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July 26, 2010

VIA HAND DELIVERY

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

RECEIVED

JUL 26 2010

**PUBLIC SERVICE
COMMISSION**

***Re: In the Matter of Communications Venture Corporation, d/b/a INdigital
Telecom for Arbitration of Certain Terms and Conditions of Proposed
Interconnection Agreement with BellSouth Telecommunications, Inc., d/b/a
AT&T Kentucky***

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of the Final Joint Issues Matrix between Communications Venture Corporation d/b/a INdigital Telecom's and BellSouth Communications, Inc., d/b/a AT&T Kentucky's. Please file-stamp one copy and return it to our delivery person.

As you will notice, the parties have resolved all issues contained in the Final Joint Issues Matrix, rendering a formal hearing on the matter unnecessary. The parties respectfully request that the Public Service Commission of the Commonwealth of Kentucky remand the formal hearing scheduled for August 3-4, 2010 from its docket accordingly. The parties anticipate filing the final agreement within thirty (30) days.

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

Sincerely,


Edward T. Depp

ETD/lb

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36405-1

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Jeff Derouen, Executive Director

February 17, 2009

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cc: Tiffany Bownan, Esq. (w/encl.)
Mary K. Keyer, Esq. (w/encl.)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 26 2010

PUBLIC SERVICE
COMMISSION

In the Matter of:

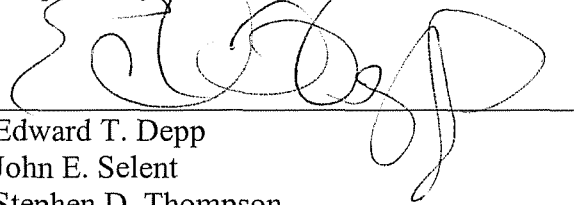
Petition of Communications Venture)
Corporation, d/b/a INdigital Telecom for)
Arbitration of Certain Terms and Conditions)
of Proposed Interconnection Agreement)
with BellSouth Telecommunications, Inc.,)
d/b/a AT&T Kentucky, Pursuant to the)
Communications Act of 1934, as Amended)
by the Telecommunications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

Case No. 2009-00438

**JOINT FILING OF THE FINAL JOINT ISSUES MATRIX
BY INDIGITAL TELECOM AND AT&T KENTUCKY**

Pursuant to the Public Service Commission of the Commonwealth of Kentucky's (the "Commission") January 25, 2010 order setting forth the Procedural Schedule in the above-styled case, Communications Venture Corporation, d/b/a INdigital telecom and BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, by counsel, hereby jointly file the Final Joint Issues Matrix in this matter.

Respectfully submitted,



Edward T. Depp

John E. Selent

Stephen D. Thompson

DINSMORE & SHOHL LLP

1400 PNC Plaza

500 West Jefferson Street

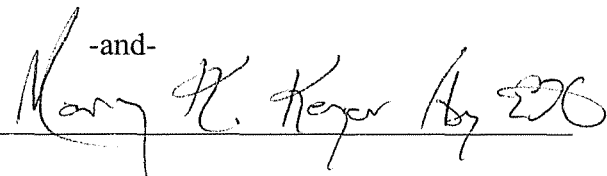
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-and-



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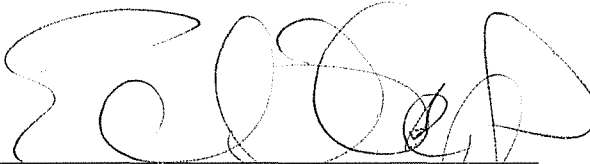
*Counsel for BellSouth Telecommunications,
Inc., d/b/a AT&T Kentucky*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by U.S. First Class mail and electronic mail on this 26th day of July, 2010, to the following individuals:

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Counsel to INdigital Telecom

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 12 - COLLOCATION

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|-----------|---|---------|--|---|---|---|
| | <p>INDigital: Should INDigital Telecom be liable to AT&T Kentucky for consequential, incidental, or punitive damages related to damage at a co-location facility?</p> <p><u>AT&T:</u> Can the CLEC limit the damage liability to AT&T Kentucky and other CLECs resulting from the installation, operation, or maintenance of the CLEC's equipment, including but not limited to from any defect in CLEC's equipment or its installation, operation, or maintenance, or resulting from the actions or inaction, willful, or negligent, of the CLEC's employees, suppliers, or contractors?</p> <p>RESOLVED</p> | 4.4 | <p>4.4 The CLEC will be responsible for any and all damages resulting from any harm to AT&T Kentucky's or other CLEC's premises, or any outage in AT&T Kentucky's or other CLEC's network, which is a result of the installation, operation, or maintenance of the CLEC's equipment, including but not limited to from any defect in CLEC's equipment or its installation, operation, or maintenance, or resulting from the actions or inaction, willful, or negligent, of the CLEC's employees, suppliers, or contractors. <u>In no event shall CLEC be liable to AT&T Kentucky or other CLECs for consequential, incidental, or punitive damages.</u></p> | <p>No, INDigital Telecom should not be responsible for consequential, incidental or punitive damages related to damage at a co-location facility. Such damages are remote, they are customarily excluded from arrangements such as this, AT&T Kentucky is not similarly responsible for damage to INDigital Telecom's facilities located in the collocation facility. AT&T Kentucky and other CLECs have (and are typically required to have) insurance to protect against such losses, and it is otherwise commercially unreasonable to impose these costs in the non-mutual manner proposed by AT&T Kentucky.</p> | <p>4.4 The CLEC will be responsible for any and all damages resulting from any harm to AT&T Kentucky's or other CLEC's premises, or any outage in AT&T Kentucky's or other CLEC's network, which is a result of the installation, operation, or maintenance of the CLEC's equipment, including but not limited to from any defect in CLEC's equipment or its installation, operation, or maintenance, or resulting from the actions or inaction, willful, or negligent, of the CLEC's employees, suppliers, or contractors.</p> | <p>AT&T Kentucky's position is that the CLEC is liable for all damages subject to the limitations on liability set forth in Section 16 of the Agreement, including the limitation on consequential, incidental, and punitive damages in Section 16.4</p> <p>If the CLEC's equipment or employee is found to be the fault of the damage, then the CLEC needs to be help accountable.</p> |
| 2 | <p>INDigital: Should AT&T Kentucky have sole discretion to determine whether material deviations from the specifications of a mutually agreed co-location Application constitute exceptions subject to</p> | 10.2 | <p>10.2 After the Physical Collocator's receipt of such notice, the Physical Collocator shall request within fifteen (15) calendar days an acceptance walk-through of the Collocation space with AT&T Kentucky. The acceptance walk-through will be scheduled on a mutually agreed upon date. Any material deviations from mutually agreed Application specifications may be noted by the Physical Collocator as exceptions. The exceptions shall be corrected by AT&T Kentucky by a</p> | <p>No, there is no good reason to permit AT&T to determine in its sole discretion whether material deviations from the specifications of a mutually agreed co-location Application should qualify as exceptions subject to correction by a mutually agreed upon date. AT&T's language allows it to unreasonably</p> | <p>10.2 After the Physical Collocator's receipt of such notice, the Physical Collocator shall request within fifteen (15) calendar days an acceptance walk-through of the Collocation space with AT&T Kentucky. The acceptance walk-through will be scheduled on a mutually agreed upon date. Any material deviations from mutually agreed Application specifications may be noted by the Physical Collocator as exceptions, <u>which to qualify as exceptions, must be agreed to as</u></p> | <p>AT&T Kentucky believes it has the right to review the exceptions from CLEC's list after the acceptance walk-through. AT&T's language is very clear that the parties will agree on the exceptions and AT&T Kentucky will correct them. If a dispute arises then the CLEC can use the Dispute Resolution process. If AT&T</p> |

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

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|-----------|--|---------|---|--|---|---|
| | <p>correction by a mutually agreed upon date?</p> <p><u>AT&T:</u> Does AT&T Kentucky have the right to review and agree to the exceptions CLEC has listed during the acceptance walk-through?</p> <p>RESOLVED</p> | | <p>mutually agreed upon date. The correction of these exceptions shall be at <u>AT&T Kentucky's</u> expense. <u>AT&T Kentucky</u> will then establish a new Space Ready Date.</p> | <p>impose opportunity and financial costs on Indigital Telecom by unilaterally claiming that material deviations from a mutually agreed co-location Application do not qualify as exceptions, notwithstanding that material deviation.</p> | <p>exceptions by AT&T Kentucky. The agreed upon exceptions shall be corrected by AT&T Kentucky by a mutually agreed upon date. The correction of these exceptions shall be at AT&T Kentucky's expense. AT&T Kentucky will then establish a new Space Ready Date.</p> | <p>Kentucky is not allowed to review and approve the exceptions, AT&T Kentucky should not be held responsible for resolving those identified exceptions at its expense.</p> |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATT 13 251(C)(3) UNE's

| Issue No | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|----------|---|---------|---|---|---|--|
| 1 | <p><u>INDigital:</u> Should Attachment 13 override intervening law or changes in law?</p> <p><u>AT&T:</u> Should the language clearly indicate that the provisions of the underlying agreement are subject to declassification?</p> <p>Whose language should appear in the ICA? RESOLVED</p> | 1.4 | 1.4 Subject to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an Unbundled Network Element or 251(c)(3) UNE in this Agreement is Declassified or is otherwise no longer a 251(c)(3) UNE, then the Transition Procedure defined in Section 3.5 below, shall govern. | No, intervening law or changes in law should apply to this Attachment. | 1.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an Unbundled Network Element or 251(c)(3) UNE in this Agreement is Declassified or is otherwise no longer a 251(c)(3) UNE, then the Transition Procedure defined in Section 3.5 below, shall govern. | AT&T Kentucky's proposed language should be accepted as it properly limits AT&T Kentucky's obligation to provide UNEs to those required under the Act as determined by the FCC rules and associated lawful and effective FCC and judicial orders. AT&T Kentucky's language makes it clear so as to alleviate any future conflict or future dispute with respect to AT&T Kentucky's obligations to provide such declassified UNEs. |
| 2 | <p><u>INDigital:</u> Should AT&T be permitted to disconnect circuits when the parties have been unable to reach agreement for substitute service arrangements or elements?</p> <p><u>AT&T:</u> Should AT&T Kentucky be allowed to disconnect or convert services? RESOLVED</p> | 16.4 | 16.4 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the applicable transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 14.4.1 above of this Agreement, and if CLEC and AT&T Kentucky have failed to reach agreement under Section 14.4.1 above of this Agreement as to a substitute service arrangement or element, then AT&T Kentucky may convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available, at rates applicable to such analogous service or arrangement. | No, AT&T Kentucky should not be permitted to disconnect circuits just because the parties have been unable to reach agreement as to appropriate substitute arrangements for the subject circuits. INDigital Telecom's language permits AT&T Kentucky to convert those elements, but to permit service-affecting action like disconnection (especially with no prior written notice) is unreasonable to INDigital Telecom and its customer(s). | 16.4 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the applicable transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 14.4.1 above of this Agreement, and if CLEC and AT&T Kentucky have failed to reach agreement under Section 14.4.1 above of this Agreement as to a substitute service arrangement or element, then AT&T Kentucky may, at its sole option, disconnect DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport, whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available, at rates applicable to such analogous service or arrangement. | AT&T Kentucky's UNE declassification transition language states that AT&T Kentucky will provide reasonable notice that an item or category of items otherwise included in the UNE Attachment as a 251 (c)(3) UNE has been declassified. Upon that notice, CLEC has a choice—it can request that it discontinue the item, in which case AT&T Kentucky will do so. Or, if it doesn't request discontinuance, AT&T Kentucky will simply replace and/or re-price the item accordingly. This process will minimize disruption and disputes. AT&T Kentucky will continue to provide the item as a "UNE" during the 30-day period between the notice and the discontinuance or re-pricing and/or replacement of the product. If for some reason, there is no analogous product available, AT&T Kentucky's |

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

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

| Issue No | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's Language</u> | <u>AT&T Kentucky's Position</u> |
|----------|-----------------|---------|---------------|-----------------|-------------------------------------|--|
| | | | | | | language provides for the parties to negotiate and incorporate terms and conditions for a replacement product. AT&T Kentucky's approach is reasonable and orderly, and should help avoid disputes at the Commission. |

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

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 15 - CHC

| Issue No. | Issue Statement | Section(s) | CLEC Language | CLEC's Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|-----------|---|------------|--|--|--|--|
| 1 | <p><u>Indigital:</u> Should AT&T be required to work cooperatively with Indigital prior to suspending CHC/OC service?</p> <p><u>AT&T:</u> Should language be included to enable AT&T to suspend CHC/OC activity due to unanticipated heavy work loads/activity periods? RESOLVED</p> | 3.5 | <p>3.5 <u>AT&T Kentucky reserves the right to suspend the availability of CHC/OC service during unanticipated heavy workload/activity periods, but shall also work cooperatively with CLEC regarding</u> the availability of CHC/OC service during unanticipated heavy workload/activity these periods. Heavy workload includes any unanticipated volume of work that impacts <u>AT&T Kentucky's</u> ability to provide its baseline service. Where time permits, <u>AT&T Kentucky</u> will make every effort to notify CLEC when such unanticipated activities occur.</p> | <p>Yes. AT&T should be required to work cooperatively with Indigital prior to suspending CHC/OC. Because CHC/OC can lead to out-of-service periods, any unilateral suspension would be unacceptable and detrimental to Indigital's 911/E911 service and those that depend on the service in an emergency. AT&T should be required to work cooperatively with Indigital to ensure that out-of-service periods do not detrimentally interrupt its service.</p> | <p>3.5 <u>AT&T Kentucky reserves the right to suspend</u> the availability of CHC/OC service during unanticipated heavy workload/activity periods. Heavy workload includes any unanticipated volume of work that impacts <u>AT&T Kentucky's</u> ability to provide its baseline service. Where time permits, <u>AT&T Kentucky</u> will make every effort to notify CLEC when such unanticipated activities occur.</p> | <p>AT&T Kentucky proposes terms and conditions for Coordinated Hot Cuts (CHC) that should be incorporated into the agreement. Whether AT&T Kentucky is performing work for itself, for Indigital or for another customer, the scheduling for any particular activity is subject to certain workload constraints. AT&T Kentucky's proposed language provides a necessary mechanism for AT&T Kentucky to schedule CHC service and ensures that Indigital receives non-discriminatory treatment. In order to maintain a high level of service at reasonable costs, AT&T Kentucky must be able to manage the scheduling of its workload. Accordingly, AT&T Kentucky's proposed language should be adopted.</p> |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GTC

| Issue No. | Issue Statement | Section(s) | CLEC Language | CLEC Preliminary Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|-----------|--|--------------------|---|---|---|---|
| 1 | <p>Indigital/AT&T: Should Disputed Charges constitute Unpaid Charges? <u>Indigital accepts AT&T's language in 2.168.</u></p> <p><u>AT&T accepts Indigital's proposed in section 11.2.</u></p> <p>RESOLVED</p> | 2.168, <u>11.2</u> | <p>2.168 "Unpaid Charges" means any charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible. Disputed Amounts are not Unpaid Charges.</p> <p><u>11.2 A Late Payment Charge will be assessed for all Past Due payments and Disputed Amounts that are resolved in favor of the Billing Party as provided below, as applicable.</u></p> | <p>No; in some cases Disputed Charges will meet the AT&T Kentucky proposed definition for "Unpaid Charges," and it is appropriate to exclude amounts that are unpaid, but actively disputed (and therefore may not be due). Clarification of this issue will be helpful to non-lawyers attempting to operate on the basis of this agreement. The late payment provision in Section 11.2 should be changed to include "Disputed Amounts."</p> | <p>2.168 "Unpaid Charges" means any charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible.</p> <p><u>11.2 A Late Payment Charge will be assessed for all Past Due payments as provided below, as applicable.</u></p> | <p>Yes. Disputed charges are deemed to be unpaid charges. A charge held in dispute is still a charge that has not been paid and therefore is subject to late payment charges if the dispute is resolved in favor of the billing party. If merely disputing a charge could absolve a party of any duty to pay late-payment charges, parties could continually dispute charges merely as a means of delaying payment, effectively turning AT&T Kentucky into an interest-free banker for CLECs.</p> |
| 2 | <p>Indigital: Should the ICA be non-severable?</p> <p><u>AT&T:</u> Should the Severability provision be reflected in such a manner that the distinct provisions of this agreement are treated in their totality?</p> <p>RESOLVED</p> | 3.7.2 | <p>3.7.2 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.</p> | <p>No, the time and expense of negotiating an ICA is too great to permit a finding that any provision of this ICA is illegal, invalid, or unenforceable to result in the dissolution of this entire ICA. In fact, the disputed language seems to directly contradict the first two sentences of this section.</p> | <p>3.7.2 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.</p> <p>Consistent with the foregoing in this subsection, the Parties negotiated the terms and conditions of this Agreement for Interconnection Services as a total arrangement and it is intended that any adoption of this Agreement contain all of the terms and</p> | <p>Yes. The agreement is a negotiated agreement between the parties and an interconnection agreement, regardless of the attachments/appendices the parties negotiate to append to the general terms and conditions, is intended to be a total arrangement and not severable. The parties have agreed to language that addresses an event where if a provision is found to be invalid how the agreement would be handled.</p> |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GTC

| Issue No. | Issue Statement | Section(s) | CLEC Language | CLEC Preliminary Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|-------------------|---|---|--|--|
| | | | | | conditions. | |
| 3 | <p>INDigital/AT&T: Should the ICA contain an "evergreen" clause? <u>INDigital accepts AT&T's proposed [AT&T column]</u></p> <p>RESOLVED</p> | 8.2.1 | <p>8.2.1 Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on _____ (the "Initial Term"). <u>Following the expiration of the Initial Term, the Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Term") unless CLEC or AT&T Kentucky provides no less than thirty (30) days prior written Notice of its intent to terminate the Agreement at the end of the Initial Term or any Renewal Term or its intent to negotiate a successor Agreement to replace this Agreement.</u></p> | <p>Yes, the time and expense of negotiating an ICA is great, and for efficiency's sake, the ICA should contain an evergreen clause. <u>An evergreen clause does not restrict the parties in anyway. It simply makes clear that the ICA will continue in effect unless the parties choose otherwise. INDigital's language makes the ability to terminate or initiate negotiations for a new contract mutual between the parties.</u></p> | <p>8.2.1 Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on _____ (the "Initial Term").</p> <p>8.4.5 <u>[Intentionally deleted]</u> Either on or following the expiration date of this Agreement, if the Parties have not entered into a new agreement or are not in Active Negotiations as described in Section 8.4.4 above, then upon written Notice to CLEC by AT&T Kentucky, AT&T Kentucky may continue to offer services to CLEC pursuant to the rates, terms and conditions set forth in AT&T Kentucky's then current Generic found at the AT&T CLEC Online website. At any time thereafter, the Parties may initiate negotiations for a new agreement by providing a written Notice under Section 252 to the other Party.</p> | <p>No. AT&T Kentucky's proposal of a three (3) year term sufficiently meets the needs of both INDigital and AT&T Kentucky. To provide an annual auto renewal would restrict the parties to outdated terms and conditions as technology and the markets advance. AT&T Kentucky is only required to make an agreement available for a certain period of time because at that point the agreement becomes stale. The parties could always mutually agree to extend the contract, but renewal should not be automatic, and certainly should not be in the sole control of INDigital.</p> |
| 4 | <p>INDigital/AT&T: Should INDigital Telecom be required to provide a deposit in the event AT&T Kentucky determines there has been a general impairment of INDigital Telecom's financial stability?</p> <p>If so, which deposit language should be used in Section 10.2.2? RESOLVED <u>INDigital accepts AT&T's proposed [AT&T Column]</u></p> | 10.2.1- 10.2.2 | <p>10.2 Assurance of payment may be requested by AT&T Kentucky:</p> <p>10.2.1 <u>Intentionally deleted;</u></p> | <p>No; as long as INDigital Telecom is timely paying its bills consistent with the terms of this ICA, it should not be required to provide assurance of payment. Assurance of payment is expensive for new entrants, and the demand for such security should be limited to circumstances when it appears CLEC is having trouble paying more than one of its bills to AT&T Kentucky (Nonpayment of a single bill may be attributable to administrative error).</p> | <p>10.2 Assurance of payment may be requested by <u>AT&T Kentucky;</u></p> <p>10.2.1 <u>If based on AT&T Kentucky's analysis of the AT&T Kentucky Credit Profile and other relevant information regarding CLEC's credit and financial condition, there is an impairment of the credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from Third Party financial sources; or [Intentionally deleted];</u></p> | <p>Yes. Deposit requirements are a standard business operating practice for companies when extending credit and thus should be determined by reasonable measures developed by AT&T Kentucky in the event that a CLEC is or becomes credit impaired to reduce AT&T Kentucky's risk of loss from nonpayment of undisputed bills. AT&T Kentucky believes that today's financial conditions make a deposit requirement essential.</p> |

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GTC

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|-----------|---|--|---|--|--|---|
| | RESOLVED | | 10.2.2 If CLEC fails to timely pay at least two (2) bill(s) rendered to CLEC by <u>AT&T Kentucky</u> (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 12.4 below); and/or | | 10.2.2 If CLEC fails to timely pay at least two (2) bill(s) rendered to CLEC by <u>AT&T Kentucky</u> (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 12.4 below); and/or there has been an impairment of the established credit and/or financial health 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. 10.12 A Cash Deposit held by <u>AT&T Kentucky</u> shall be returned to CLEC if the following conditions have been met: 10.12.1 Payment was made on bills rendered to CLEC by <u>AT&T Kentucky</u> (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 12.4 below) as of the Bill Due Date for all but onetwo times during the prior twelve month period and all payments were made with checks that were honored and, | AT&T Kentucky offers deposit language that allows AT&T Kentucky to assess a reasonable deposit in the event that a CLEC customer is or becomes credit impaired. Therefore, AT&T Kentucky's proposed language addresses the failure to make a timely payment to trigger a deposit requirement but believes Pay history alone does not indicate a future ability to pay and therefore additional safeguards are also required of which the criteria are objective and measurable. AT&T Kentucky's proposed language is objective and reasonable for both Parties. It balances the need of AT&T Kentucky to protect itself and also protect those CLECs that pay on time from the requirement to pay a deposit. |
| 5 | Indigital: Should Indigital Telecom be required to escrow amounts subject | 11.8 11.9 11.9.2.5.3, | 11.8 If any portion of an amount due to the Billing Party under this Agreement is subject to a bona fide dispute between the Parties, the Non-Paying | No, Escrow requirements are unnecessary and unreasonable. Assurance of payment provisions govern | 11.8 If any portion of an amount due to the Billing Party under this Agreement is subject to a bona fide dispute between the Parties, the Non-Paying | Yes. AT&T has experienced large financial losses from CLECs who have either gone bankrupt or otherwise exited |

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| Issue No. | Issue Statement | Section(s) | CLEC Language | CLEC Preliminary Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|--|--|---|--|--|
| | <p>to dispute?</p> <p><u>AT&T:</u> Is it reasonable to require CLEC to pay disputed charges into an escrow account while the disputed amounts are being resolved through the dispute process? RESOLVED <u>AT&T/Indigital compromise [AT&T column]</u> RESOLVED</p> | <p>11.10, 11.12— 11.12.4, 12.4— 12.4.4, 12.6— 12.6.2, 13.4.4, 40.1</p> | <p>Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 13.4 below. The Disputing Party should utilize any existing and preferred form or method provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay all undisputed amounts to the Billing Party.</p> <p><u><i>11.9 Intentionally Omitted.</i></u> <u><i>~11.9.2.5.3 Intentionally Omitted.</i></u></p> | <p>reasonable Expectations of nonpayment, and escrow provisions have the anticompetitive effect of unnecessarily tying up financial and administrative resources of new entrants.</p> | <p>Party <u>may either (a) pay the invoice in full and file its dispute in accordance with Section 13.4, or (b) the Non-Paying Party</u> must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 13.4 below <u>and escrow the disputed sum in accordance with this Section 11.8 and Section 11.9, below.</u> The Disputing Party should utilize any existing and preferred form or method provided by the Billing Party to communicate disputes to the Billing Party. <u><i>In order to properly dispute an amount, the Non-Paying Party must also, on or before the Bill Due Date, the Non-Paying Party must pay (i) pay all undisputed amounts to the Billing Party; or, and (ii) unless the Non-Paying Party pays the Billing Party the total all Disputed Amounts, if the Non-Paying Party does not have a proven history of late payments defined as not having established a minimum of twelve (12) consecutive months' timely payment history with the Billing Party prior to the date it notifies the Billing Party of this billing dispute, and if the Non-Paying Party's total outstanding and unpaid Invoice charges exceed 10% of the then-current monthly billing under this Agreement, then the Non-Paying Party must pay the full disputed amount (other than disputed charges arising from Intercarrier Compensation) into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties, and the Third Party escrow agent has agreed to provide written evidence to the Billing Party that the Non-Paying Party has met</i></u></p> | <p>the business. Many of these CLECs filed frivolous or inflated disputes in order to delay or avoid collection action. This ultimately resulted in larger losses for AT&T. The escrow provisions discourage those types of disputes and ensure that if a dispute is resolved in favor of the billing party, the funds are there to pay the bill. Without this requirement there is no incentive on the part of the CLEC to provide the information or assistance needed to resolve the dispute.</p> |

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|-----------|-----------------|------------|---------------|---------------------------|---|--------------------------|
| | | | | | <p>this escrow requirement. <u><i>In the event the Non-Paying Party escrows the disputed amount(s), the Non-Paying Party must provide the Billing Party with written evidence sufficient to show that the Non-Paying Party has met this escrow requirement. Until the Non-Paying Party provides such evidence that the full amount of the disputed amounts has been deposited into an escrow account that complies with this Section 11.8 and Section 11.9, below, such Unpaid Charges will not be deemed to be "disputed" under Section 13.4. Furthermore, in the event that the Non-Paying Party fails to satisfy this escrow requirement, if applicable, the Billing Party may, upon ten (10) days' prior written notice to the Non-Paying Party and in addition to any other rights or remedies it may have under law, take any or all of the actions set forth in Section 12.0 of this Agreement. Until</i></u></p> <p>evidence that the full amount of the outstanding and unpaid Invoice charges hasve been deposited into an escrow account that complies with this Section 11.8 and Section 11.9 below, is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 13.4. Failure to meet this escrow requirement when applicable shall permit the Billing Party, upon 10 days' written notice to the Non-Paying Party, in addition to exercising any other rights or remedies it may have under law, to take any or all of the actions set forth in Section 12.0.</p> <p><u><i>Notwithstanding the foregoing, the Non-Paying Party shall not be required to either pay the</i></u></p> | |

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| | | | <p>11.10 Disputed Amounts <u>that are resolved in favor of the Billing Party</u> will be subject to Late Payment Charges as set forth in Section 11.2 above.</p> <p>11.12.2 Intentionally deleted;</p> <p>11.12.3 within ten (10) Business Days after resolution of the dispute, the portion (if any) of the Disputed Amounts resolved in favor of the Billing Party will be <u>paid</u> to the Billing Party; and</p> <p>11.12.4 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 11.8 above.</p> <p>12.4.2 pay all undisputed Unpaid Charges to the Billing Party;</p> <p>12.4.3 Intentionally Omitted.</p> | | <p>disputed amounts to the Billing Party or escrow the disputed amounts with a Third Party escrow agent, if (prior to notifying the Billing Party of its dispute), the Non-Paying Party: (i) has established a minimum of twelve (12) consecutive months' timely payment history with AT&T-22STATE; and (ii) has total outstanding and unpaid invoice charges not in excess of ten percent of the then-current monthly billing to Non-Paying Party under the Agreement.</p> <p>11.9 Requirements to Establish Escrow Accounts:</p> <p>11.9.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:</p> <p>11.9.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;</p> <p>11.9.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and</p> <p>11.9.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH credit transfers.</p> <p>11.9.2 In addition to the foregoing requirements for the Third Party escrow agent, the Disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:</p> | |

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| | | | <p><u><i>12.4.4 Intentionally Omitted.</i></u></p> <p><u><i>12.6.2 Intentionally Omitted.</i></u></p> <p><u><i>13.4.4 Intentionally Omitted.</i></u></p> | | <p>11.9.2.1 The escrow account must be an interest bearing account;</p> <p>11.9.2.2 all charges associated with opening and maintaining the escrow account will be borne by the Disputing Party;</p> <p>11.9.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;</p> <p>11.9.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and</p> <p>11.9.2.5 disbursements from the escrow account will be limited to those:</p> <p>11.9.2.5.1 authorized in writing by both the Disputing Party and the Billing Party (that is, signature(s) from representative(s) of the Disputing Party only are not sufficient to properly authorize any disbursement); or</p> <p>11.9.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 13.7 below; or</p> <p>11.9.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 13.7 below.</p> <p>11.10 Disputed Amounts in escrow <u><i>that are resolved in favor of the Billing Party</i></u> will be subject to Late Payment Charges as set forth in</p> | |

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| | | | <p>40.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 8.0 above and Section 8.4 above on Termination; 10.6 above on Cash Deposits, Section 10.7 above on Deposit Interest; Section 10.8 above on Drawing on Cash Deposits; Sections 11.1 above thru Section 11.6 above on Billing & Payment of Charges; Section 12.0 above on Non Payment and Procedures for Disconnection; Section 14.0 above on Audits; Section 15.0 above on Warranties; Section 17.0 above Indemnity; Section 18.0 above Performance Measures; Section 19.0 above Intellectual Property/License; Section 20.0 above Notices; Section 21.0 above Publicity and Use of Trademarks or Service Marks; Section 22.0 above Confidentiality; 24.0 above Governing Law; Section CALEA Compliance; Section 34.0 above Taxes; Section 35.0 above Non-Waivers and Section 42.0 below Amendments and Modifications.</p> | | <p>Section 11.2 above.</p> <p>11.12.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;</p> <p>11.12.3 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and</p> <p>11.12.4 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 11.8 above.</p> <p><u>11.12.5 within ten (10) Business Days after resolution of the dispute, any unpaid Disputed Amounts including late payment charges resolved in favor of the Billing Party will be paid to the Billing Party.</u></p> <p>12.4.2 pay all undisputed Unpaid Charges to the Billing Party; and</p> <p>12.4.3 <u>if applicable</u>, pay all Disputed Amounts (other than Disputed Amounts arising from</p> | |

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| | | | | | <p>Inter-carrier Compensation) into an interest bearing escrow account that complies with the requirements set forth in Section 11.8 and Section 11.9 above and</p> <p>12.4.4 the Third Party escrow agent must <u>if applicable</u>, furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 11.9 above and deposited a sum equal to the Disputed Amounts into that account (other than Disputed Amounts arising from Inter-carrier Compensation). <u>If applicable</u>, until evidence that the full amount of the Disputed Charges (other than Disputed Amounts arising from Inter-carrier Compensation) has been deposited into an escrow account that complies with Section 11.8 and Section 11.9 above is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 13.0 below.</p> <p>12.6.2 deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 11.8 and Section 11.9 above within the time specified in Section 12.2 above.</p> <p>13.4.4 When CLEC is the Disputing Party, CLEC must provide evidence to AT&T-22STATE that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 11.9 above of this Agreement and deposited all Unpaid Charges relating to Resale</p> | |

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

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| | | | | | Section 35.0 above Non-Waivers and Section 42.0 below Amendments and Modifications. | |
| 6 | <p>Indigital: What is an appropriate error threshold error for the right to conduct follow-up audits?</p> <p><u>AT&T:</u> What is an appropriate error threshold for the right to conduct follow-up audits?</p> <p><u>RESOLVED</u></p> | 14.1, 14.8 | <p>14.1 Subject to the restrictions set forth in Section 22.0 below and except as may be otherwise expressly provided in this Agreement, the Auditing Party may audit the Audited Party's books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the Service Start Date for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least twenty percent (20%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least twenty percent (20%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.</p> <p>14.8 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by</p> | Follow-up audits should only be permitted when an audit discovers errors of at least twenty percent (20%); a five percent (5%) threshold is unreasonably low. | <p>14.1 Subject to the restrictions set forth in Section 22.0 below and except as may be otherwise expressly provided in this Agreement, the Auditing Party may audit the Audited Party's books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the Service Start Date for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.</p> <p>14.8 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by</p> | <p>AT&T Kentucky's language provides for an initial audit once a year with a follow-up audit(s) if there is an error with an aggregate value of at least five percent (5%) of the amounts payable by the auditing party for the audit time frame.</p> <p>AT&T Kentucky believes that follow-up audits must be warranted if there is an error with an aggregate value of at least five percent (5%) of the amounts payable by the auditing party for the audit time frame and should not be conducted on a whim or without sufficient cause. 5% is an appropriate threshold where dealing with billing accuracy between the Parties. The purpose of the terms contained within the Agreement are intended for the Parties to invoice and bill each other accurately; any incidence of billing above a 5% threshold likely signifies meaningful errors in the billing Party's practices, and therefore merits an additional check by the auditing Party to ensure the billing Party remains in compliance with the audit. It must be noted that previous audits correct errors, so the incidence of ongoing problems will be miniscule in those very rare occasions where they may occur at all.</p> |

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|-----------|--|------------|--|--|---|---|
| | | | Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than <u>twenty</u> percent (<u>20%</u>) of the aggregate charges for the audited services during the period covered by the audit. | | Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit. | |
| 7 | <p>Indigital: Should the limitation of liability related to 911 service be mutual?</p> <p><u>AT&T:</u> What is the appropriate language to be included in Section 16.7 of the interconnection agreement?</p> <p><u>RESOLVED</u> <u>Indigital accepts AT&T's language</u></p> <p><u>RESOLVED</u></p> | 16.7 | 16.7 <u>Neither Party</u> shall be liable to <u>the other Party</u> , its End User, or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service. | As Indigital Telecom's business model is targeted in large part at the provision of competitive 911 services, it is appropriate to make this limitation of liability mutual. | 16.7 AT&T Kentucky shall not be liable to CLEC , its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service. | Should AT&T Kentucky prevail on the threshold issue (Issue 1) AT&T Kentucky would not be accessing Indigital's 911 system under this agreement. Additionally, as a 911 Service provider, Kentucky law limits AT&T Kentucky's liability for damages, and AT&T Kentucky should not be required to indemnify for such damages. |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 03 - STRUCTURE ACCESS

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|---------|--|---|---|--|
| 1 | <p>INDigital: In addition to paying for the production and mailing of records relating to structure access, should INDigital Telecom pay for the cost of employee time spent gathering and copying records?</p> <p>AT&T: Should AT&T Kentucky absorb costs associated with research, review and copying of records? RESOLVED</p> | 6.2.1.4 | 6.2.1.4 AT&T Kentucky employee Costs based on the reasonable time spent researching, reviewing and copying records. | Because INDigital Telecom has no control over AT&T Kentucky's time spent researching, reviewing, and copying records, the agreement should specify that INDigital Telecom's reimbursement obligation only extends to "reasonable" time spent on these tasks. | 6.2.1.4 AT&T Kentucky employee Costs based on the time spent researching, reviewing and copying records. | No. It is AT&T Kentucky's position that the word "reasonable" is subjective and likely to lead to disputes. AT&T Kentucky should be compensated for the actual time its employees spend on these tasks. |
| 2 | <p>AT&T/INDigital: Should INDigital Telecom pay for AT&T Kentucky to monitor the entrance and exit of Facilities?</p> <p>RESOLVED</p> | 16.1 | <p>16.1 AT&T Kentucky may remotely monitor, at AT&T Kentucky's expense, the normal day-to-day entrance and exit of CLEC's Facilities into AT&T Kentucky's Manholes and the placement of CLEC's Facilities in AT&T Kentucky's Manholes. If, however, AT&T Kentucky identifies any unusual activity during its remote monitoring operations and this unusual activity cannot be corrected or reviewed remotely, then AT&T Kentucky may dispatch personnel to investigate the CLEC's Facilities activity in order to address the issue. If, upon completion of that investigation, AT&T Kentucky determines that the dispatch was necessary due to a breach of this Agreement caused by CLEC, then CLEC shall pay the costs associated with the dispatch. AT&T Kentucky may monitor, at AT&T Kentucky's expense, the entrance and exit of CLEC's Facilities into AT&T Kentucky's Manholes and the placement of CLEC's Facilities in AT&T Kentucky's Manholes.</p> | No; INDigital Telecom does not oppose AT&T Kentucky's right to monitor the entrance and exit of Facilities, but it does object to paying for AT&T Kentucky for such monitoring where INDigital was not the cause of the investigation. This attachment provides great detail about what is and is not permitted with respect to the Manholes, and it provides remedies for failure to abide by those terms and conditions. AT&T Kentucky's proposal accomplishes nothing more than unreasonably inflating INDigital Telecom's costs or competition. | <p>16.1 AT&T Kentucky may remotely monitor, at AT&T Kentucky's expense, the normal day-to-day entrance and exit of CLEC's Facilities into AT&T Kentucky's Manholes and the placement of CLEC's Facilities in AT&T Kentucky's Manholes. If, however, AT&T Kentucky identifies any unusual activity during its remote monitoring operations and this unusual activity cannot be corrected or reviewed remotely, then AT&T Kentucky may dispatch personnel to investigate the CLEC's Facility activity in order to address the issue. If, upon completion of that investigation, AT&T Kentucky determines that the dispatch was necessary due to a breach of this Agreement caused by the actions or omissions of the CLEC, then CLEC shall pay the costs associated with the dispatch.</p> | Yes. To the extent AT&T Kentucky needs to monitor the entrance and exit of CLEC facilities into AT&T Kentucky's manholes and the placement of CLEC facilities in AT&T Kentucky's manholes, the CLEC is the cost-causer and should reimburse AT&T Kentucky for that work. |

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ATTACHMENT 03 - STRUCTURE ACCESS

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|-----------|--|-------------------|--|---|--|---|
| 3 | <p>AT&T/Indigital: Should Indigital Telecom pay for the cost of post-construction inspections?</p> <p>RESOLVED</p> | 16.2.1, 16.3.3 | <p>16.2.1 AT&T KENTUCKY may conduct a post-construction inspection of the Attaching Party's attachment of Facilities to AT&T Kentucky's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. <i>If the post-construction inspection reveals a defect in conformity of the attachments to the occupancy permit, then CLEC will be responsible for the costs of the inspection. If, however, the post-construction inspection fails to reveal a defect in conformity of the attachments to the occupancy permit, then AT&T Kentucky will be responsible for the costs of the inspection.</i> AT&T Kentucky will provide the Attaching Party advance written Notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany AT&T Kentucky on the post-construction inspection. AT&T Kentucky may, at <i>its own</i> expense, conduct a post-construction inspection of the Attaching Party's attachment of Facilities to AT&T Kentucky's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. AT&T Kentucky will provide the Attaching Party advance written Notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany AT&T Kentucky on the post-construction inspection.</p> <p>16.3.3 Such inspections shall be conducted at AT&T Kentucky's expense.</p> | <p>No, Indigital Telecom does not oppose AT&T Kentucky's right to conduct a post-construction inspection, but it does object to paying for AT&T Kentucky for such inspections where no defect is revealed. This attachment provides a great detail about what is and is not permitted with respect to the Structures, and it provides remedies for failure to abide by those terms and conditions. AT&T Kentucky's proposal accomplishes nothing more than unreasonable inflating Indigital Telecom's costs or competition.</p> | <p>16.2.1 AT&T Kentucky may, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of Facilities to AT&T Kentucky's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. AT&T Kentucky will provide the Attaching Party advance written Notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany AT&T Kentucky on the post-construction inspection.</p> <p>16.3.3 Such inspections shall be conducted at AT&T Kentucky's expense; provided, however, that CLEC shall bear the Costs of inspections as delineated in Sections 16.1 above and 16.2.1 above.</p> | <p>Yes. This is a charge that is extended to all CLECs to ensure all are in compliance.</p> |
| 4 | <p>AT&T/Indigital: Should the time attributable to make ready work be included in Indigital Telecom's time to bring Facilities into compliance?</p> <p>RESOLVED</p> | 16.3.5 | <p>16.3.5 If the inspection reflects that Attaching Party's Facilities are not in compliance with the terms of this Appendix, Attaching Party shall bring its Facilities into compliance within thirty (30) calendar days <i>(exclusive of any necessary make ready work)</i> after being notified of such noncompliance. If any make ready or modification work to AT&T Kentucky's Structures is required to bring Attaching Party's Facilities into compliance, the Attaching Party shall provide Notice to AT&T Kentucky and the make ready work or modification will be treated in the same fashion as make</p> | <p>Yes, if any necessary make ready work is required to bring Facilities into compliance, it is unreasonable to require Indigital Telecom to satisfy a 30 day timeframe when it has no control over the time required by AT&T to complete any necessary make-ready work.</p> | <p>16.3.5 If the inspection reflects that Attaching Party's Facilities are not in compliance with the terms of this Appendix, Attaching Party shall bring its Facilities into compliance within thirty (30) calendar days after being notified of such noncompliance. If any make ready or modification work to AT&T Kentucky's Structures is required to bring Attaching Party's Facilities into compliance, the Attaching Party shall provide Notice to AT&T Kentucky and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new</p> | <p>Yes. CLEC must be in compliance after attaching to AT&T Kentucky's poles, conduits and rights of way, without consideration of make ready work. Make ready work is addressed in the next sentence of the agreed-upon language.</p> |

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

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 03 - STRUCTURE ACCESS

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|-----------|---|------------------------------|--|---|--|--|
| | | | ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, Facilities must be brought into compliance upon notification. | | request for attachment. If the violation creates a hazardous condition, Facilities must be brought into compliance upon notification. | |
| 5 | <p><u>INDigital:</u> Should AT&T Kentucky be permitted to charge INDigital Telecom for the storage of any removed Facilities?</p> <p><u>AT&T:</u> Should CLEC pay the costs for storage, in relation to AT&T Kentucky's removal of CLEC's facilities? RESOLVED</p> | 19.7.1 | 19.7.1 If AT&T Kentucky removes any of Attaching Party's Facilities pursuant to this article, Attaching Party shall reimburse AT&T Kentucky for AT&T Kentucky's Costs in connection with the removal, delivery, or other disposition of the removed Facilities. | No, if AT&T has to remove INDigital Telecom's Facilities, INDigital Telecom has effectively abandoned those Facilities, and AT&T Kentucky should simply deliver the Facilities to INDigital Telecom or dispose of the Facilities, either at INDigital Telecom's cost. AT&T Kentucky should not be permitted to store unwanted equipment at INDigital Telecom's expense. | 19.7.1 If AT&T Kentucky removes any of Attaching Party's Facilities pursuant to this article, Attaching Party shall reimburse AT&T Kentucky for AT&T Kentucky's Costs in connection with the removal, storage , delivery, or other disposition of the removed Facilities. | Yes. AT&T Kentucky is not fully aware of all the types of costs it may incur when CLEC facilities will have to be removed. Therefore, reimbursement for storage of these facilities is appropriate, and AT&T Kentucky should not be limited to recovery of removal costs alone. AT&T Kentucky's language is more specific and more likely to eliminate or minimize any future disputes. |
| 6 | <p><u>AT&T/INDigital:</u> Should the indemnification provisions of the GT&C govern the structure access, and if not, should the indemnification provisions relating to damage to Facilities be mutual in nature? RESOLVED</p> | 22.1.3— 22.1.4, 22.1.6 | <p>22.1.3 <u>[Intentionally omitted.]</u></p> <p>22.1.4 <u>[Intentionally Omitted.]</u></p> <p>22.1.6 <u>[Intentionally omitted.]</u></p> | AT&T Kentucky's one-sided indemnification provisions in this attachment are neither necessary (given the indemnification terms of the GT&C) nor fair. The language is not necessary, and if language must be included, it should be mutual. | <p>22.1.3 CLEC shall indemnify, protect and save harmless AT&T Kentucky, its directors, officers, employees and agents, AT&T Kentucky's other CLECs, and Joint User(s) from and against any and all claims, demands, causes of action, damages and Costs, including reasonable attorney's fees through appeals incurred by AT&T Kentucky, AT&T Kentucky's other CLECs and Joint User(s) as a result of acts by the CLEC, its employees, agents or contractors, including but not limited to the Costs of relocating Pole(s), Anchor(s), Guy(s), or Conduit System resulting from a loss of ROW or property owner consents and/or the Costs of defending those rights and/or consents.</p> <p>22.1.4 — Each Party shall indemnify, protect and save harmless the other Party, its directors, officers,</p> | Under the agreement, the CLEC will utilize AT&T Kentucky's Poles, Conduits, and Rights-of-Way; therefore, it is reasonable that the CLEC would be the party indemnifying AT&T Kentucky for claims that arise out of such utilization. AT&T Kentucky does not agree to make this language mutual nor will it agree to omit the language, as the CLEC is using AT&T Kentucky's equipment not vice versa. |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 03 - STRUCTURE ACCESS

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

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|---|---|---|---|--|
| | <p>INDigital: Should this "generic" 911/E911 attachment be included in INDigital Telecom's ICA?</p> <p>AT&T: Does INDigital have the right to interconnect with AT&T under Section 251(c) of the Act for INDigital's provision of competitive 911/E911 services to PSAPs?</p> <p>If not, what is the appropriate language to be included in the interconnection agreement? COMMISSION HAS ALREADY RESOLVED</p> <p>RESOLVED</p> | <p>AllThres hold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p><i>INDigital Telecom's proposed alternative to the use of this "Attachment 5 – 911/E911 (Generic)" is set forth as its position with respect to Alternate Attachments 5 and 5A.]</i> Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>This "Attachment 5 – 911/E911 (Generic)" contemplates that AT&T Kentucky will be the monopoly 911/E911 service provider through out its territory. Accordingly, it does not meet INDigital Telecom's needs insofar as it does not provide terms and conditions sufficient to permit INDigital Telecom to compete against AT&T Kentucky's historical monopoly over 911/E911 services.¹</p> <p>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>AT&T Kentucky's position is that the 911 service that INDigital intends to provide does not meet the definition of "telephone exchange service" as set forth in 47 U.S.C. 153(47) because the service will not provide the ability to both originate and terminate calls. Accordingly, AT&T Kentucky is not required to provide interconnection pursuant to the provisions set forth in Section 251(c). AT&T Kentucky is available to negotiate a commercial agreement for INDigital's 911 services.</p> <p>The Commission, however, did not adopt AT&T Kentucky's position in its decision on the threshold issue issued April 9, 2010. AT&T Kentucky disagrees with that decision, but in light of that ruling, and while reserving its right to appeal, AT&T Kentucky now proposes its language in the Alternate Attachment 05 911/E911 DPL and Alternate Attachment 05A 911/E911 NIM DPL. Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> |
| 2 | <p>INDigital: Should this "generic" 911/E911 attachment be</p> | <p>1.2Thres hold issue</p> | <p>1.2 The Parties acknowledge and agree that each Party can only provide E911 Service in a territory where that Party is the E911 network provider, and that only said service</p> | <p>This "Attachment 5 – 911/E911 (Generic)" contemplates that AT&T Kentucky will be the monopoly</p> | <p>1.2 The Parties acknowledge and agree that AT&T Kentucky can only provide E911 Service in a territory where AT&T Kentucky is the E911 network provider, and that only said</p> | <p>This AT&T Kentucky Attachment 05 provides the guidelines by which AT&T Kentucky will provide INDigital with</p> |

¹ INDigital Telecom notes that because this Attachment 5 – 911/E911 (Generic) formed the basis of the parties initial discussion and negotiation surrounding the provision of 911/E911-related services, the language of this attachment (within the composite agreement attached as Exhibit 1) remains formatted consistent with the parties' initial discussions. Since that time, INDigital Telecom's positions with respect to 911/E911-related services has evolved into those positions set forth in Alternate Attachments 5 and 5A. Nevertheless, as evidence of its attempt to productively engage AT&T Kentucky with this issue, INDigital Telecom has attached this document in its original formatted form, notwithstanding the fact that this Attachment 5 – 911/E911 (Generic) should be disregarded in favor of Alternate Attachments 5 and 5A.

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

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|---|--|--|--|--|--|
| | <p>included in INdigital Telecom's ICA?</p> <p><u>AT&T:</u> Should the language allow for E911 service providers other than AT&T Kentucky?</p> <p><u>COMMISSION HAS ALREADY RESOLVED</u> <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> <p><u>RESOLVED</u></p> | <p><u>decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>configuration will be provided once it is purchased by the E911 Customer and/or PSAP. Access to a Party's E911 Selective Routers and E911 Database Management System will be by mutual agreement between the Parties.</p> <p><u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>911/E911 service provider through out its territory. Accordingly, it does not meet INdigital Telecom's needs insofar as it does not provide terms and conditions sufficient to permit INdigital Telecom to compete against AT&T Kentucky's historical monopoly over 911/E911 services.²</p> <p><u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>service configuration will be provided once it is purchased by the E911 Customer and/or PSAP. Access to AT&T Kentucky's E911 Selective Routers and E911 Database Management System will be by mutual agreement between the Parties.</p> <p><u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>access to E911 Service in territories where AT&T Kentucky is the E911 network provider. Where AT&T Kentucky requires access to another E911 network provider for the completion AT&T Kentucky's E911 calls, AT&T Kentucky will enter into a separate agreement with that E911 service provider to obtain such connectivity.</p> <p>The Commission, however, did not adopt AT&T Kentucky's position in its decision on the threshold issue issued April 9, 2010, AT&T Kentucky disagrees with that decision, but in light of that ruling, and while reserving its right to appeal, AT&T Kentucky now proposes the language in the Alternate Attachment 05 911/E911 DPL and Alternate Attachment 05A 911/E911 NIM DPL.</p> <p><u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> |
| 3 | <p>INdigital: Should this "generic" 911/E911 attachment be included in INdigital Telecom's ICA?</p> <p><u>AT&T:</u> Should AT&T be required to</p> | <p>1.3<u>Thres hold issue decided by the Kentucky Public Service</u></p> | <p>1.3 [intentionally deleted.]</p> <p><u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>This "Attachment 5 – 911/E911 (Generic)" contemplates that AT&T Kentucky will be the monopoly 911/E911 service provider through out its territory. Accordingly, it does not meet INdigital Telecom's needs insofar as it does not provide terms and conditions sufficient to permit INdigital</p> | <p><u>1.3 For CLEC's own switches, AT&T Kentucky shall provide access to its E911 Selective Routers as described herein only where the PSAP and/or E911 Customer served by the E911 Selective Routers has approved CLEC to carry E911 Emergency Services calls, which approval is subject to being revoked, conditioned, or modified by the PSAP and/or E911 Customer at any time. Threshold issue decided by the Kentucky Public Service Commission by order</u></p> | <p>This language is appropriate and in accordance with the administration of CLEC interconnection to insure that CLEC has established E911 service prior to exchanging telephone exchange or exchange access services. Attachment 05 provides for ancillary services used in conjunction</p> |

² INdigital Telecom notes that because this Attachment 5 – 911/E911 (Generic) formed the basis of the parties initial discussion and negotiation surrounding the provision of 911/E911-related services, the language of this attachment (within the composite agreement attached as Exhibit 1) remains formatted consistent with the parties' initial discussions. Since that time, INdigital Telecom's positions with respect to 911/E911-related services has evolved into those positions set forth in Alternate Attachments 5 and 5A. Nevertheless, as evidence of its attempt to productively engage AT&T Kentucky with this issue, INdigital Telecom has attached this document in its original formatted form, notwithstanding the fact that this Attachment 5 – 911/E911 (Generic) should be disregarded in favor of Alternate Attachments 5 and 5A.

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DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|--|--|---|---|--|
| | <p>provide access to its selective routers for switches not owned by CLEC as identified in this agreement? COMMISSION HAS ALREADY RESOLVED <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u> RESOLVED</p> | <p>Commission by order dated April 9, 2010.</p> | | <p>Telecom to compete against AT&T Kentucky's historical monopoly over 911/E911 services.³<u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p><u>dated April 9, 2010.</u></p> | <p>with the CLEC interconnection for the transmission and routing of Telephone Exchange Service traffic between the respective End Users of the parties pursuant to section 251(c)(2) of the Act. <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> |
| 4 | <p>INdigital: Should this "generic" 911/E911 attachment be included in INdigital Telecom's ICA? AT&T: Should the definition of Selective Router extend beyond the routing of 911 calls from CLEC to the proposed PSAP? COMMISSION HAS ALREADY RESOLVED <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u> RESOLVED</p> | <p>2.13 Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>2.13 "Selective Routing" (SR) means the routing and "E911 Selective Router" (E911 SR) means the equipment used to route a call to 911 to the proper PSAP based upon the number and location of the caller. SR is controlled by an ESN, which is derived from the location of the access line from which the 911 call was placed. <u>For purposes of this attachment: (i) SR includes selective call rejection and secondary selective routing services by which 911 calls may be automatically routed to CLEC, AT&T Kentucky, or any other carrier that may serve as the underlying carrier of an E911 Customer; and (ii) E911 SR includes both primary and secondary equipment used to route a call to 911 to the proper PSAP based upon the number and location of the caller.</u> <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>This "Attachment 5 – 911/E911 (Generic)" contemplates that AT&T Kentucky will be the monopoly 911/E911 service provider through out its territory. Accordingly, it does not meet INdigital Telecom's needs insofar as it does not provide terms and conditions sufficient to permit INdigital Telecom to compete against AT&T Kentucky's historical monopoly over 911/E911 services.⁴<u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>2.13 "Selective Routing" (SR) means the routing and "E911 Selective Router" (E911 SR) means the equipment used to route a call to 911 to the proper PSAP based upon the number and location of the caller. SR is controlled by an ESN, which is derived from the location of the access line from which the 911 call was placed.<u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>The items listed in the CLEC definition are not applicable to the AT&T Kentucky Selective Router operation. The AT&T Kentucky Selective Router routes calls from Competitive Local Exchange Providers (CLECs), not to them. The current AT&T Kentucky definition is applicable for the E911 service provided under the terms of this agreement. <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> |

³ INdigital Telecom notes that because this Attachment 5 – 911/E911 (Generic) formed the basis of the parties initial discussion and negotiation surrounding the provision of 911/E911-related services, the language of this attachment (within the composite agreement attached as Exhibit 1) remains formatted consistent with the parties' initial discussions. Since that time, INdigital Telecom's positions with respect to 911/E911-related services has evolved into those positions set forth in Alternate Attachments 5 and 5A. Nevertheless, as evidence of its attempt to productively engage AT&T Kentucky with this issue, INdigital Telecom has attached this document in its original formatted form, notwithstanding the fact that this Attachment 5 – 911/E911 (Generic) should be disregarded in favor of Alternate Attachments 5 and 5A.

⁴ INdigital Telecom notes that because this Attachment 5 – 911/E911 (Generic) formed the basis of the parties initial discussion and negotiation surrounding the provision of 911/E911-related services, the language of this attachment (within the composite agreement attached as Exhibit 1) remains formatted consistent with the parties' initial discussions. Since that time, INdigital Telecom's positions with respect to 911/E911-related services has evolved into those positions set forth in Alternate Attachments 5 and 5A. Nevertheless, as evidence of its attempt to productively engage AT&T Kentucky with this issue, INdigital Telecom has attached this document in its original formatted form, notwithstanding the fact that this Attachment 5 – 911/E911 (Generic) should be disregarded in favor of Alternate Attachments 5 and 5A.

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

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|--|--|--|---|---|
| 5 | <p>INDigital: Should this "generic" 911/E911 attachment be included in INDigital Telecom's ICA?</p> <p>AT&T: What trunking and traffic routing arrangements should be used for the exchange of traffic?</p> <p>COMMISSION HAS ALREADY RESOLVED</p> <p>RESOLVED</p> | <p>3.0, 3.2.1– 3.2.2</p> <p>3.3.1, 3.3.2</p> <p>3.4.1– 3.4.3</p> <p>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>3.0 <u>AT&T and CLEC</u> Responsibilities</p> <p>3.2 Call Routing:</p> <p>3.2.1 AT&T Kentucky will route 911 calls from the AT&T Kentucky SR to the designated primary PSAP or to designated alternate locations, according to routing criteria specified by the PSAP, unless CLEC is the provider of E911 Service to an E911 Customer, in which case AT&T Kentucky will route calls to CLEC over SS7 ISUP trunking, for ultimate termination by CLEC in a manner specified by CLEC's E911 Customer(s).</p> <p>3.22 AT&T Kentucky and CLEC, as appropriate, will forward the ANI for the calling party number it receives from the other party and the associated 911 ALI to the PSAP for display. If no ANI is forwarded by the calling party's carrier, the party routing the call(s) to the PSAP will forward an Emergency Service Central Office (ESCO) identification code for display at the PSAP. If ANI is forwarded by the calling party's carrier, but no ALI record is found in the E911 DBMS, the party routing the call(s) to the PSAP will report this "No Record Found" condition to the calling party's carrier in accordance with NENA standards.</p> <p>3.3 Facilities and Trunking:</p> <p>3.3.1 Each Party shall provide and maintain sufficient dedicated E911 Trunks from their respective E911 SR to the PSAP of the E911 Customer, according to provisions of any appropriate state Commission-approved tariff and specifications of the E911 Customer.</p> <p>3.3.2 AT&T Kentucky will provide SS7 ISUP direct trunking facilities to interconnect the CLEC to the AT&T Kentucky's E911 SR or per the requirements set forth via any applicable</p> | <p>This "Attachment 5 – 911/E911 (Generic)" contemplates that AT&T Kentucky will be the monopoly 911/E911 service provider through-out its territory. Accordingly, it does not meet INDigital Telecom's needs insofar as it does not provide terms and conditions sufficient to permit INDigital Telecom to compete against AT&T Kentucky's historical monopoly over 911/E911 services. Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>3.0 AT&T Responsibilities</p> <p>3.2 Call Routing:</p> <p>3.2.1 AT&T Kentucky will route 911 calls from the AT&T Kentucky SR to the designated primary PSAP or to designated alternate locations, according to routing criteria specified by the PSAP.</p> <p>3.22 AT&T Kentucky will forward the ANI to the calling party number it receives from CLEC and the associated 911 ALI to the PSAP for display. If no ANI is forwarded by CLEC, AT&T Kentucky will forward an Emergency Service Central Office (ESCO) identification code for display at the PSAP. If ANI is forwarded by the CLEC, but no ALI record is found in the E911 DBMS, AT&T Kentucky will report this "No Record Found" condition to the CLEC in accordance with NENA standards.</p> <p>3.3 Facilities and Trunking:</p> <p>3.3.1 AT&T Kentucky shall provide and maintain sufficient dedicated E911 Trunks from AT&T Kentucky's E911 SR to the PSAP of the E911 Customer, according to provisions of the appropriate state Commission-approved tariff and documented specifications of the E911 Customer.</p> <p>3.3.2 AT&T Kentucky will provide facilities to interconnect the CLEC to the AT&T Kentucky's E911 SR, as specified in Attachment 02-Network Interconnection of this Agreement or per the requirements set forth via the applicable state tariff. Additionally, CLEC has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities. If diverse facilities are requested by CLEC, AT&T Kentucky will provide such diversity where technically feasible, at standard applicable tariff rates.</p> <p>3.4 Database:</p> | <p>All of Section 3.0; CLEC has inserted language that attempts to make the 911 attachment into a reciprocal agreement for CLEC's service offering. This is related to the threshold issue (Issue-1). Since AT&T Kentucky's offering of E911 and the associated attachment are ancillary to the interconnection agreement, it is not appropriate for CLEC to write its network requirements for its customer service offerings into this attachment. The Commission, however, did not adopt AT&T Kentucky's position in its decision on the threshold issue issued April 9, 2010, AT&T Kentucky disagrees with that decision, but in light of that ruling, and while reserving its right to appeal, AT&T Kentucky now proposes the language in the Alternate Attachment 05-911/E911-DPL and Alternate Attachment 05A-911/E911-NIM-DPL. Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> |

⁵ INDigital Telecom notes that because this Attachment 5 – 911/E911 (Generic) formed the basis of the parties initial discussion and negotiation surrounding the provision of 911/E911-related services, the language of this attachment (within the composite agreement attached as Exhibit 1) remains formatted consistent with the parties' initial discussions. Since that time, INDigital Telecom's positions with respect to 911/E911-related services has evolved into those positions set forth in Alternate Attachments 5 and 5A. Nevertheless, as evidence of its attempt to productively engage AT&T Kentucky with this issue, INDigital Telecom has attached this document in its original formatted form, notwithstanding the fact that this Attachment 5 – 911/E911 (Generic) should be disregarded in favor of Alternate Attachments 5 and 5A.

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GENERIC ATT 05 – 911/E911 (CLEC)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|--|--|--|--|--|
| | | | <p>state tariff. Additionally, CLEC has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities. If diverse facilities are requested by CLEC, AT&T Kentucky will provide such diversity where technically feasible, at standard applicable tariff rates.</p> <p>3.4 Database:</p> <p>3.4.1 Where a Party ("Managing Party") manages the E911 Database, the Managing Party shall provide the other Party ("Accessing Party") access to the E911 Database to store Accessing Party's End User "911 Records" (i.e., the name, address, and associated telephone number(s) for each of Accessing Party's End Users). Accessing Party or its representative(s) is responsible for electronically providing End User 911 Records and updating this information.</p> <p>3.4.2 Where Managing Party manages the E911 Database, Managing Party shall coordinate access to the Managing Party DBMS for the initial loading and updating of Accessing Party End User 911 Records.</p> <p>3.4.3 Where Managing Party manages the E911 Database, Managing Party's E911 Database shall accept electronically transmitted files that are based upon NENA standards. Manual (i.e., facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly. <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | | <p>3.4.1 Where AT&T Kentucky manages the E911 Database, AT&T Kentucky shall provide CLEC access to the E911 Database to store CLEC's End User "911 Records" (i.e., the name, address, and associated telephone number(s) for each of CLEC's End Users). CLEC or its representative(s) is responsible for electronically providing End User 911 Records and updating this information.</p> <p>3.4.2 Where AT&T Kentucky manages the E911 Database, AT&T Kentucky shall coordinate access to the AT&T Kentucky DBMS for the initial loading and updating of CLEC End User 911 Records.</p> <p>3.4.3 Where AT&T Kentucky manages the E911 Database, AT&T Kentucky's E911 Database shall accept electronically transmitted files that are based upon NENA standards. Manual (i.e., facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly.</p> <p>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | |
| 6 | <p>INDigital: Should this "generic" 911/E911 attachment be included in INDigital Telecom's ICA?</p> <p>AT&T: Should CLEC's</p> | <p>4.0 – 4.3.4 Threshold issue decided by the Kentucky Public</p> | <p>4.0 [Intentionally deleted.]</p> <p>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>This "Attachment 5 – 911/E911 (Generic)" contemplates that AT&T Kentucky will be the monopoly 911/E911 service provider through out its territory. Accordingly, it does not meet INDigital Telecom's needs insofar as it does not provide terms and conditions sufficient to permit INDigital</p> | <p>4.0 CLEC Responsibilities</p> <p>4.1 Call Routing (for CLEC's own switches):</p> <p>4.1.1 CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T Kentucky E911 SR location.</p> <p>4.1.2 CLEC will forward the ANI information of the party calling 911 to the AT&T Kentucky E911 SR.</p> | <p>Section 4.0 identifies the responsibilities for the CLEC. CLEC functionality is not that of an E911 provider.</p> <p>All of Section 4 should remain in the agreement because it describes the requirements of the CLEC (not a 911</p> |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|---|---------------|--|--|--|
| | <p>responsibilities be omitted?</p> <p>Should CLEC be financially responsible for the transport facilities to route 911 calls?</p> <p>Should CLEC be responsible for ordering dedicated E911 trunks for originating 911 emergency calls?</p> <p><u>COMMISSION HAS ALREADY RESOLVED</u> <u>threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> <p><u>RESOLVED</u></p> | <p><u>Service Commission by order dated April 9, 2010.</u></p> | | <p>Telecom to compete against AT&T Kentucky's historical monopoly over 911/E911 services.⁶<u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>4.2 Facilities and Trunking (for CLEC's own switches):</p> <p>4.2.1 CLEC shall be financially responsible for the transport facilities to each AT&T Kentucky E911 SR that serves the Exchange Areas in which CLEC is authorized to and will provide Telephone Exchange Service.</p> <p>4.2.2 CLEC acknowledges that its End Users in a single local calling scope may be served by different E911 SRs and CLEC shall be financially responsible for the transport facilities to route 911 calls from its End Users to the proper E911 SR.</p> <p>4.2.3 CLEC shall order a minimum of two (2) one-way outgoing E911 Trunk(s) dedicated for originating 911 Emergency Service calls for each default PSAP or default ESN to interconnect to each appropriate AT&T Kentucky E911 SR, where applicable. Where Signaling System 7 (SS7) connectivity is available and required by the applicable E911 Customer, the Parties agree to implement Common Channel Signaling (CCS) trunking rather than Multi-Frequency (MF) trunking.</p> <p>4.2.4 CLEC is responsible for ordering a separate E911 Trunk group from AT&T Kentucky for each county, default PSAP or other geographic area that the CLEC serves if the E911 Customer for such county or geographic area has a specified varying default routing condition. Where PSAPs do not have the technical capability to receive 10-digit ANI, E911 traffic must be transmitted over a separate trunk group specific to the underlying technology. CLEC will have administrative control for the purpose of issuing ASRs on this trunk group. Where the parties utilize SS7 signaling and the E911 network has the technology available, only one (1) E911 Trunk group shall be established to handle multiple NPAs within the local</p> | <p>competitive Service Provider) in conjunction with its Network Interconnection.<u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> |

⁶ INdigital Telecom notes that because this Attachment 5 – 911/E911 (Generic) formed the basis of the parties initial discussion and negotiation surrounding the provision of 911/E911-related services, the language of this attachment (within the composite agreement attached as Exhibit 1) remains formatted consistent with the parties' initial discussions. Since that time, INdigital Telecom's positions with respect to 911/E911-related services has evolved into those positions set forth in Alternate Attachments 5 and 5A. Nevertheless, as evidence of its attempt to productively engage AT&T Kentucky with this issue, INdigital Telecom has attached this document in its original formatted form, notwithstanding the fact that this Attachment 5 – 911/E911 (Generic) should be disregarded in favor of Alternate Attachments 5 and 5A.

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

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|-----------|-----------------|---------|---------------|-----------------|---|-------------------------------------|
| | | | | | <p>Exchange Area or LATA. If the E911 network does not have the appropriate technology available, a SS7 trunk group shall be established per NPA in the local Exchange Area or LATA. In addition, 911 traffic originating in one (1) NPA must be transmitted over a separate 911 Trunk group from 911 traffic originating in any other NPA 911.</p> <p>4.2.5 CLEC shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 interconnection between the CLEC switch and the AT&T Kentucky E911 SR.</p> <p>4.2.6 CLEC shall order sufficient trunking to route CLEC's originating 911 calls to the designated AT&T Kentucky E911 SR.</p> <p>4.2.7 Diverse (i.e., separate) 911 facilities are highly recommended and may be required by the Commission or E911 Customer. If required by the E911 Customer, diverse 911 Trunks shall be ordered in the same fashion as the primary 911 Trunks. CLEC is responsible for initiating trunking and facility orders for diverse routes for 911 interconnection.</p> <p>4.2.8 CLEC is responsible for determining the proper quantity of trunks and transport facilities from its switch (es) to interconnect with the AT&T Kentucky E911 SR. CLEC shall engineer its 911 Trunks to attain a minimum P.01 grade of service as measured using the time consistent average busy season busy hour twenty (20) day averaged loads applied to industry standard Neal-Wilkinson Trunk Group Capacity algorithms (using Medium day-to-day Variation and 1.0 Peakedness factor), or such other minimum grade of service as required by Applicable Law.</p> <p>4.2.9 CLEC shall monitor its 911 Trunks for the purpose of determining originating network traffic volumes. If CLEC's traffic study indicates that additional 911 Trunks are needed to meet the current level of 911 call volumes, CLEC</p> | |

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

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|-----------|-----------------|---------|---------------|-----------------|---|-------------------------------------|
| | | | | | <p>shall provision additional 911 Trunks for Interconnection with AT&T Kentucky.</p> <p>4.2.10 CLEC is responsible for the isolation, coordination and restoration of all 911 facility and trunking maintenance problems from CLEC's demarcation (for example, collocation) to the AT&T Kentucky E911 SR(s).</p> <p>4.2.11 CLEC is responsible for advising AT&T Kentucky of the 911 Trunk identification and the fact that the trunks are dedicated for 911 traffic when notifying AT&T Kentucky of a failure or outage. The Parties agree to work cooperatively and expeditiously to resolve any 911 outage. AT&T Kentucky will refer network trouble to CLEC if no defect is found in AT&T Kentucky's 911 network. The Parties agree that 911 network problem resolution will be managed expeditiously at all times.</p> <p>4.2.12 CLEC will not turn up live traffic until successful testing of E911 Trunks is completed by both Parties.</p> <p>4.2.13 Where required, CLEC will comply with Commission directives regarding 911 facility and/or 911 Trunking requirements.</p> <p>4.3 Database:</p> <p>4.3.1 Once the 911 Interconnection between CLEC and all appropriate AT&T Kentucky E911 SR(s) has been established and tested, CLEC or its representatives shall be responsible for providing CLEC's End User 911 Records to AT&T Kentucky for inclusion in AT&T Kentucky's DBMS on a timely basis.</p> <p>4.3.2 CLEC or its agent shall provide initial and ongoing updates of CLEC's End User 911 Records that are Master Street Address Guide (MSAG) valid in electronic format based upon established NENA standards.</p> <p>4.3.3 CLEC shall adopt use of a Company/NENA ID on all CLEC End User 911 Records in accordance with NENA standards. The Company ID is used to identify the carrier</p> | |

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

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|--|---|--|---|--|---|
| | | | | | <p>of record in facility configurations.</p> <p>4.3.4 CLEC is responsible for providing AT&T Kentucky updates to the E911 database; in addition, CLEC is responsible for correcting any errors that may occur during the entry of their data to the AT&T Kentucky 911 DBMS. Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | |
| 7 | <p><u>Indigital:</u> Should this "generic" 911/E911 attachment be included in Indigital Telecom's ICA?</p> <p><u>AT&T:</u> Should the CLEC be allowed to forgo identifying the responsibility for transport from the CLEC owned switches?</p> <p>Should CLEC be allowed to insert additional parties outside of the ICA for responsibility of implementing 911 facilities?</p> <p><u>COMMISSION HAS ALREADY RESOLVED</u> <u>Threshold issue decided by the Kentucky Public Service Commission by order</u></p> | <p>5.0 – 5.1.1</p> <p>5.2 – 5.2.1.3 <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>5.0 Responsibilities of the Parties</p> <p>5.1 <u>The</u> Parties shall jointly coordinate the provisioning of transport capacity sufficient to route originating E911 calls from <u>their respective</u> POI(s) to the designated E911 SR(s).</p> <p>5.1.1 <u>The Parties</u> and CLEC will cooperate to promptly test all trunks and facilities between <u>their</u> networks and the E911 SR(s).</p> <p>5.2 911 Surcharge Remittance to PSAP:</p> <p>5.2.1 <u>The</u> Parties agree that:</p> <p>5.2.1.1 <u>The Parties are</u> not responsible for collecting and remitting applicable 911 surcharges or fees <u>on behalf of each other</u> directly to municipalities or government entities where such surcharges or fees are assessed by said municipality or government entity, and</p> <p>5.2.1.2 <u>The Parties are</u> not responsible for providing <u>each other with</u> the 911 Customer detailed monthly listings of the actual number of access lines, or breakdowns between the types of access lines (e.g., residential, business, payphone, Centrex, PBX, and exempt lines).</p> <p>5.2.1.3 <u>Each Party</u> shall be responsible for collecting and remitting all applicable 911 fees and surcharges on a per line basis to the appropriate PSAP or other governmental</p> | <p>This "Attachment 5 – 911/E911 (Generic)" contemplates that AT&T Kentucky will be the monopoly 911/E911 service provider through out its territory. Accordingly, it does not meet Indigital Telecom's needs insofar as it does not provide terms and conditions sufficient to permit Indigital Telecom to compete against AT&T Kentucky's historical monopoly over 911/E911 services. <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> | <p>5.0 Responsibilities of the Parties</p> <p>5.1 <u>For CLEC's own switch(es)</u>, both Parties shall jointly coordinate the provisioning of transport capacity sufficient to route originating E911 calls from CLEC's POI to the designated AT&T Kentucky E911 SR(s).</p> <p>5.1.1 AT&T Kentucky and CLEC will cooperate to promptly test all trunks and facilities between CLEC's network and the AT&T Kentucky E911 SR(s).</p> <p>5.2 911 Surcharge Remittance to PSAP:</p> <p>5.2.1 <u>For CLEC's own switch(es)</u>, the Parties agree that:</p> <p>5.2.1.1 <u>AT&T Kentucky is</u> not responsible for collecting and remitting applicable 911 surcharges or fees directly to municipalities or government entities where such surcharges or fees are assessed by said municipality or government entity, and</p> <p>5.2.1.2 <u>AT&T Kentucky is</u> not responsible for providing the 911 Customer detailed monthly listings of the actual number of access lines, or breakdowns between the types of access lines (e.g., residential, business, payphone, Centrex, PBX, and exempt lines).</p> <p>5.2.1.3 <u>Facility based CLECs</u> shall be responsible for collecting and remitting all applicable 911 fees and surcharges</p> | <p>AT&T Kentucky's language of Section 5 should remain as it describes the requirements of both parties for the joint provisioning of E911 service for a Competitive Local Exchange Carrier interconnecting with AT&T Kentucky to provide local exchange service and the provisioning of ancillary services (as is E911) to the CLEC's end user that will be originating the E911 call.</p> <p>Per the Telecommunications Act of 1996 CLEC has an obligation to interconnect on the ILEC's network. <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u></p> |

⁷ Indigital Telecom notes that because this Attachment 5 – 911/E911 (Generic) formed the basis of the parties initial discussion and negotiation surrounding the provision of 911/E911-related services, the language of this attachment (within the composite agreement attached as Exhibit 1) remains formatted consistent with the parties' initial discussions. Since that time, Indigital Telecom's positions with respect to 911/E911-related services has evolved into those positions set forth in Alternate Attachments 5 and 5A. Nevertheless, as evidence of its attempt to productively engage AT&T Kentucky with this issue, Indigital Telecom has attached this document in its original formatted form, notwithstanding the fact that this Attachment 5 – 911/E911 (Generic) should be disregarded in favor of Alternate Attachments 5 and 5A.

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DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
GENERIC ATT 05 – 911/E911 (CLEC)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's</u> Language | <u>AT&T Kentucky's</u> Position |
|-----------|--|---------|---|-----------------|---|-------------------------------------|
| | <u>dated April 9, 2010.</u> RESOLVED | | authority responsible for collection of such fees and surcharges. <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u> | | on a per line basis to the appropriate PSAP or other governmental authority responsible for collection of such fees and surcharges. <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u> | |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 -911/E911 (SERVICE PROVIDER)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|---|--|---|--|--|---|
| 1 | <p>INDigital: Should this attachment be designated "(Service Provider)?"</p> <p>AT&T: Does INDigital have the right to interconnect with AT&T under Section 251(c) of the Act for INDigital's provision of competitive 911/E911 services to PSAPs?</p> <p>If so, what is the appropriate language that should be included in the interconnection agreement?</p> <p><u>Partially Resolved [AT&T Accepted INDigitals proposed to remove 'Service Provider' as designated document name] RESOLVED</u> <u>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010. RESOLVED</u></p> | <p>Title/ Overall Alternate Attachment 05A— 911/E911 NIM (Service Provider) Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>Alternate Attachment 05— 911/E911 Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>AT&T Kentucky added "(Service Provider)" on the afternoon before filing this petition, simultaneous with its assertion that this attachment is not appropriate for INDigital Telecom's ICA. Accordingly to the extent this addition can be so interpreted, it should be deleted from the attachment. Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>Alternate Attachment 05— 911/E911 (Service Provider) Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>AT&T Kentucky's position is that the 911 service that INDigital intends to provide does not meet the definition of "telephone exchange service" as set forth in 47 U.S.C. 153(47) because the service will not provide the ability to both originate and terminate calls. Accordingly, AT&T Kentucky is not required to provide interconnection pursuant to the provisions set forth in Section 251(c). AT&T Kentucky is available to negotiate a commercial agreement for INDigital's 911 services.</p> <p>The Commission, however, did not adopt AT&T Kentucky's position in its decision on the threshold issue issued April 9, 2010. AT&T Kentucky disagrees with that decision, but in light of that ruling, and while reserving its right to appeal, AT&T Kentucky now offers the language in Alternate Attachment 05, which should be adopted.</p> <p>If the Commission finds that INDigital is not entitled to Section 251(c) interconnection, AT&T Kentucky's language set forth in the Generic ATT 05— 911/E911 (CLEC) issues matrix would be the AT&T Kentucky proposed language and should be adopted. Threshold issue decided by</p> |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 -911/E911-(SERVICE PROVIDER)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|---|---------------------|--|--|---|---|
| | | | | | | <u>the Kentucky Public Service Commission by order dated April 9, 2010.</u> |
| 2 | <p><u>INDigital:</u> Should this attachment account for the possibility that there may be more than one E911 service provider in a territory?</p> <p><u>AT&T:</u> Should only the 911/E911 System Network providers be identified as part of this agreement? <u>INDigital</u> accepts AT&T's proposed [AT&T Column] RESOLVED</p> | 1.2 | 1.2 The Parties acknowledge and agree that the Parties can only provide 911/E911 Service in a territory where the Party is <u>an</u> E911 <u>service</u> provider, and then only that E911 Service configuration as purchased by the E911 Customer. The Parties' E911 Selective Routers and E911 Database Management System are by mutual agreement being provided under this Agreement on an "as is" basis. | Yes, "territory" is not a defined term, and INDigital Telecom and AT&T Kentucky may both be 911/E911 Service Providers within AT&T Kentucky's general service territory. AT&T Kentucky's language does not contemplate this possibility. | 1.2 The Parties acknowledge and agree that the Parties can only provide 911/E911 Service in a territory where the Party is <u>the an</u> E911 <u>systems service network</u> provider, and then only that E911 Service configuration as purchased by the E911 Customer. The Parties' E911 Selective Routers and E911 Database Management System are by mutual agreement being provided under this Agreement on an "as is" basis. | <p>This agreement is specific to the territory in which AT&T Kentucky provides 911/E911 Service.</p> <p>AT&T Kentucky's language more specifically focused on how the parties react at the network level which is the purpose of this agreement and INDigital's language is ambiguous.</p> |
| 3 | <p><u>INDigital:</u> [6.1.1.1] How Should the "primary" provider of selective routing be determined?</p> <p><u>AT&T:</u> How should the "primary" provider of selective routing be determined? RESOLVED <u>INDigital</u> accepts AT&T's</p> | 4.1.1.1, 6.1.1.1 | 4.1.1.1 Where <u>an</u> End Office serves End Users both within and outside of the AT&T Kentucky network serving area, CLEC shall work cooperatively with AT&T Kentucky and the affected E911 Customer(s) (i) to establish call routing and/or call handoff arrangements, (ii) to establish which E911 Service provider will serve as the "primary" Selective Routing provider for direct trunking from the split wire center, determined by <u>the E911 Customer's stated preference or, if no preference is expressed, mutual agreement by the 911 systems service providers, or a clear majority of end</u> | 4.1.1.1 and 6.1.1.1 The determination of which carrier should serve as the primary selective router should be determined on the basis of the 911/E911 Customer's stated preference. AT&T Kentucky's proposal to determine the selective routing provider based on the number of lines served will always default AT&T Kentucky as the selective routing provider, thereby driving up costs for INDigital Telecom and its potential | 4.1.1.1 Where <u>a CLEC</u> End Office serves End Users both within and outside of the AT&T Kentucky network serving area, CLEC shall work cooperatively with AT&T Kentucky and the affected E911 Customer(s) (i) to establish call routing and/or call handoff arrangements, (ii) to establish which E911 Service provider will serve as the "primary" Selective Routing provider for direct trunking from the split wire center, determined by <u>mutual agreement by the 911 systems service providers, or a clear majority of end users</u> , based on the Number of <u>Network</u> Access Lines (NALs) served by the Designated Primary Wireline Service Provider <u>in the wire</u> | Section 4.1.1.1 and 6.1.1.1 specifies how to route 911 calls when a CLEC wire center overlaps both an AT&T Kentucky E911 Customer and a CLEC E911 Customer. Because two E911 Customers will be involved, it is more appropriate to require mutual agreement between the 911 system service providers, not to let one E911 Customer unilaterally choose. The 911 service providers will be |

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| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|---|---------|--|---|---|--|
| | <p><u>proposed [AT&T column]</u></p> <p>RESOLVED</p> | | <p><u>users</u> based on the Number of Access Lines (NALs) served by the Designated Primary Wireline Service Provider <u>in the wire center served by the PSAP</u>; and (iii) to establish which 911/E911 Service provider will serve as the "secondary" Selective Routing provider receiving a call hand-off from the primary Selective Routing provider.</p> <p>6.1.1.1 Where an End Office serves End Users both within and outside of the CLEC network serving area, AT&T Kentucky shall work cooperatively with CLEC and the affected E911 Customer(s) (i) to establish call routing and/or call handoff arrangements, (ii) to establish which E911 Service provider will serve as the "primary" Selective Routing provider for direct trunking from the split wire center, determined by <u>the E911 Customer's stated preference or, if no preference is expressed</u>, a clear majority based on the Number of Access Lines (NALs) served by the Designated Primary Wireline Service Provider; and (iii) to establish which 911/E911 Service provider will serve as the "secondary" Selective Routing provider receiving a call hand-off from the primary Selective Routing provider.</p> | <p>911/E911 Customers. The parties should comply with the 911/E911 Customer's preferences, and only absent Customer request should the selective routing function be determined by the number of access lines. <u>If the parties are unable to come to mutual agreement, then the most equitable solution is to have the primary selective router be determined based upon which PSAP serves the greatest number of lines in the wire center.</u></p> | <p><u>center served by the PSAP</u>; and (iii) to establish which 911/E911 Service provider will serve as the "secondary" Selective Routing provider receiving a call hand-off from the primary Selective Routing provider.</p> <p>6.1.1.1 Where an <u>AT&T Kentucky</u> End Office serves End Users both within and outside of the CLEC network serving area, AT&T Kentucky shall work cooperatively with CLEC and the affected E911 Customer(s) (i) to establish call routing and/or call handoff arrangements, (ii) to establish which E911 Service provider will serve as the "primary" Selective Routing provider for direct trunking from the split wire center, determined by <u>as mutually agreed agreement to by the 911 systems service providers, or a clear majority of end users</u>, based on the Number of Access Lines (NALs) served by the Designated Primary Wireline Service Provider <u>in the wire center served by the PSAP</u>; and (iii) to establish which 911/E911 Service provider will serve as the "secondary" Selective Routing provider receiving a call hand-off from the primary Selective Routing provider.</p> | <p>representing their E911 Customer's preference.</p> <p>A third party who is not a party to the Interconnection Agreement should not be included in making the determination under this provision.</p> |
| 4 | <p><u>Indigital</u>: Should 911 calls from AT&T Kentucky End Offices be process by AT&T Kentucky's selective router prior to delivery to INdigital Telecom for ultimate delivery to the 911/E911 Customer?</p> <p>AT&T:</p> | 6.1.1 | <p>6.1.1 AT&T Kentucky will transport 911 calls from its End Offices to the CLEC POI(s). This traffic may be aggregated but not switched after AT&T Kentucky End Office origination and prior to delivery to the CLEC E911 Selective Router. In the event AT&T Kentucky's End Office has End Users served by more than one E911 Selective Router network, AT&T Kentucky will <u>transport</u> 911 calls to the appropriate E911 Selective Router location consistent with the terms of section 6.1.1.1, below.</p> | <p>No, INdigital Telecom has its own selective routers and the only reasons AT&T Kentucky might want to route the traffic first are to increase its revenue from INdigital Telecom and to thereby drive up the cost of INdigital Telecom's competitive 911/E911 offerings; restraining meaningful competition for such services.</p> | <p>6.1.1 AT&T Kentucky will transport 911 calls from its End Offices to the CLEC POI(s). This traffic may be aggregated but not switched after AT&T Kentucky End Office origination or AT&T Kentucky Selective Router and prior to delivery to the CLEC E911 Selective Router. In the event AT&T Kentucky's End Office has End Users served by more than one E911 Selective Router network, AT&T Kentucky will <u>route</u> 911 calls from its End Offices to the appropriate E911 Selective Router location consistent with the terms of section 6.1.1.1, below.</p> | <p>Use of the word "route" rather than "transport" is more appropriate in section 6.1.1 because that section is used in conjunction with section 6.1.1.1, which describes the routing of 911 calls. Transport is dealt with under the physical interconnection portion of the agreement. Use of "transport" instead of "route" appears as a ploy to shift transport costs to</p> |

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ALTERNATE ATT 05 -911/E911 (SERVICE PROVIDER)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|---|---------|--|--|---|--|
| | Does the word "route" in Section 6.1.1 appropriately determine the method of transporting calls between the parties of this agreement? RESOLVED | | | | | AT&T Kentucky. |
| § | INDigital: Should AT&T Kentucky's 911/E911 Customer support tandem-to-tandem transfer when such PSAP-to-PSAP call transfer is requested with an INdigital Telecom 911/E911 Customer? AT&T: Is the term "customer" properly stated in 7.3.2? RESOLVED [AT&T accepts INdigital's Language] | 7.3.2 | Where CLEC has been designated the 911 Service Provider for a 911 Customer contiguous to an AT&T Kentucky 911 Customer, and where each Party's respective 911 Customer has requested the ability for PSAP-to-PSAP call transfer (and when AT&T Kentucky's 911/E911 Customer has entered into an agreement with AT&T Kentucky for additional features of Tandem to Tandem transfer between two E911 services providers) the Parties shall work cooperatively to establish methods and procedures to support PSAP to PSAP call transfer with ALI for 911 calls. | Yes, AT&T Kentucky should ensure that its 911/E911 Customer has entered into an appropriate tandem-to-tandem transfer agreement in order to effect PSAP-to-PSAP call transfer functionality with an INdigital Telecom 911/E911 Customer. | 7.3.2 Where CLEC has been designated the 911 Service Provider for a 911 Customer contiguous to an AT&T Kentucky 911 Customer, and where each Party's respective 911 Customer has requested the ability for PSAP-to-PSAP call transfer (and customer has entered into an agreement with AT&T Kentucky for additional features of Tandem to Tandem transfer between two E911 services providers) the Parties shall work cooperatively to establish methods and procedures to support PSAP to PSAP call transfer with ALI for 911 calls. | Yes, the use of "customer" in this section refers to the 911/E911 Customer which is defined in the definitions section of the document. It should not be limited to AT&T Kentucky's customer. The 911 Customers must mutually agree to transfer and accept 911 calls from one another. |
| § | INDigital: Should 911/E911 rates be benchmarked at AT&T Kentucky's tariffed rate? AT&T: | 10.1 | 10.1—Rates for access to 911 and E911 Databases, trunking and call routing of E911 call completion to a Public Safety Answering Point (PSAP) as required by Section 251 of the Act as set forth in the AT&T Kentucky Appendix Pricing or the applicable AT&T Kentucky or CLEC Commission-approved access tariff. | No, INdigital Telecom should not be required to mirror AT&T Kentucky's rates because AT&T Kentucky has an undoubtedly lower cost structure than INdigital Telecom does. | 10.1—Rates for access to 911 and E911 Databases, trunking and call routing of E911 call completion to a Public Safety Answering Point (PSAP) as required by Section 251 of the Act as set forth in the AT&T Kentucky Appendix Pricing or the applicable AT&T Kentucky Commission-approved access tariff. | ICAs normally include only AT&T Kentucky's rates for services available in the ICA and do not include rates applicable to CLEC's services. To the extent the CLEC provides a reciprocal service to AT&T Kentucky (e.g., |

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DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 -911/E911-(SERVICE PROVIDER)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|---|------------|--|--|--|--|
| | Should the ICA include rates for CLEC services? <u>RESOLVED - INdigital accepts AT&T's language</u> <u>RESOLVED</u> | | | | | intercarrier compensation) the CLEC typically mirrors AT&T Kentucky's rates. As for services AT&T Kentucky will provide to INdigital, AT&T Kentucky's rates are included in its ICA pricing schedules and/or its tariffs referenced in the ICA, as appropriate. |
| 7 | AT&T/INdigital: Should the parties have mutual indemnity obligations with respect to claims arising from access to or use of each party's respective 911/E911 systems? <u>RESOLVED - INdigital accepts AT&T's language</u> <u>RESOLVED</u> | 11.5, 11.6 | 11.5 <u>AT&T Kentucky agrees to release, indemnify, defend and hold harmless CLEC from any and all Loss arising out of CLEC providing AT&T Kentucky access to the 911 System hereunder or out of AT&T Kentucky's End Users' use of the 911 System, whether suffered, made, instituted or asserted by AT&T Kentucky, its End Users, or by any other parties or persons, for any personal injury or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by AT&T Kentucky, its End Users or others, unless the act or omission proximately causing the Loss constitutes gross negligence, recklessness or intentional misconduct of CLEC.</u> 11.6 <u>AT&T Kentucky also agrees to release, indemnify, defend and hold harmless CLEC from any and all Loss involving an allegation of the infringement or invasion of the right of privacy or confidentiality of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of the 911 System features and the equipment associated therewith, including by not limited to the identification of the telephone number,</u> | Yes, indemnity obligations relating to claims arising from access to or use of the other party's respective 911/E911 systems should be mutual in scope. There is no justifiable reason why INdigital Telecom should indemnify AT&T Kentucky for these claims (see sections 11.3 and 11.4) without AT&T Kentucky undertaking the same obligation. | 11.5 Intentionally deleted. 11.6 Intentionally deleted. | Should AT&T Kentucky prevail on the threshold issue (Issue 1) AT&T Kentucky would not be accessing INdigital's 911 system under this agreement, therefore, these provisions are unnecessary and unwarranted. Additionally, as a 911 Service provider, Kentucky law limits AT&T Kentucky's liability for damages, and AT&T Kentucky should not be required to indemnify for such damages. |

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DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05 -911/E911 (SERVICE PROVIDER)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-----------|-----------------|---------|--|-----------------|--------------------------|--------------------------|
| | | | <u>address or name associated with the telephone used by the party or parties accessing the 911 System provided hereunder, unless the act or omission proximately causing the Loss constitutes the gross negligence, recklessness or intentional misconduct of CLEC.</u> | | | |

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DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ALTERNATE ATT 05A – 911/E911 NIM (SERVICE PROVIDER)

| Issue No. | Issue Statement | Section | CLEC Language | CLEC's Position | <u>AT&T Kentucky's Language</u> | <u>AT&T Kentucky's Position</u> |
|-----------|--|--|---|--|---|---|
| 1 | <p>INDigital: Should this attachment be designated "(Service Provider)?"</p> <p>AT&T: Does INDigital have the right to interconnect with AT&T under Section 251(c) of the Act for INDigital's provision of competitive 911/E911 services to PSAPs?</p> <p>If so, what is the appropriate language to be included in the interconnection agreement?</p> <p>RESOLVED <u>Partially Resolved [AT&T Accepted INDigitals proposed to remove 'Service Provider' as designated document name] Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</u> RESOLVED</p> | <p>Title/Overall Alternate Attachment 05A – 911/E911 NIM (Service Provider) Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>Alternate Attachment 05A – 911/E911 NIM (Network Interconnection Methods) Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>AT&T Kentucky added "(service Provider)" on the afternoon before filing this petition, simultaneous with its assertion that this attachment is not appropriate for INDigital Telecom's ICA. Accordingly, to the extent this addition can be so interpreted, it should be deleted from the attachment.</p> <p>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>Alternate Attachment 05A – 911/E911 NIM (Service Provider) (Network Interconnection Methods) Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> | <p>AT&T Kentucky's position is that the 911 service that INDigital intends to provide does not meet the definition of "telephone exchange service" as set forth in 47 U.S.C. 153(47) because the service will not provide the ability to both originate and terminate calls. Accordingly, AT&T Kentucky is not required to provide interconnection pursuant to the provisions set forth in Section 251(c). AT&T Kentucky is available to negotiate a commercial agreement for INDigital's 911 services.</p> <p>The Commission, however, did not adopt AT&T Kentucky's position in its decision on the threshold issue issued April 9, 2010, AT&T Kentucky disagrees with that decision, but in light of that ruling, and while reserving its right to appeal, AT&T Kentucky now offers the language in Alternate Attachment 05A, which should be adopted.</p> <p>Threshold issue decided by the Kentucky Public Service Commission by order dated April 9, 2010.</p> |

DOCKET# 2009-00438
ISSUES BETWEEN AT&T KENTUCKY AND INDIGITAL TELECOM
ATTACHMENT 08 - BONA FIDE REQUEST

| Issue | Issue Statement | Section(s) | CLEC Language | CLEC Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-------|--|-----------------|---|---|---|--|
| 1 | <p><u>INdigital:</u> Should AT&T Kentucky receive fees for evaluating, cancelling, and implementing bona fide requests for interconnection services?</p> <p><u>AT&T:</u> Should the language address compensation to AT&T Kentucky for costs incurred as a result of CLEC's BFR request? RESOLVED</p> | 2.2, 2.3, 3.1.2 | <p>2.2 [Intentionally deleted.]</p> <p>2.3 [Intentionally deleted.]</p> <p>3.1.2 [Intentionally deleted.]</p> | No, AT&T Kentucky should not be paid for evaluating the good faith request(s) of INdigital Telecom for interconnection services. The "good faith" element of this concept protects AT&T Kentucky from undertaking evaluations and work not required under applicable law. With respect to cancellation, INdigital Telecom has proposed paying for all reasonable costs incurred by AT&T Kentucky up to the date of cancellation (See Section 3.8) | <p>2.2 "Complex Request Evaluation Fee" means an Individual Case Basis (ICB) fee to compensate AT&T Kentucky for the extraordinary expenses directly related to the CLEC's BFR which is a complex request that requires the allocation and engagement of additional resources above the existing allocated resources used on BFR cost development which include, but are not limited to, expenditure of funds to develop feasibility studies, specific resources that are required to determine request requirements (such as operation support system analysts, technical managers, software developers), software impact analysis by specific software developers; software architecture development, hardware impact analysis by specific system analysts, etc.</p> <p>2.3 "Development Rate" means the estimated cost for AT&T Kentucky to develop the new or modified 251(c)(3) element and other network elements.</p> <p>3.1.2 If the BFR Deposit amount identified in the Pricing Schedule is not made at the time of the BFR Application, CLEC shall be responsible for all preliminary evaluation costs incurred by AT&T Kentucky to complete the preliminary analysis (regardless of whether such costs are greater or lesser than the BFR Deposit amount in the Pricing Schedule).</p> | <p>AT&T Kentucky's proposed language is necessary because it describes the process which has been developed and put into place for Bona Fide Requests (BFR's). It is a process that is followed throughout the AT&T region and works effectively when used properly by both parties.</p> <p>If AT&T Kentucky is requested by a CLEC (cost causer) to provide a specific element or product which has currently not been identified or developed, then AT&T is entitled to recover all of the costs associated with completing that CLEC request.</p> <p>AT&T should not be held accountable for costs it incurs at the specific request of the CLEC (cost causer).</p> |
| 2 | <p><u>INdigital:</u> Should AT&T Kentucky receive fees for evaluating, cancelling, and implementing bona fide requests for interconnection services?</p> | 3.3 | 3.3 For any new or modified Section 251 or 251(c)(3) element required to be unbundled by Act, if AT&T Kentucky determines that the preliminary analysis of the requested BFR is of such complexity that it will cause AT&T Kentucky to expend extraordinary resources to evaluate the BFR, AT&T Kentucky shall notify CLEC within ten (10) Business Days of AT&T Kentucky's receipt of the BFR and the parties may | No, AT&T Kentucky should not be paid for evaluating the good faith request(s) of INdigital Telecom for interconnection services. The "good faith" element of this concept protects AT&T Kentucky from undertaking evaluations and work not required under applicable law. With respect to cancellation, INdigital Telecom has | 3.3 For any new or modified Section 251 or 251(c)(3) element required to be unbundled by Act, if AT&T Kentucky determines that the preliminary analysis of the requested BFR is of such complexity that it will cause AT&T Kentucky to expend extraordinary resources to evaluate the BFR, AT&T Kentucky shall notify CLEC within ten (10) Business Days of AT&T Kentucky's receipt of the BFR that a Complex | The dispute resolution process is not designed for or intended for use in addressing BFR requests, which is a separate process with specific requirements and procedures of its own. The dispute resolution process is in place for elements or wholesale products that already exist and have been identified within the terms and conditions of the ICA and have been |

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

| Issue | Issue Statement | Section(s) | CLEC Language | CLEC Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-------|--|------------|--|---|--|---|
| | <p>AT&T: Should the costs incurred by AT&T Kentucky for a Complex Evaluation be addressed through the dispute resolution procedures? RESOLVED</p> | | <p><u><i>pursue the dispute resolution procedures provided pursuant to the General Terms and Conditions of this Agreement.</i></u></p> | <p>proposed paying for all reasonable costs incurred by AT&T Kentucky up to the date of cancellation (See Section 3.8)</p> | <p>Request Evaluation Fee will be required prior to the preliminary analysis of the BFR being performed by AT&T Kentucky. If CLEC accepts the Complex Request Evaluation Fee proposed by AT&T Kentucky, CLEC shall submit such fee within thirty (30) Business Days of AT&T Kentucky's notice that a Complex Request Evaluation Fee is required. AT&T Kentucky will not be obligated to further process the BFR until such Complex Request Evaluation Fee is received by AT&T Kentucky. Within thirty (30) Business Days of AT&T Kentucky's receipt of the Complex Request Evaluation Fee, AT&T Kentucky shall respond to CLEC by providing a preliminary analysis.</p> | <p>provisioned via the AT&T network. A Bona Fide Request (BFR) is the process in which a CLEC may request the development of a NEW element or product, which is not currently available within the AT&T element or product offerings, or is currently not developed to provide the functionality being requested by the CLEC. If a current functionality or product needs to be developed or reconfigured as a result of the CLEC's request, AT&T Kentucky should not be held responsible, as it is not the cost causer for the change.</p> <p>The request for, and payment of, the Complex Request Evaluation fee is necessary for a couple of reasons:</p> <ol style="list-style-type: none"> 1) it confirms a commitment by the CLEC that the BFR is in fact a legitimate one and that the CLEC truly wants to move forward with the development of its request. 2) It is good business sense to cover AT&T Kentucky's costs as well as alleviate any waste of time and/or resources in order to dispute something which is not currently available or even wanted by any other CLEC. 3) Should the CLEC choose to abandon its request after AT&T Kentucky has begun its analysis, AT&T Kentucky will at least be able to recoup some of its expenses |
| 3 | <p>Indigital: Should AT&T Kentucky receive fees for evaluating, cancelling, and implementing bona fide requests for interconnection services?</p> | 3.4 | <p><u><i>3.4 Notwithstanding any other provision of this attachment, AT&T Kentucky shall, within thirty (30) Business Days of its receipt of CLEC's complete and valid BFR, respond to CLEC by confirming whether AT&T Kentucky will or will not offer the new or modified Section 251 or 251(c)(3) element and, if it will offer the new or modified Section 251 or</i></u></p> | <p>No, AT&T Kentucky should not be paid for evaluating the good faith request(s) of Indigital Telecom for interconnection services. The "good faith" element of this concept protects AT&T Kentucky from undertaking evaluations and work not required under applicable law. With respect</p> | <p>3.4 If AT&T Kentucky is not required to expend extraordinary resources to evaluate the BFR as described in Section 3.3 above, then within thirty (30) Business Days of AT&T Kentucky's receipt of CLEC's fully complete and valid BFR, AT&T Kentucky shall respond to CLEC by providing a preliminary analysis of the new or modified Section 251 or 251(c)(3)</p> | <p>The CLEC's language is attempting to require AT&T Kentucky to do something it is not obligated to do. AT&T Kentucky will, when no extraordinary additional resources and/or funding are required, commit to respond to a CLEC within 30 days. The CLEC language, on the other hand, is silent as to how AT&T</p> |

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

| Issue | Issue Statement | Section(s) | CLEC Language | CLEC Position | AT&T Kentucky's Language | AT&T Kentucky's Position |
|-------|---|------------|--|--|---|--|
| | <p>AT&T: Should AT&T Kentucky be held to a 30-day response time even if extraordinary situations occur preventing AT&T Kentucky from completing its evaluation?</p> <p>RESOLVED</p> | | <p>251(c)(3) element, provide a preliminary analysis of such element(s).</p> | <p>to cancellation, INdigital Telecom has proposed paying for all reasonable costs incurred by AT&T Kentucky up to the date of cancellation (See Section 3.8)</p> | <p>element. The preliminary analysis shall confirm either that AT&T Kentucky will or will not offer the new or modified Section 251 or 251(c)(3) element.</p> | <p>Kentucky will be compensated in those cases where resources and/or funding are required of AT&T Kentucky. This is clearly an unequal proposition in which AT&T Kentucky is disadvantaged. In addition, it is contrary to the already established AT&T Kentucky BFR process.</p> <p>AT&T Kentucky's language also provides for a preliminary analysis of what is being requested as well as whether or not AT&T Kentucky intends to offer the new/modified Section 251 or 251(c)(3) element. The preliminary analysis will provide AT&T Kentucky's reasoning for its decision.</p> <p>AT&T Kentucky's language addresses a substantiated, in-place process which has been established in AT&T throughout the AT&T region.</p> <p>The CLEC's language is redundant and poorly written, which would lead to misunderstanding and possible confusion.</p> |
| 4 | <p>INDigital: Should AT&T Kentucky receive fees for evaluating, cancelling, and implementing bona fide requests for interconnection services?</p> <p>AT&T: Should AT&T Kentucky be compensated for CLEC's failure to timely cancel a request when AT&T Kentucky has already</p> | 3.5 | <p>3.5 If CLEC desires to cancel a BFR, it shall notify AT&T Kentucky of that desire as soon as commercially practicable.</p> | <p>No, AT&T Kentucky should not be paid for evaluating the good faith request(s) of INdigital Telecom for interconnection services. The "good faith" element of this concept protects AT&T Kentucky from undertaking evaluations and work not required under applicable law. With respect to cancellation, INdigital Telecom has proposed paying for all reasonable costs incurred by AT&T Kentucky up to the date of cancellation (See Section 3.8)</p> | <p>3.5 CLEC may cancel a BFR at any time up until thirty (30) Business Days after receiving AT&T Kentucky's preliminary analysis. If CLEC cancels the BFR within thirty (30) Business Days after receipt of AT&T Kentucky's preliminary analysis, AT&T Kentucky shall be entitled to retain the BFR Deposit or any Complex Request Evaluation Fee, minus those costs that have not been incurred by AT&T Kentucky as of the date of cancellation</p> | <p>A CLEC always has the option to cancel its BFR request. However, depending on when the CLEC chooses to do so and the extent of resources and/or funding AT&T Kentucky has committed, a CLEC should not simply walk away free of any financial obligations. AT&T Kentucky's language states what its expectations are when work has been done, costs have been incurred, etc.</p> <p>The CLEC's language appears to allow it to be free of any responsibility, financially or otherwise, for a cancelled BFR.</p> |

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| | <p>expended resources for the preliminary analysis?</p> <p>RESOLVED</p> | | | | | |
| 5 | <p><u>INDigital:</u> Should AT&T Kentucky receive fees for evaluating, cancelling, and implementing bona fide requests for interconnection services?</p> <p><u>AT&T:</u> Should CLEC be required to provide payment of an estimated Development Rate for a new or modified network element?</p> <p>RESOLVED</p> | 3.6 | 3.6 CLEC will have thirty (30) Business Days from receipt of the preliminary analysis to accept the preliminary analysis. CLEC must provide acceptance of the preliminary analysis in writing. If CLEC fails to respond within this thirty (30) Business Day period, the BFR will be deemed cancelled. | No, AT&T Kentucky should not be paid for evaluating the good faith request(s) of INDigital Telecom for interconnection services. The "good faith" element of this concept protects AT&T Kentucky from undertaking evaluations and work not required under applicable law. With respect to cancellation, INDigital Telecom has proposed paying for all reasonable costs incurred by AT&T Kentucky up to the date of cancellation (See Section 3.8) | 3.6 CLEC will have thirty (30) Business Days from receipt of the preliminary analysis to accept the preliminary analysis. CLEC must provide acceptance of the preliminary analysis in writing and provide the payment of the estimated Development Rate for the new or modified network element quoted in the preliminary analysis. If CLEC fails to respond within this thirty (30) Business Day period, the BFR will be deemed cancelled. | AT&T Kentucky is not required to develop any product/service free of charge; AT&T Kentucky has the right to be compensated for the time, resources and funding it expends at the CLEC's request. If the CLEC is serious about continuing with the development of the element it requested, then it should be expected to pay all of the associated costs required in various parts of the process. Otherwise, it could be construed that that CLEC has not chosen to commit to the element development at the same level AT&T Kentucky has. |
| 6 | <p><u>INDigital:</u> Should AT&T Kentucky receive fees for evaluating, cancelling, and implementing bona fide requests for interconnection services?</p> <p><u>AT&T:</u> Should CLEC be obligated to commit to accepting the preliminary analysis and pay an estimated Development</p> | 3.7 | 3.7 As soon as feasible, but not more than ninety (90) calendar days after AT&T Kentucky's receipt of CLEC's BFR , AT&T Kentucky shall provide to CLEC a firm price quote for the requested element(s) . The firm price quote will include the nonrecurring rate and the recurring rate, and a detailed implementation plan. | No, AT&T Kentucky should not be paid for evaluating the good faith request(s) of INDigital Telecom for interconnection services. The "good faith" element of this concept protects AT&T Kentucky from undertaking evaluations and work not required under applicable law. With respect to cancellation, INDigital Telecom has proposed paying for all reasonable costs incurred by AT&T Kentucky up to the date of cancellation (See Section 3.8) | 3.7 As soon as feasible, but not more than ninety (90) calendar days after AT&T Kentucky's receipt of CLEC's written acceptance of the preliminary analysis and payment of the estimated Development Rate , AT&T Kentucky shall provide to CLEC a firm price quote. The firm price quote will include any additional Development Rates , the nonrecurring rate and the recurring rate, and a detailed implementation plan. The firm nonrecurring rate will not include any of the Development Rate or the Complex Request Evaluation Fee, if required, in the calculation of this rate. | AT&T Kentucky's language clarifies the timing of events in the BFR process, the payment responsibilities along the way, and what will be included in the firm price quote. The CLEC's language, by contrast, omits some of the important details, leaving them up in the air, and implies that someone other than that CLEC should be responsible for the financial aspect of the development by stating what will be included within the firm price quote. Whereas AT&T Kentucky's language places the burden of cost on the cost causer CLEC who is specifically |

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|-------|---|------------|--|---|--|---|
| | Rate prior to AT&T Kentucky's moving forward? <u>RESOLVED</u> | | | | | requesting the development, not any other CLEC who comes in later. Additionally, by including the CLEC language, AT&T Kentucky risks: 1) never recovering any of the costs it was required to incur for the development/implementation since no other CLEC may ever want the resulting element; or 2) with the number of CLECs exiting the business, never recovering its costs from the requesting CLEC, much less anyone else. |
| 7 | <u>INDigital:</u> Should AT&T Kentucky receive fees for evaluating, cancelling, and implementing bona fide requests for interconnection services? <u>AT&T:</u> Should AT&T be compensated for necessary work that is required to complete the CLEC's request? <u>RESOLVED</u> | 3.8 | 3.8 CLEC shall have thirty (30) Business Days from receipt of the firm price quote to accept or deny the firm price quote in writing. If <u>AT&T Kentucky</u> does not receive Notice of any of the foregoing within such thirty (30) Business Day period, the BFR shall be deemed canceled. CLEC shall be responsible to reimburse <u>AT&T Kentucky</u> for its <u>reasonable</u> costs incurred up to the date of cancellation (whether affirmatively canceled or deemed canceled by <u>AT&T Kentucky</u>). | No, AT&T Kentucky should not be paid for evaluating the good faith request(s) of INDigital Telecom for interconnection services. The "good faith" element of this concept protects AT&T Kentucky from undertaking evaluations and work not required under applicable law. With respect to cancellation, INDigital Telecom has proposed paying for all reasonable costs incurred by AT&T Kentucky up to the date of cancellation (See Section 3.8) | 3.8 CLEC shall have thirty (30) Business Days from receipt of the firm price quote to accept or deny the firm price quote in writing and submit any additional Development Rates or nonrecurring rates quoted in the firm price quote. If <u>AT&T Kentucky</u> does not receive Notice of any of the foregoing within such thirty (30) Business Day period, the BFR shall be deemed canceled. CLEC shall be responsible to reimburse <u>AT&T Kentucky</u> for its costs incurred up to the date of cancellation (whether affirmatively canceled or deemed canceled by <u>AT&T Kentucky</u>). | AT&T Kentucky's language proposes to recover any additional costs for work that was necessary to complete in order to fulfill the CLEC's request. These are costs which were, for any number of reasons, unforeseen in the original analysis, but necessary for the completion and implementation of the BFR. |