



Mary K. Keyer  
General Attorney  
Kentucky Legal Department

AT&T Kentucky  
601 W. Chestnut Street  
Room 407  
Louisville, KY 40203

T 502-582-8219  
F 502-582-1573  
[mary.keyer@att.com](mailto:mary.keyer@att.com)

July 16, 2010

**RECEIVED**

JUL 19 2010

**PUBLIC SERVICE  
COMMISSION**

**VIA OVERNIGHT MAIL**

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

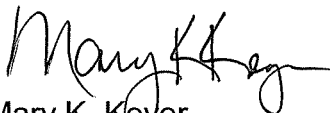
Re: Petition of Communications Venture Corporation,  
d/b/a INdigital Telecom for Arbitration of Certain  
Terms and Conditions of Proposed Interconnection  
Agreement with BellSouth Telecommunications, Inc.  
d/b/a AT&T Kentucky, Pursuant to the Communications  
Act of 1934, as Amended by the Telecommunicates 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 BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky's Motion to Strike Portions of INdigital's Rebuttal Testimony or, in the Alternative, for Leave to File Surrebuttal Testimony on Designated Issues.

Should you have any questions, please let me know.

Sincerely,

  
Mary K. Keyer

Enclosures

cc: Party of Record

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2. The agreed schedule in this proceeding called for the Parties to submit *simultaneous* direct testimony on June 15, 2010, and simultaneous rebuttal testimony on July 14, 2010.

3. In their direct testimony on June 15, 2010, AT&T Kentucky's witnesses addressed each of the arbitration issues, either explaining the basis for AT&T Kentucky's proposed interconnection agreement language, or, in a few instances, indicating that the issue was a legal one to be addressed in briefs.

4. Unlike AT&T Kentucky's direct testimony, INdigital's direct testimony on June 15, 2010, did not address all of the issues. Instead, INdigital elected to submit no testimony on several issues. In its rebuttal testimony, however, INdigital seeks, for the first time, to explain its position on several arbitration issues that it did not address in direct testimony, specifically Alternative Attachment 05 Issues 1, 2, 3, and 4; GTC Issues 1, 2, and 6; Structure Access Issues 1, 2, 3 and 4; and BFR Issues 1-7.<sup>1</sup> Additionally, INdigital proposes alternate language that AT&T Kentucky is seeing for the first time.

5. The Commission should not tolerate this kind of sandbagging. By providing for two rounds of *simultaneous* testimony, the agreed schedule anticipated that each Party would have a chance to respond to the other Party's position, but INdigital's tactics have prevented that. As a result of INdigital's strategic decision not to explain its position on the arbitration issues listed above, AT&T Kentucky was unable to address or respond to INdigital's position in AT&T Kentucky's rebuttal testimony. And because the

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<sup>1</sup> Mr. Cummings's direct testimony did include one page (page 16) that addressed the BFR Attachment. Unlike his rebuttal testimony, however, that direct testimony did not address the specific BFR issues or specific contract language in dispute (aside from a passing reference to Section 3.8). As a result, AT&T Kentucky has had no opportunity to respond to INdigital's positions on the specific BFR issues and contract language.

schedule did not include a round of surrebuttal testimony, AT&T Kentucky will have no opportunity to respond to the explanations INdigital provided for the first time in its rebuttal testimony. In fairness and as a matter of due process, and because of the obvious prejudice to AT&T Kentucky if it is not given any opportunity to respond to INdigital's tardy testimony, INdigital's testimony on these issues should either be stricken or, if it is not stricken, AT&T Kentucky should be allowed to file written surrebuttal on those issues to address INdigital's claims. This is particularly important because (i) INdigital's first-time testimony on these issues contains several factual misstatements that could materially mislead the Commission and unfairly prejudice AT&T Kentucky, and (ii) in several cases, INdigital has used its testimony (rather than the ongoing negotiation process) to propose new contract language, and if that language is now going to reflect INdigital's proposals in this case, AT&T Kentucky should be allowed to respond to it in testimony.

WHEREFORE, AT&T Kentucky moves that the Commission strike the following portions of Mr. Cummings's rebuttal testimony:

Page 5, Line 1 through Page 14, Line 2 (Alternate Attachment 05 Issues 1, 2, 3, and 4)

Page 19, Line 1 through Page 23, Line 2 (GTC Issues 1 and 2)

Page 32, Lines 1 through 19 (GTC Issue 6)

Page 34, Line 1 through Page 40, Line 3 (Structure Access Issues 1, 2, 3, and 4)

Page 45, Line 1 through Page 54, Line 17 (BFR Issues 1-7)

In the alternative, if this testimony is not stricken, AT&T Kentucky should be allowed to file written surrebuttal testimony on or before July 26, 2010, to respond to

INdigital's testimony on the designated issues, in keeping with the intent to give each Party at least one chance to respond to the other Party's testimony on an issue.

Respectfully submitted,

  
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Mary K. Keyer  
601 W. Chestnut Street, Room 407  
Louisville, KY 40203  
Telephone (502) 582-8219  
mary.keyer@att.com

J. Tyson Covey  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606  
Telephone: (312) 701-8600  
jcovey@mayerbrown.com

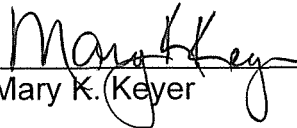
COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC. D/B/A AT&T  
KENTUCKY

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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 U. S. Mail, this 16th day of July 2010.

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

  
Mary K. Keyer