

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION



SDA


IN THE MATTER OF ISSUES RELATING TO)
UNIVERSAL SERVICE AND LIFELINE) CAUSE NO. 42144 S3
ASSISTANCE FUND ADMINISTRATION)
ARTICULATED IN CAUSE NOS. 40785, 42144,)
AND 43082, AND THE PROVISIONS SET) APPROVED: JUL 30 2009
FORTH IN HEA 1279, CODIFIED AS IC § 8-1-36)

BY THE COMMISSION:

David E. Ziegner, Commissioner
Scott R. Storms, Chief Administrative Law Judge

On June 26, 2008, the Indiana Universal Service Fund (“IUSF”) Oversight Committee (“Oversight Committee”) filed a pleading in Cause No. 42144 entitled *IUSF Oversight Committee Request for Surcharge Exemption*. In a Docket Entry issued on August 7, 2008, the Presiding Officers opened this subdocket to address implementation issues regarding IUSF and the Indiana Lifeline Assistance Program (“ILAP” or “Lifeline”) and instructed the Oversight Committee to submit its request in this Cause. On September 3, 2008, the Oversight Committee filed its request in this subdocket.

Pursuant to notice, duly published as required by law, an Evidentiary Hearing in this matter was held on May 11, 2009, commencing at 9:30 a.m. in Room 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. At the Evidentiary Hearing the verified testimony of Mr. James Stidham was admitted into evidence on behalf of the Oversight Committee. The Indiana Office of the Utility Consumer Counselor (“OUCC”) is a member of the Oversight Committee and did not file additional testimony in this matter.

Based upon the applicable law and the evidence herein, and being duly advised in the premises, the Commission now finds as follows:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the public hearing conducted herein was published by the Commission. With the exception of the Indiana Office of Utility Consumer Counselor, the Oversight Committee is made up of communications service providers within the meaning of Ind. Code (IC) § 8-1-2.6-13(b). Many of the Oversight Committee member companies, and the types of communications service providers that are represented by the membership of the Oversight Committee, are also Eligible Telecommunications Carriers (“ETCs”) as that term is defined at IC § 8-1-36-4. The Commission has jurisdiction over the parties and subject matter of this Cause in the manner and to the extent provided by IC § 8-1-2.6-13(d)(12) and IC § 8-1-36 *et seq.*

2. **Relief Requested.** In its petition, the Oversight Committee requested that the Commission issue an Order that approves an exemption for ILAP recipients from the IUSF surcharge and directs ETCs that have Lifeline customers to implement a waiver of the

surcharges for both the IUSF and ILAP funds for ILAP recipients in their billing systems. The Oversight Committee also presented testimony with respect to the timeframe it believes is appropriate to properly implement the ILAP.

3. **Background.** The Commission has addressed universal service issues in two separate proceedings in recent years. The IUSF was established on March 17, 2004 through a final order in Cause No. 42144 (“IUSF Order”). On November 7, 2007, the Commission issued a final order in Cause No. 43082 that addressed funding issues related to the ILAP as required by IC § 8-1-36 (“ILAP Funding Order”).

In the IUSF Order the Commission determined that the IUSF shall be funded via a mandatory contribution requirement imposed upon all telecommunications carriers that provide intrastate retail telecommunications service in Indiana and receive revenues therefrom. Such contribution assessments shall be passed through as a percentage surcharge to the end user customers of such telecommunications carriers. In the ILAP Funding Order, the Commission adopted a funding mechanism for the ILAP that is nearly identical to the funding mechanism adopted for the IUSF — a surcharge on the customer bill as a percentage of the intrastate retail telecommunications revenue of the service provider. However, unlike the IUSF Order, the ILAP Funding Order includes a specific exemption that prevents participants from being assessed the ILAP surcharge. Because the IUSF Order predated the ILAP Funding Order, the Commission did not consider the possible exemption of ILAP participants from assessment of the IUSF surcharge. Thus, under current Commission orders, when the ILAP is implemented, ETCs will not be permitted to assess the ILAP surcharge on ILAP participants but will be required to assess the IUSF surcharge on ILAP participants.

In this proceeding the Petitioners requested relief that would allow ETCs to refrain from assessing both the ILAP and IUSF surcharges on ILAP participants in a manner consistent with the federal counterpart USF and Lifeline programs. The federal counterpart programs exempt federal Lifeline participants from both the federal USF and Lifeline surcharges. *See Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 02-329, ¶ 51 (December 13, 2002).*

4. **Petitioners Case-In-Chief.** In his testimony Mr. Stidham indicated, *inter alia*, that: (1) granting the requested relief will further the goals of universal service by not requiring Lifeline customers to fund the IUSF; (2) the requested relief is consistent with state law calling for Lifeline funding mechanisms to be consistent with comparable federal programs; (3) the financial impact of the requested relief will be *de minimus* to the ILAP fund and to the surcharge amount paid by end users; and (4) the requested relief will reduce ETCs’ burden of administering the ILAP.

Mr. Stidham also provided testimony regarding the timing of the implementation of the ILAP and requested that the Commission consider variations in the customer billing systems of ETCs and the fact that they may require a substantial amount of time to establish the internal systems necessary to implement the ILAP. Mr. Stidham testified that in addition to granting the surcharge exemption, with an implementation date tied to the ILAP

implementation date, the Commission should adopt provisions similar to those adopted in Cause No. 42144 that permitted ETCs that were unable to establish the bill surcharge by the effective date of the ILAP to, once the surcharge was in place in the ETCs billing system, temporarily increase the surcharge percentage to collect the required amount going back to the effective date of the ILAP.

5. Discussion and Findings by the Commission. The goal of both the IUSF and ILAP is to ensure access to affordable telephone service for customers in Indiana whether the service is being provided in high cost areas or for low income customers. The methods used to fund the IUSF and ILAP mirror their federal counterpart, the federal Universal Service Fund which includes provisions for both Lifeline and High Cost support. The funding and surcharge requirements for the two Indiana programs are identical with the exception that ILAP customers are required to pay the IUSF surcharge, but not the ILAP surcharge.

In the ILAP Funding Order we determined that it was in the public interest to exempt ILAP recipients from the requirement to pay the ILAP surcharge. The same rationale supporting our decision in that Cause applies with respect to the requested exemption of ILAP recipients from funding the IUSF. Our action in this Cause will promote the universal service goals of this Commission by reducing the cost of service to ILAP participants in a consistent and uniform manner with a de minimus impact on the IUSF and the end user's local service bill. Additionally, our action in this Order is consistent with and comparable to the federal Lifeline program. In its December 13, 2002 Report and Order (FCC 02-329), the FCC clarified that federal Lifeline customers should not be assessed a surcharge for funding the Federal USF program. (para 19). Consequently, our action is in compliance with statutory requirements for the ILAP. See, IC § 8-1-36-8(b), requiring funding of the ILAP to be undertaken "in a manner based on and consistent with comparable federal funding mechanisms for the federal Lifeline program...."

Based on the evidence presented in this proceeding, we find that it is in the public interest to grant the relief requested by the Oversight Committee in this matter. However, this exemption for both the ILAP and IUSF surcharge for Lifeline recipients does not require any carrier other than the ETC serving the Lifeline recipient to implement an exemption. Therefore, a Lifeline recipient may be billed an ILAP and/or IUSF surcharge by a long distance provider based on the Lifeline recipient's intrastate telecommunications revenue.

6. Implementation of the IUSF Exemption and the ILAP Program. As required by statute, the Commission has conducted a separate rulemaking to adopt rules for administering the ILAP. These rules have not been finalized, creating uncertainty as to when the ILAP will be established. However, we note that pursuant to the proposed ILAP rule (170 IAC 7-8-2(12), the actual calendar implementation date of the ILAP will be established by General Administrative Order ("GAO"). Accordingly, it is not necessary to the Commission to take additional action with respect to implementation of the ILAP in this proceeding.

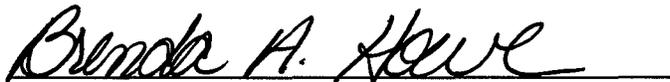
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Indiana Universal Service Fund Oversight Committee's request is granted consistent with the findings set forth herein.
2. This Order shall be effective on and after the date of its approval.

HARDY, ATTERHOLT, LANDIS AND ZIEGNER CONCUR; GOLC ABSENT:

APPROVED: JUL 30 2009

I hereby certify that the above is a true and correct copy of the Order as approved.

A handwritten signature in cursive script, reading "Brenda A. Howe", is written over a horizontal line.

**Brenda A. Howe
Secretary to the Commission**