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FILED

APR 20 2007

INDIANA UTILITY
REGULATORY COMMISSION
CAUSE NO. 42144

IN THE MATTER OF THE INVESTIGATION N)
THE COMMISSION'S OWN MOTION, UNDER)
INDIANA CODE § 8-1-2-72, INTO ANY AND)
ALL MATTERS RELATING TO THE)
COMMISSION'S MIRRORING POLICY)
ARTICULATED IN CAUSE NO. 40785 AND THE)
EFFECT OF THE FCC'S MAG ORDER ON)
SUCH POLICY, ACCESS CHARGE REFORM,)
UNIVERSAL SERVICE REFORM, AND HIGH)
COST OR UNIVERSAL SERVICE FUNDING)
MECHANISMS RELATIVE TO TELEPHONE)
AND TELECOMMUNICATIONS SERVICES)
WITHIN THE STATE OF INDIANA)

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") caused the following entry to be made:

On August 31, 2006, AT&T Communications of Indiana G.P., TCG Indianapolis, and Indiana Bell Telephone Company, Incorporated, d/b/a AT&T Indiana (collectively, "AT&T"), the Indiana Exchange Carrier Association, Inc. ("INECA") and United Telephone Company of Indiana, Inc. d/b/a Embarq ("Embarq") (hereafter all collectively the "Settling Parties")¹, filed a Request for an Attorneys' Status Conference ("Motion") in this proceeding to determine what remaining issues, if any, exist with respect to the implementation of the Commission's final order ("Final Order") issued in this Cause.

1. Background. In their Motion, the Settling Parties noted that on March 17, 2004, the Commission issued a Final Order in this Cause which approved a settlement agreement reached among the Settling Parties that established, among other things, an Indiana Universal Service Fund ("IUSF"). Following the issuance of the Final Order, various parties appealed the Final Order to the Indiana Court of Appeals. On July 15, 2005, the Court of Appeals affirmed the Commission's Final Order and remanded the case to the Commission for the limited purpose

¹ Since the Commission's issuance of its Final Order the names of several of the Settling Parties have changed due to corporate mergers. Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana is now doing business as "AT&T Indiana", resulting from the merger of SBC Communications, Inc., its parent company, with AT&T Corp. Sprint Corporation merged with Nextel Corporation, creating Sprint Nextel Corporation. United Telephone Company of Indiana, Inc. d/b/a Sprint has separated from the Sprint Nextel Corporation, becoming a newly-created local telephone company, n/k/a United Telephone Company of Indiana, Inc. d/b/a Embarq.

of attaching certain revised exhibits, admitted into evidence at the evidentiary hearing, to its Final Order. *Nextel West Corporation v. Indiana Utility Regulatory Commission*, 831 N.E.2d 134 (Ind. Ct. App. 2005) ("Opinion").²

On April 25, 2006, the Indiana Court of Appeals denied several Petitions for Rehearing filed by certain parties as to its Opinion. On May 24, 2006, these same parties jointly filed a Petition to Transfer that proceeding to the Indiana Supreme Court. On August 24, 2006, the Indiana Supreme Court denied the Petition to Transfer, Thus, the appellate process regarding the Final Order in this Cause has been concluded.

2. Attorneys' Conference. In response to the Motion, the Presiding Officers issued a Docket Entry on December 15, 2006, in which they scheduled an Attorneys' Conference for January 11, 2007. As reflected in the Motion, the central issue to be discussed at the Attorneys' Conference was consideration of the steps necessary to implement the Final Order issued by the Commission in this Cause.

As the Settling Parties requested the Attorneys' Conference, in an effort to facilitate discussion, they brought a proposed agenda ("Proposed Agenda") to the meeting that reflected the topics that they believed should be discussed. The four general topics proposed for consideration and discussion--regarding implementation of the Final Order--included the following issues: 1) the current composition of the Oversight Committee established in this Cause and the need to fill certain vacancies; 2) consideration of the Request for Proposal ("RFP") process for the selection of an IUSF Administrator; 3) discussion of the Surcharge Percentage and Funding of the IUSF; and 4) a final section for General Discussion of any remaining issues related to implementation of the Final Order.

While a preliminary discussion of these issues took place at the Attorneys' Conference, certain parties indicated that they had not seen the proposed agenda prepared by the Settling Parties and requested an opportunity to fully review and respond to the topics set forth in the proposed agenda. As a Final Order has been issued in this Cause, proposals set forth in a proposed agenda are not controlling on the steps that must be undertaken to implement the Final Order. None-the-less, the Presiding Officers found it appropriate to provide the remaining parties with an opportunity to review and comment on the proposed agenda presented by the Settling Parties and a schedule was established for that purpose.

3. Filings in Response to Proposed Agenda. Pursuant to the determinations made by the Presiding Officers at the Attorneys' Conference, on January 18, 2007, Cellco Partnership, d/b/a Verizon Wireless filed the *Comments of Verizon Wireless Related to Settling Parties' January 11, 2007 Conference Agenda*. Verizon North, Inc., and Contel of the South, Inc., d/b/a Verizon North Systems (collectively "Verizon") filed *Comments and Suggestions by Verizon on the Proposed Timetable to Implement Terms of March 17, 2004 Final Order*. Also on January 18, 2007, Powertel/Memphis Inc., d/b/a T-Mobile and T-Mobile Central LLC d/b/a T-Mobile (collectively "T-Mobile") and United States Cellular Corporation ("US Cellular") filed *Initial Comments of T-Mobile and U.S. Cellular Pursuant to the Attorney Conference on January 11,*

² On November 9, 2006, the Commission issued an *Order Addressing Remand Issue*, which addressed the matter identified by the Court of Appeals.

2007. On January 24, 2007, the Settling Parties filed their *Response to Comments filed Regarding Settling Parties Proposed Agenda and Timeframe*. Also on January 24, 2007, Time Warner Telecom of Indiana, L.P. ("TWTC") filed the *Reply Comments of Time Warner Telecom of Indiana, L.P.* On January 25, 2007, T-Mobile and US Cellular filed *Reply Comments and Request to Respond to Settling Parties Comments When Filed*. Also on January 25, 2007, the Settling Parties filed a *Motion to Strike "Reply" Comments of Time Warner Telecom* and on January 26, 2007 TWTC filed an *Objection to the Settling Parties Motion to Strike*.³

In their respective responsive comments, T-Mobile\US Cellular, Verizon, Verizon Wireless, and TWTC (collectively "Non-Settling Parties"), identified several issues that should be considered. Some of these issues mirrored the topics presented in the Proposed Agenda while other topics were suggested for the first time for possible consideration as part of the implementation of the Final Order.

The *additional* matters that the Non-Settling Parties believed should be considered generally included the following issues: the impact of the recent passage of HEA 1279 which amended Indiana Code § 8-1-2.6 (sometimes referred to as "HEA 1279") and the corresponding regulatory issues addressed under the act (Comments filed by Verizon Wireless at 3 and comments filed by Verizon at 3-4); the impact of the creation and implementation of the Indiana Lifeline Assistance Program under HEA 1279. (Verizon comments at 4 and Verizon Wireless comments at 4); the pace of implementation of the IUSF. (Verizon comments at 5-6, Verizon Wireless comments at 4-5, and T-Mobile\US Cellular comments at 6-8); and jurisdiction with respect to current and other parties. (Verizon comments at 5 and T-Mobile\US Cellular comments at 8-9).

4. Discussion of Issues Presented that do not Impact Implementation of the Final Order. While the Presiding Officers invited input from the parties with respect to implementation issues, regardless of the position of the respective parties, the Final Order is the controlling document that governs the implementation of the IUSF. Having considered the input from each of the parties it is apparent that there are differing views regarding the appropriate steps necessary for implementation of the Final Order. While the central issues identified in the Proposed Agenda provide a uniform framework for discussion of the issues, consideration of the recent enactment of HEA 1279 falls outside the scope of this suggested framework. We will therefore review this issue as a preliminary matter, prior to proceeding to review issues specific to the implementation of the Final Order.

While certain Non-Settling Parties raise the recent enactment of HEA 1279 as an issue that may impact the Commission's ability to implement the Final Order, this statute specifically preserves the Commission's ability to implement the IUSF. Pursuant to Indiana Code § 8-1-2.6-12, the terms and conditions of the IUSF settlement agreement are not affected by the new legislation. This section of new law states in part, that "[t]his chapter does not terminate or otherwise change the terms and conditions of a settlement agreement approved by the commission under this chapter before July 29, 2004." Furthermore, HEA 1279 explicitly directs the Commission, both before and after full deregulation, to "[f]ulfill the Commission's

³ In recognition that this case has been concluded and a Final Order issued, the Presiding Officers hereby deny the Motion to Strike filed by Settling Parties without considering the merits of the request.

obligations . . . concerning universal service" under the federal Telecommunications Act of 1996 ("TA-96"). Indiana Code 8-1-2.6-13(d)(5).

Accordingly, while the passage of 1279 impacted the Commission's jurisdiction with respect to telecommunications providers in the State of Indiana, it also specifically preserved certain matters to be addressed by the Commission. Thus, the need for an IUSF remains today in order to establish a competitively neutral support mechanism for maintaining high cost support for the provisioning of universal service by RLECs in rural areas within the state of Indiana. The Commission's implementation of an IUSF comports with its statutory directive under Indiana Code 8-1-2.6-13(d)(5) to fulfill its obligations under §§ 254(b)(4) and (f) of TA-96 as to competitive neutrality.

In their comments, Verizon and Verizon Wireless contend that (1) the elimination of Commission jurisdiction over "non-basic telecommunications service" under Indiana Code § 8-1-2.6-1.2; (2) the rate "flexibility" as to basic telecommunications service accorded to carriers during the "rate transition period" under Indiana Code § 8-1-2.6-1.3; and (3) the lack of Commission jurisdiction over basic telecommunications service after June 30, 2009, under Indiana Code 8-1-2.6-1.4, make the IUSF unnecessary.

According to Verizon and Verizon Wireless, the creation of rate flexibility under HEA 1279 will allow wireline carriers to recover in rate increases what they might otherwise have had to recover from the IUSF. (Verizon Comments, at 3-4 and Verizon Wireless Comments, at 3-4). The likelihood of whether wireline carriers would actually utilize rate flexibility for this purpose is not discussed. Regardless of the passage of HEA 1279, the arguments on this issue invite the Commission to ignore the requirements set forth in TA-96 that rates charged for universal service must be reasonably comparable to rates for such services in urban areas and must be just, reasonable, and affordable. § 254(b)(3), TA-96. The Commission's Final Order established benchmark rates to satisfy these requirements. (Commission's Final Order, 38-39) and it appears unlikely based on the extensive hearing and appeal process regarding these issues, that the issue of rate rebalancing will now somehow take care of itself in a uniform manner consistent with the requirements set forth in TA-96. We therefore, will not consider this issue further with respect to implementation of the Final Order.

As a final matter, Verizon and Verizon Wireless suggest that an IUSF may be rendered unnecessary when the Indiana Lifeline Assistance Program ("ILAP") is created and funded as required by Indiana Code § 8-1-36 (Verizon Wireless Comments at 4 and Verizon Comments at 4-5). Accordingly, Verizon Wireless submits that the Commission should address whether IUSF implementation should await the issuance of the new ILAP rules, while Verizon contends the Commission should implement the new ILAP rules first before it takes any further action on IUSF. These comments ignore the distinction between the IUSF to be created pursuant to the Final Order issued in this proceeding and the ILAP to be established by the Commission pursuant to the provisions set forth in Indiana Code § 8-1-36. Therefore, we find no reason to consider this issue in conjunction with the implementation of the Final Order.

5. Discussion of Issues and the Steps Necessary for the Implementation of the Final Order. Having addressed the major additional issues suggested by certain parties we now turn to consideration of the remaining items, which were also discussed in comments regarding the Proposed Agenda. The topics identified on the Proposed Agenda included issues associated with the Oversight Committee; selection of an IUSF Administrator; and funding of the IUSF, including the establishment of an initial surcharge percentage. We find that implementation of the Final Order requires consideration of each of these issues.

A. Role and Function of Oversight Committee. The passage of time and inactivity with respect to implementation of the Final Order resulted in vacancies on the Oversight Committee established by the Final Order. In Docket Entries issued on February 1st and March 13th, 2007, the Commission filled all existing vacancies and established a timeframe for nominations for two remaining positions that will expire at the end of 2007.

Consistent with the terms of the Final Order, the Oversight Committee shall act as an advisory body to the Commission with regard to the on-going operations of the Indiana Universal Service Fund. Under the terms of the Final Order the IUSF's Administrator is to be a neutral third party and is to be selected by the Commission through a request for proposal ("RFP") process. However, the responsibility of selecting an Administrator to undertake and manage the IUSF is tasked in the Final Order as an initial responsibility of the Oversight Committee. This selection is subject to review and approval by the Commission and any dispute among parties regarding the selection of an Administrator, or other disputes regarding the administration of the IUSF, remains subject to the Commission's jurisdiction. *See*, Final Order at 41-42.

B. Selection of the Administrator. With respect to its selection of an Administrator under the Final Order, the Oversight Committee is imbued with a great deal of independence and flexibility with respect to ongoing operations of the IUSF. It is therefore within the purview of the Oversight Committee to determine whether an Interim Administrator should be selected as part of an overall effort to ensure the timely operation of the fund pending the preparation and submission of the RFP in this Cause. As this matter is no longer pending as a docketed proceeding before the Commission we anticipate that the Oversight Committee can work directly with Commission Staff to begin efforts to develop an RFP for selection of a permanent Administrator.⁴ Meetings to discuss these issues can be scheduled by the Oversight Committee, and include Commission Staff assigned to this matter, on an informal basis with reports filed with the Commission under this Cause regarding progress in meeting these requirements.

C. Surcharge Percentage and Funding of IUSF. Under the terms of the Final Order the IUSF is to be funded by mandatory contributions from all telecommunications carriers that provide intrastate retail telecommunications service in Indiana. These carriers shall pass those contribution assessments through to their customers pursuant to a "Surcharge Percentage" calculation. The initial Surcharge Percentage will be established by the Commission. Following the establishment of the initial percentage, IUSF contribution assessments will be modified by the IUSF's administrator, with Commission approval, no more than twice each calendar year as

⁴ In the event that the Oversight Committee selects an Interim Administrator this entity shall not be precluded from consideration as the permanent fund Administrator under the RFP process.

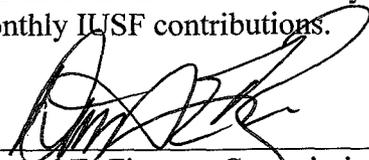
necessary to maintain sufficient funds in the IUSF. All intrastate telecommunications carriers will be required to remit contributions to the IUSF each month, and to bill the surcharge to their respective end users on a monthly basis.

As the Final Order requires the Commission to establish the Initial Surcharge Percentage, we find that on or before June 1, 2007, each carrier shall submit its net billed intrastate retail telecommunications revenue to the Commission for the year 2006. To the extent that a carrier believes that such information may properly be afforded confidential treatment it may file a request for confidential treatment under this Cause pursuant to the Commission's rules under 170 I.A.C. 1-1.1-4. Such requests for confidentiality shall be filed on or before May 25, 2007, to allow for timely consideration of the request by the Commission.

In addition, on or before June 1, 2007, the Settling Parties shall submit a revised timeline to the Commission that shall include a schedule for the submission of revisions of Attachments B-E to the IUSF Settlement Agreement, and at a minimum, the following information:

- (1) Timeframe for conducting a subsequent Qualification test;
- (2) timing of the preparation of a rate shortfall analysis;
- (3) a transition schedule for rate rebalancing;
- (4) a proposed date for issuance of Commission Order regarding the initial surcharge percentage;
- (5) a timeframe for the development of any procedures associated with initiation of the surcharge billing process;
- (6) a determination of the initial month in 2007 in which the initial surcharge percentage will be assessed on intrastate retail telecommunications service revenues in order to ensure the fund is functional and self-sustaining;
- (7) a determination of the surcharge tariff submission due date (for carriers subject to such tariffing requirement); and
- (8) a determination of the initial remittance due date by all carriers to interim IUSF administrator of monthly IUSF contributions.

IT IS SO ORDERED.



David E. Ziegner, Commissioner



Scott R. Storms, Chief Administrative Law Judge



Date