
11

12 **Q. MR. CUMMINGS DISCUSSES INDEMNIFICATION ON PAGE 9, LINES 6**

13 **THROUGH 14 OF HIS DIRECT TESTIMONY. WILL AT&T KENTUCKY HAVE**

14 **A RESPONSE?**

15 A. Yes. As I stated in my direct testimony, AT&T Kentucky believes this issue is  
16 more legal in nature, and as such, it will be addressed in AT&T Kentucky's post-  
17 hearing briefs.

18 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

19 A. Yes.

20

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## INTERCONNECTION AND/OR RESALE AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection and/or Resale Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (**the Agreement**), by and between one or more of the SBC Communications Inc. owned ILEC's **Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin**, (only to the extent that the agent for each such SBC-owned ILEC executes this Agreement for such SBC-owned ILEC and only to the extent that such SBC-owned ILEC provides Telephone Exchange Services as an ILEC in each of the state(s) listed below) and, Communications Venture Corporation d/b/a INdigital Telecom ("CLEC"), (a Indiana corporation), shall apply to the state of Indiana.

**WHEREAS**, CLEC represents that it is, or intends to become, a provider of Telephone Exchange Service to residential and business End Users offered exclusively over its own Telephone Exchange Service facilities or predominantly over its own Telephone Exchange Service facilities in combination with the use of Lawful unbundled network elements purchased from other entity(ies) and the resale of Telecommunications Services of other carriers.

**WHEREAS**, the Parties want to Interconnect their networks at mutually agreed upon points of interconnection to provide, directly or indirectly, Telephone Exchange Services and Exchange Access to residential and business End Users over their respective Telephone Exchange Service facilities in the states which are subject to this Agreement; and

**WHEREAS**, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and facilities and provide to each other services as required by the Telecommunications Act of 1996 as specifically set forth herein; and

**WHEREAS**, for purposes of this Agreement, CLEC intends to operate where one or more of **Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin** is the incumbent Local Exchange Carrier(s) and CLEC, a competitive Local Exchange Carrier, has or, prior to the provisioning of any Interconnection, access to Lawful unbundled network elements, Telecommunications Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide certain local Telephone Exchange Services in the foregoing ILEC Service areas by the appropriate State Commission(s);

**NOW, THEREFORE**, the Parties hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Attachments, Schedules, Exhibits and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

referring Party's tariff(s). However, if either Party provides Referral Announcements for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

4.9.4 The following applies to **SBC OHIO** only:

4.9.4.1 Referral Announcements shall be provided by a Party to the other Party for the period of time specified in Rule 4901:1-5-12, Ohio Administrative Code and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

- 4.10 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.
- 4.11 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.
- 4.12 This Agreement contains comprehensive OSS terms and conditions; however, CLEC represents and covenants that it will only use OSS furnished pursuant to this Agreement for activities related to Lawful UNEs, resold services or other services covered by this Agreement, for which this Agreement contains explicit terms, conditions and rates.
- 4.13 The Parties acknowledge and agree that they do not intend to include products and services in this Agreement that do not have corresponding rates and charges. Accordingly, if this Agreement is executed and/or approved by the Commission and the Parties later discover that a product or service is included in this Agreement without an associated rate or charge, the Parties agree that they will agree upon a rate or charge to include in this Agreement before the product or service is provided or performed. If the Parties cannot agree, either Party may pursue dispute resolution under the applicable provisions of this Agreement.

## 5. EFFECTIVE DATE, TERM, AND TERMINATION

- 5.1 In **SBC-13STATE**, with the exception of **SBC OHIO**, the Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act. In **SBC OHIO**, based on the PUC-OH, the Agreement is Effective upon filing and is deemed approved by operation of law on the 91<sup>st</sup> day after filing.
- 5.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on March 7, 2006, provided; however, should CLEC implement (i.e. provided assurance of payment, ordered facilities, and submitted ASRs for trunking) this Agreement within six (6) months of the Effective Date, then this Agreement will automatically renew for one additional year and expire on March 7, 2007 (the "**Term**"). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 5.3 or 5.4.
- 5.3 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the

terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof. Any termination of this Agreement pursuant to this Section 5.3 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.

- 5.4 If pursuant to Section 5.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 5.5 and 5.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 5.4 other than its obligations under Sections 5.5 and 5.6.
- 5.5 Upon termination or expiration of this Agreement in accordance with Sections 5.2, 5.3 or 5.4:
- 5.5.1 Each Party shall continue to comply with its obligations set forth in Section 41; and
- 5.5.2 Each Party shall promptly pay all amounts owed under this Agreement or place any Disputed Amounts into an escrow account that complies with Section 8.4 hereof;
- 5.5.3 Each Party's confidentiality obligations shall survive; and
- 5.5.4 Each Party's indemnification obligations shall survive.
- 5.6 If either Party serves notice of expiration pursuant to Section 5.2 or Section 5.4, CLEC shall have ten (10) calendar days to provide SBC-13STATE written confirmation if CLEC wishes to pursue a successor agreement with SBC-13STATE or terminate its agreement. CLEC shall identify the action to be taken on each applicable (13) state(s). If CLEC wishes to pursue a successor agreement with SBC-13STATE, CLEC shall attach to its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with SBC-13STATE under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
- 5.7 If written notice is not issued pursuant to Section 5.2, the rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the date that is ten (10) months after the date on which SBC-13STATE received CLEC's Section 252(a)(1) request.
- 5.8 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), CLEC withdraws its Section 252(a)(1) request, CLEC must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that CLEC does not wish to pursue a successor agreement with SBC-13STATE for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provides notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) calendar day following SBC-13STATE's receipt of CLEC's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall, have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.
- 5.9 If CLEC does not affirmatively state that it wishes to pursue a successor agreement with SBC-13STATE in its, as applicable, notice of expiration or termination or the written confirmation required after receipt of the SBC-owned ILEC's notice of expiration or termination, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC



provided or received notice of expiration or termination. If the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC provided or received notice of expiration or termination, the Parties shall have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.

- 5.10 In the event of termination of this Agreement pursuant to Section 5.9, SBC-13STATE and CLEC shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that CLEC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement.

## 6. END USER FRAUD

- 6.1 SBC-13STATE shall not be liable to CLEC for any fraud associated with CLEC's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Traffic (**ABT**). ABT is a service that allows End Users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABT calls: calling card, collect, and third number billed calls.
- 6.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud involving 1+ IntraLATA toll calls, ABT, and ported numbers. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 6.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in Section 6.2 will include providing to the other Party, upon request, information concerning Customers who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the End User's permission to obtain such information.
- 6.4 SBC-10STATE, SBC CALIFORNIA, and SBC CONNECTICUT will provide notification messages to CLEC on suspected occurrences of ABT-related fraud on CLEC accounts stored in the applicable LIDB. SBC CALIFORNIA will provide such alert messages by e-mail. SBC-10STATE and SBC CONNECTICUT will provide via fax.
- 6.4.1 SBC SOUTHWEST REGION 5-STATE (on behalf of itself and SBC CONNECTICUT) and SBC CALIFORNIA will use a Fraud Monitoring System to determine suspected occurrences of ABT-related fraud for CLEC using the same criteria SBC SOUTHWEST REGION 5-STATE and SBC CALIFORNIA use to monitor fraud on their respective accounts.
- 6.4.2 CLEC understands that Fraud Monitoring System alerts only identify potential occurrences of fraud. CLEC understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. CLEC understands and agrees that it will also need to determine what, if any, action CLEC should take as a result of a Fraud Monitoring System alert.
- 6.4.3 The Parties will provide contact names and numbers to each other for the exchange of Fraud Monitoring System alert notification.
- 6.5 In SBC SOUTHWEST REGION 5-STATE and SBC CALIFORNIA ABT-related alerts are provided to CLEC at no additional charge, except as related in 6.6 below.
- 6.6 In SBC CALIFORNIA 1+ IntraLATA toll fraud alerts are offered for Resale only under the product name Traffic Alert Referral Service (**TARS**). For TARS, CLEC agrees to pay a recurring usage rate as outlined in Appendix Pricing. For terms and conditions for TARS, see Appendix Resale.

## 7. ASSURANCE OF PAYMENT

- 7.1 Upon request by SBC-13STATE, CLEC will provide SBC-13STATE with adequate assurance of payment of amounts due (or to become due) to SBC-13STATE.

- 7.2 Assurance of payment may be requested by SBC-12STATE if:
- 7.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to SBC-13STATE for charges incurred as a CLEC; or
  - 7.2.2 in SBC-12STATE's reasonable judgment, at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about CLEC that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems; or
  - 7.2.3 CLEC fails to timely pay a bill rendered to CLEC by SBC-12STATE (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 9.3); or
  - 7.2.4 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 7.3 Unless otherwise agreed by the Parties, the assurance of payment will, at SBC-12STATE's option, consist of
- 7.3.1 a cash security deposit in U.S. dollars held by SBC-12STATE ("Cash Deposit") or
  - 7.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to SBC-12STATE naming the SBC-owned ILEC(s) designated by SBC-12STATE as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to SBC-12STATE ("Letter of Credit").
  - 7.3.3 The Cash Deposit or Letter of Credit must be in an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by SBC-12STATE, for the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation or any other functions, facilities, products or services to be furnished by SBC-12STATE under this Agreement.
    - 7.3.3.1 Notwithstanding anything else set forth in this Agreement, SBC SOUTHWEST REGION 5-STATE will not request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Arkansas in an amount that would exceed one (1) month's projected bill for CLEC's initial market entry; provided, however, that after three (3) months of operation, SBC SOUTHWEST REGION 5-STATE may request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Arkansas in an amount not to exceed two times projected average monthly billing to CLEC.
    - 7.3.3.2 Notwithstanding anything else set forth in this Agreement, SBC SOUTHWEST REGION 5-STATE will not request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Oklahoma in an amount that would exceed two times projected average monthly billing to CLEC.
- 7.4 To the extent that SBC-12STATE elects to require a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 7.5 A Cash Deposit will accrue interest, however, SBC-12STATE will not pay interest on a Letter of Credit.



- 8.3.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CLEC is responsible for any Late Payment Charges resulting from CLEC's failure to use electronic funds credit transfers through the ACH network.
- 8.3.2 CLEC must make all payments to SBC CONNECTICUT in "immediately available funds." All payments to SBC CONNECTICUT must be made using one of the methods set forth in the Connecticut Access Service Tariff approved by the DPUC or via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by SBC CONNECTICUT. If CLEC makes payment through funds transfer via the ACH network, remittance information will be communicated together with the funds transfer via the ACH network. If CLEC makes payment through funds transfer via the ACH network, CLEC must use the CCD+ or the CTX transaction set. CLEC and SBC CONNECTICUT will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each payment must be received by SBC CONNECTICUT no later than the Bill Due Date of each bill or Late Payment Charges will apply. SBC CONNECTICUT is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.
- 8.4 If any portion of an amount due to a Party (the "**Billing Party**") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "**Non-Paying Party**") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("**Disputed Amounts**") and include in such written notice the specific details and reasons for disputing each item listed in Section 10.4.1. The Disputing Party should utilize any existing and preferred form provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties.
- 8.5 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.
- 8.6 Requirements to Establish Escrow Accounts.
- 8.6.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:
- 8.6.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
- 8.6.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 8.6.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.
- 8.6.2 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:
- 8.6.2.1 The escrow account must be an interest bearing account;
- 8.6.2.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
- 8.6.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
- 8.6.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and
- 8.6.2.5 disbursements from the escrow account will be limited to those:



- 8.6.2.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or
  - 8.6.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 10.7; or
  - 8.6.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 10.7.
- 8.6.3 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.
- 8.6.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.
- 8.7 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed:
- 8.7.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute;
    - 8.7.1.1 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;
    - 8.7.1.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and
    - 8.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 8.1.5.
- 8.8 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 8.7.1.1 and Section 8.7.1.3 are completed within the times specified therein.
- 8.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.7 shall be grounds for termination of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.
- 8.9 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.
- 8.9.1 Each additional copy of any bill provided for billing from **SBC SOUTHWEST REGION 5-STATE's** CABS billing system will incur charges as specified in Access Service Tariff FCC No. 73 Section 13 Alternate Bill Media.
  - 8.9.2 Bills provided to CLEC from **SBC SOUTHWEST REGION 5-STATE's** CRIS system through Bill Plus will incur charges as specified in Appendix Pricing.
- 8.10 Exchange of Billing Message Information
- 8.10.1 **SBC-13STATE** will provide CLEC a specific Daily Usage File (“DUF” or “Usage Extract”) for Resale Services and Lawful Unbundled Network Element usage sensitive services provided hereunder (“**Customer Usage Data**”). Such Customer Usage Data will be provided by **SBC-**

of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.

- 9.2.1 **SBC INDIANA** will also provide any written notification to the Indiana Utility Regulatory Commission as required by rule 170 IAC 7-6.
- 9.2.2 **SBC KANSAS** will also provide any written notification to the Kansas Corporation Commission as required by Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.
- 9.2.3 **SBC MISSOURI** will also provide any written notification to the Missouri Public Service Commission as required by Rule 4 CSR 240-32.120.
- 9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges:
- 9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("**Disputed Amounts**") and the specific details listed in Section 10.4.1 of this Agreement, together with the reasons for its dispute; and
- 9.3.2 pay all undisputed Unpaid Charges to the Billing Party; and
- 9.3.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; and
- 9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 8.4 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.
- 9.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 10.
- 9.5 **SBC-12STATE**
- 9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:
- 9.5.1.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or

9.5.1.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement.

9.5.2 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 9.5.1, Section 9.5.1.1 and Section 9.5.1.2:

9.5.2.1 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and

9.5.2.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.

9.6 **SBC MIDWEST REGION 5-STATE** only

9.6.1 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

9.6.1.1 cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

9.6.1.2 discontinue providing any Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.

9.6.1.2.1 Notwithstanding any inconsistent provisions in this Agreement, discontinuance of service by **SBC INDIANA** will comply with Indiana Utility Regulatory Commission rule 170 IAC 7-6.

9.6.1.2.2 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of discontinuance of service.

9.6.1.2.3 Additional charges may become applicable under the terms of this Agreement following discontinuance of service.

9.7 **SBC-7STATE** only

9.7.1 Any demand provided by **SBC-7STATE** to CLEC under Section 9.5.1 will further specify that upon disconnection of CLEC, **SBC-7STATE** will cause CLEC's End Users that are provisioned through Resale Services to be transferred to **SBC-7STATE** local service.

9.7.1.1 A copy of the demand provided to CLEC under Section 9.7.1 will be provided to the Commission.

9.7.2 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

9.7.2.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

9.7.2.2 disconnect any Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.

9.7.2.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by **SBC KANSAS** will comply with Kansas Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

9.7.3 On the same date that Resale Services to CLEC are disconnected, **SBC-7STATE** will transfer CLEC's End Users provisioned through Resale Services to **SBC-7STATE**'s local service. To the extent available at retail from **SBC-7STATE**, the Resale End Users transferred to **SBC-**

## 9.9 Limitation on Back-billing and Credit Claims:

9.9.1 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to

9.9.1.1 Back-bill for or claim credit for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of the back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount. The Parties agree that the twelve (12) month limitation on back-billing and credit claims set forth in the preceding sentence shall be applied prospectively only after the Effective Date of this Agreement, meaning that the twelve month period for any back-billing or credit claims may only include billing periods that fall entirely after the Effective Date of this Agreement and will not include any portion of any billing period that began prior to the Effective Date of this Agreement.

9.9.1.2 Back-billing and credit claims, as limited above, will apply to all Interconnection, Resale Services, Unbundled Network Elements, Collocation, facilities, functions, product and services purchased under this Agreement. Reciprocal Compensation is specifically excluded from this Section and is addressed separately in the Reciprocal Compensation Attachment.

## 10. DISPUTE RESOLUTION

### 10.1 Finality of Disputes

10.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

10.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.

### 10.2 Alternative to Litigation

10.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

### 10.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

10.3.1.1 Service Center (**SBC MIDWEST REGION 5-STATE**), LSC (**SBC-7STATE**) or LEC-C (**SBC CONNECTICUT**);

10.3.1.2 Informal Dispute Resolution; and

10.3.1.3 Formal Dispute Resolution, each of which is described below.

10.4 LSC/Service Center/LEC-C Dispute Resolution - the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written notice sent to **SBC-13STATE** for Disputed Amounts must be made on the "13 Billing Claims Dispute Form".

- 10.4.1 If the written notice given pursuant to Section 10.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first be referred to the appropriate service center **SBC MIDWEST REGION 5-STATE** Service Center; **SBC-7STATE** Local Service Center (**LSC**); **SBC CONNECTICUT** Local Exchange Carrier Center (**LEC-C**)] for resolution. In order to resolve a billing dispute, CLEC shall furnish **SBC-13STATE** written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. To be deemed a "dispute" under this Section 10.4, CLEC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 8.4 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Lawful Unbundled Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 10.4.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.
- 10.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on **SBC-13STATE**'s current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the CLEC furnishes all requisite information and evidence under Section 10.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, **SBC-13STATE** will notify CLEC of the status of the dispute and the expected resolution date.
- 10.4.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received (provided that CLEC furnishes all requisite information and evidence under Section 10.4.1), **SBC-13STATE** will notify CLEC of the status of the dispute and the expected resolution date.
- 10.4.4 Any notice of Disputed Amounts given by **SBC-13STATE** to CLEC pursuant to Section 10.3 shall furnish CLEC written notice of: (i) the date of the bill in question, (ii) the account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that **SBC-13STATE** disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided **SBC-13STATE**, furnishes all requisite information by the Bill Due Date) and Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days, CLEC will notify **SBC-13STATE** of the status of the dispute and the expected resolution date.
- 10.4.5 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 10.4, the Non-Paying Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 10.5 of this Agreement.
- 10.5 Informal Resolution of Disputes
- 10.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 10.3 or Section 10.4.5, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from




COMMONWEALTH OF KENTUCKY  
KENTUCKY PUBLIC SERVICE COMMISSION

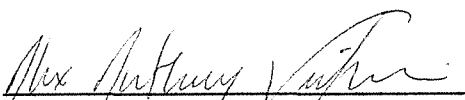
COUNTY OF Collin

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 rebuttal testimony consisting of 8 pages and 0 exhibits.

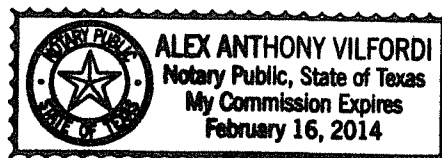
  
\_\_\_\_\_  
Mark Neinast

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

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

My Commission Expires: 02/16/2014

827355



1 AT&T KENTUCKY

2 REBUTTAL TESTIMONY OF MARK NEINAST

3 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

4 DOCKET NO. 2009-00438

5 JULY 14, 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. ARE YOU THE SAME MARK NEINAST THAT FILED DIRECT TESTIMONY IN**  
11 **THIS DOCKET ON JUNE 15, 2010?**

12  
13 A. Yes.

14 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.**

15 A. I am offering rebuttal testimony on the network and technical aspects relevant to  
16 the Direct Testimony of Brent Cummings and the Direct Testimony of Mark  
17 Grady filed in this case. Specifically, I will be discussing the testimony regarding  
18 negotiations, primary/secondary selective routing, and the suggested use of the  
19 Coordinated Hot Cuts process for 911 conversion projects.

20 **Q. MESSRS. CUMMINGS AND GRADY BOTH UTILIZE SEVERAL PAGES IN**  
21 **THEIR DIRECT TESTIMONY TO DISCUSS THE NEGOTIATIONS PROCESS.<sup>1</sup>**  
22 **ARE YOU AWARE OF ANY ARBITRATION ISSUES REGARDING THE ICA**  
23 **NEGOTIATIONS?**

24  
25 A. No. Mr. Cummings's and Mr. Grady's discussions do not relate to any of the  
26 arbitration issues identified by either Party. Since the role of the Commission is

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<sup>1</sup> Direct Testimony of Brent Cummings filed June 15, 2010 ("Cummings Direct"), pp. 2-5; Direct Testimony of Mark Grady filed June 15, 2010 ("Grady Direct"), pp. 5-8.



1 limited to resolving the specific arbitration issues regarding specific contract  
2 language, Mr. Cummings's and Mr. Grady's discussions about their views of the  
3 negotiations process are irrelevant and appear to be an attempt to prejudice the  
4 Commission by giving a skewed, one-sided discussion of matters that are not at  
5 issue. Nevertheless, I will briefly respond to their inaccurate claims.

6 **Q. MR. CUMMINGS CLAIMS (AT 3-4, 6) THAT AT&T KENTUCKY HAS TRIED TO**  
7 **"DELAY OR DENY INTERCONNECTION FOR 911/E911 TRAFFIC WITH**  
8 **INDIGITAL" AND WILL ONLY OFFER CONTRACT TERMS FOR**  
9 **INTERCONNECTION "IF IT IS FORCED TO DO SO." IS THAT TRUE?**

10  
11 A. Absolutely not. As Mr. Cummings must know, AT&T Kentucky was upfront in  
12 consistently communicating its position to INdigital that it did not believe INdigital  
13 was eligible for interconnection under Section 251(c) of the 1996 Act for its 911  
14 services, but that AT&T Kentucky nevertheless was willing to discuss a non-  
15 Section 251 commercial agreement for interconnection. Such a commercial  
16 agreement would have given INdigital all it needed to enter the market and  
17 provide competing service in Kentucky.

18 **Q. HAS AT&T KENTUCKY IMPOSED "ROAD BLOCKS," AS MR. CUMMINGS**  
19 **CLAIMS (AT 4-5)?**

20  
21 A. No. As explained in AT&T Kentucky's briefs on the threshold issue, AT&T  
22 Kentucky negotiated with INdigital based on the mutual understanding that AT&T  
23 Kentucky did not believe INdigital was eligible for Section 251(c) interconnection  
24 for the provision of competitive E911 services. Mr. Cummings's primary example  
25 of an alleged "road block" is that AT&T Kentucky offered an Alternative 911/E911  
26 Attachment for the contract being discussed, but then argued that the terms of  
27 that attachment should not be part of any agreement between the Parties. That

1 is incorrect. AT&T Kentucky explained to INdigital during negotiations that AT&T  
2 Kentucky did not believe INdigital was entitled to a Section 251(c) agreement for  
3 its 911 services at all, but that if were determined by the Kentucky Public Service  
4 Commission that INdigital was entitled to such an agreement, the Alternate  
5 911/E9111 Attachment would apply.

6 Mr. Cummings and Mr. Grady complain that AT&T Kentucky wanted  
7 INdigital to sign a non-disclosure agreement (“NDA”) before AT&T Kentucky  
8 would send a draft non-Section 251 commercial agreement for negotiation, and  
9 alleged that the NDA would have required INdigital to forego any right to seek  
10 arbitration under Section 252 over terms discussed in prior negotiations. Both  
11 gentlemen are incorrect. It is AT&T’s policy to require all CLECs to sign an NDA  
12 prior to sharing AT&T’s form commercial agreement with them. The version of  
13 the NDA that AT&T and INdigital were negotiating would not have required  
14 INdigital to waive its right to arbitrate under Section 252. The NDA specifically  
15 provided that “each Party further acknowledges that nothing herein or as to these  
16 Negotiations affects either Party’s ability to initiate negotiations under Sections  
17 251 and 252, as may be permitted by the Act and/or the interconnection  
18 agreements between AT&T ILECs and Carrier.” Furthermore, in response to  
19 INdigital’s concerns, AT&T was open to adding language acknowledging that  
20 neither AT&T nor INdigital “waive any arguments that they may have regarding  
21 whether or not certain transit traffic services and 911/E911 services that  
22 [INdigital] seeks must be made available to [INdigital] pursuant to Sections 251  
23 and 252 of the Act.”

1 **Q. MR. CUMMINGS STATES (AT 3) THAT VERIZON AND EMBARQ ENTERED**  
2 **INTO SECTION 251(C) AGREEMENTS WITH INDIGITAL, AND THAT ONLY**  
3 **AT&T HAS REQUIRED ARBITRATION. HOW DO YOU RESPOND TO THAT?**

4  
5 A. I obviously cannot speak for Verizon and Embarq, since every company makes  
6 its own business decisions based on its own particular situation. For all I know,  
7 INdigital made concessions to Verizon and Embarq on other issues that made it  
8 worthwhile for those companies to forego arbitration. I do know, however, that in  
9 other states both Verizon and Embarq have gone through Section 252  
10 arbitrations with Intrado, another competing 911 carrier, including disputes on the  
11 same threshold issue. I also know that, while Mr. Cummings refers to the Ohio  
12 and North Carolina commissions requiring AT&T ILECs to enter into Section  
13 251(c) agreements with Intrado, the Illinois and Florida commissions did not.<sup>2</sup>

14 ***Alternative Attachment 05 (Issue 4) (Section 6.1.1)***

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

17  
18 *INdigital: Should 911 calls from AT&T Kentucky End Offices be processed by*  
19 *AT&T Kentucky's selective router prior to delivery to INdigital Telecom for*  
20 *ultimate delivery to the 911/E911 Customer?*

21  
22 **Q. INDIGITAL HAS AGREED TO LANGUAGE IN SECTION 6.1.1.1 OF**  
23 **ALTERNATE ATTACHMENT 5 THAT UTILIZES PRIMARY/SECONDARY**  
24 **SELECTIVE ROUTING WHEN AT&T KENTUCKY HAS A WIRE CENTER**  
25 **SPLIT BETWEEN TWO PSAPS. IN ADDRESSING SECTION 6.1.1 OF THAT**  
26 **SAME ATTACHMENT, HOWEVER, MR. CUMMINGS (AT 8) ACCUSES AT&T**  
27 **KENTUCKY OF USING PRIMARY/SECONDARY SELECTIVE ROUTING**  
28 **ONLY "TO INCREASE ITS REVENUE FROM INDIGITAL." IS HE CORRECT?**

29  
30 A. No. As I explained in my direct testimony, primary/secondary selective routing is  
31 used in "split" wire centers (those with different PSAPs served by different 911  
32 service providers) and ensures that all 911 traffic will first be directed to the

---

<sup>2</sup> See AT&T Kentucky's Initial Brief on Threshold Issue filed February 26, 2010, pp. 8-9.

1 "primary" selective router. INdigital has agreed to use primary/secondary  
2 selective routing in the undisputed language that is included in Section 6.1.1.1 of  
3 Alternate Attachment 05.<sup>3</sup> Section 6.1.1 merely makes clear that in a split wire  
4 center (*i.e.*, one "served by more than one E911 Selective Router network," as  
5 Section 6.1.1 states), AT&T Kentucky will send 911 traffic from its end office "to  
6 the appropriate E911 Selective Router location consistent with the terms of  
7 Section 6.1.1.1." The only disputed language in Section 6.1.1 concerns whether  
8 the word "transport" or "route" is more appropriate to describe the function AT&T  
9 Kentucky performs in that scenario.

10 Mr. Cummings does not explain why INdigital wants to use the word  
11 "transport" rather than "route," so I am still unsure of INdigital's concerns. All Mr.  
12 Cummings does is repeat INdigital's claim from the DPL that, by routing traffic  
13 from its own end office to the proper selective router, AT&T Kentucky is  
14 somehow trying to get more revenue from INdigital. Mr. Cummings is mistaken.  
15 In the split wire center situation covered by Section 6.1.1, AT&T Kentucky will not  
16 charge INdigital anything for AT&T Kentucky's routing of 911 traffic from an end  
17 office to the appropriate selective router. Since that is INdigital's only concern  
18 regarding Section 6.1.1, and it is baseless, the Commission should adopt AT&T  
19 Kentucky's language for Section 6.1.1.<sup>4</sup> Further, as I indicated in my direct

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<sup>3</sup> AT&T Kentucky and other carriers have all agreed that the reliability of 911 is of the utmost importance and the primary/secondary method for handling split wire centers is superior to any other known method.

<sup>4</sup> AT&T Kentucky reserves the right to charge the PSAP for such routing, since it is a service actually performed on behalf of the PSAP that receives the 911 call and there is no intercarrier compensation for 911 calls, but that is not a matter addressed by the interconnection agreement language, nor is it a matter pending before the Commission in this case.

1 testimony (at 10), the function being performed is routing (switching of the call)  
2 and not just transporting where no switching is involved

3 **Q. ARE THERE MANY OF THESE SPLIT WIRE CENTERS IN KENTUCKY**  
4 **TODAY, AND HOW IS 911 TRAFFIC HANDLED THERE?**

5  
6 A. AT&T Kentucky has no split wire centers today. I am only aware of one such  
7 split wire center that involves AT&T Kentucky and another carrier whose end  
8 office is split between its selective router-served PSAP and AT&T Kentucky's  
9 selective router-served PSAP. The other carrier performs the primary selective  
10 routing function and AT&T Kentucky performs the secondary selective routing  
11 function.

12 **Q. WILL THERE POTENTIALLY BE MORE SPLIT WIRE CENTERS IN A**  
13 **COMPETITIVE 911 ENVIRONMENT?**

14  
15 A. While there is no way to know for sure, it does seem logical that there would be  
16 PSAPs that may select a competitive 911 service and create more of these  
17 scenarios across the state.

18 **Q. IS IT BEST TO HAVE AN EQUITABLE MANNER TO DEAL WITH THESE**  
19 **SCENARIOS BEFORE THEY COME UP?**

20  
21 A. Yes. AT&T Kentucky would prefer to work cooperatively with the competitive 911  
22 provider to establish a routing model for these scenarios that would not require  
23 Commission intervention.

24 **Q. DOES AT&T KENTUCKY'S LANGUAGE PROVIDE FOR A FAIR AND**  
25 **EQUITABLE MANNER TO DECIDE WHICH CARRIER PERFORMS THE**  
26 **PRIMARY SELECTIVE ROUTING FUNCTION?**

27  
28 A. Yes. As I stated in my direct testimony at pages 7-9, AT&T Kentucky's language  
29 allows the opportunity for the 911 systems service providers to mutually agree on  
30 the primary selective router. Each carrier can certainly obtain input from its

1 PSAP customers, but the ultimate decision as to the routing of this critical traffic  
2 should be made between the carriers, not by just one carrier or one PSAP, as  
3 INdigital's proposed language would do. In the absence of a mutual agreement  
4 between the carriers, then the objective default would be whichever selective  
5 router processes the majority of access lines served within the split wire center.  
6 The Commission should adopt AT&T Kentucky's language for this issue, which  
7 will provide the best public policy position in this matter.

8 ***Coordinated Hot Cuts Issue (Attachment 15) (CHC Section 3.5)***

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

11 *AT&T: Should language be included to enable AT&T to suspend CHC/OC*  
12 *activity due to unanticipated heavy work loads/activity periods?*

13  
14 **Q. MR. CUMMINGS TESTIFIED IN HIS DIRECT TESTIMONY (AT 20) THAT THE**  
15 **COORDINATED HOT CUTS (CHC) PROCESS WILL BE USED FOR 911**  
16 **CONVERSION PROJECTS AND WANTS TO MODIFY THE CHC LANGUAGE**  
17 **TO SUPPORT THIS WORK. IS THE CHC PROCESS THE CORRECT**  
18 **PROCESS FOR 911 CONVERSIONS?**

19  
20 **A.** No. I understand Mr. Cummings' concern and INdigital's necessity to insure  
21 transparent 911 conversion projects, but the CHC process is the wrong vehicle.  
22 The CHC process is a process designed for normal end user conversions  
23 involving Local Number Portability (LNP) and regular installation forces – *not* 911  
24 technicians. A 911 conversion project – that is, a project to convert a wire center  
25 where INdigital becomes the service provider to the PSAP - is a unique type of  
26 project that would require specialized 911 personnel. Having personally  
27 supervised the successful conversion of sixteen 911 selective routers from  
28 analog to digital technology, I would not want to use the CHC process for this  
29 kind of 911 conversion project. Even with INdigital's language changes, it is just

1 a hope for the best that all goes well. While the CHC process is designed to  
2 reduce the amount of customer downtime in normal end user conversions, it is  
3 not designed for 911 conversions since it does not involve the 911 personnel.

4 **Q. IF THE CHC PROCESS SHOULD NOT BE USED FOR 911 CONVERSIONS,**  
5 **WHAT PROCESS SHOULD BE USED?**

6  
7 A. All 911 conversions should fall into a special project category, so the right people  
8 are involved that understand 911 to insure success. To date, there has not been  
9 911 competition, so there has not been a need to develop a CHC-type “cookie  
10 cutter” process to deal with this work. The FCC allowed cost recovery for LNP,  
11 but even with 911 competition, there may never be enough 911 conversions to  
12 warrant spending millions of dollars on mechanized systems similar to the ones  
13 that are used for LNP and the CHC process. A 30-minute 911 outage must be  
14 reported to the FCC, and AT&T Kentucky does not want to risk any downtime at  
15 all. This work must fall into a special project category, so that the right people  
16 are involved in these projects. There is no LNP work in 911 call routing, so it is  
17 best to leave that process out of the equation. The Commission should adopt  
18 AT&T Kentucky’s language for the CHC process, so that it does not become  
19 broken for what it was designed. INdigital’s requirements can be clearly met  
20 using a special project request.

21 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

22 A. Yes.

23  
24 830033