

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY ) CAUSE NO. 43644  
REGULATORY COMMISSION'S OBLIGATIONS )  
PURSUANT TO HEA 1279 FOR THE PROTECTION ) CONFIDENTIAL FILING  
OF CERTAIN INFORMATION PROVIDED IN ) GUIDELINES FOR 2008  
RESPONSE TO THE COMMISSION'S CALENDAR ) COMMUNICATIONS  
YEAR 2008 COMMUNICATIONS SURVEY AS ) SURVEY  
TRADE SECRET AND CONFIDENTIAL )  
PURSUANT TO IND. CODE 8-1-2.6-13 ) APPROVED: FEB 25 2009

**BY THE COMMISSION:**

Larry S. Landis, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On March 14, 2006, the Governor of the State of Indiana signed into law House Enrolled Act 1279 ("HEA 1279"), as enacted by the 2006 Indiana General Assembly ("Legislature"). Pursuant to Ind. Code 8-1-2.6-4, as amended, the Indiana Utility Regulatory Commission ("Commission") must report annually to the Regulatory Flexibility Committee of the Indiana General Assembly regarding the effects of competition and technological change on universal service and pricing for Indiana telecommunications services, as well as the status of competition and technological change in the provision of video service to Indiana customers. See, I.C. §8-1-2.6-4 and I.C. §8-1-1-2. Explicit in this mandate is the obligation to safeguard the confidential nature of potentially sensitive material submitted to the Commission. See, I.C. §§8-1-2.6-13(d)(9)(A)(ii), I.C. 8-1-32.5-6(a)(9)(B), and I.C. 8-1-32.5-6(d).

Consistent with these regulatory obligations, the Commission has developed a Communications Survey ("Survey") to gather data for the Commission's report to the Legislature. The Commission has also created a streamlined procedure for carriers to submit confidential information in response to that Survey.

1. **Commission Jurisdiction.** The Commission is required to safeguard the confidential nature of potentially sensitive material submitted to the Commission. See, I.C. §§8-1-2.6-13(d)(9)(A)(ii), I.C. 8-1-32.5-6(a)(9)(B), I.C. 8-1-32.5-6(d). The Commission may also prescribe such regulation as it sees fit regarding the submission of confidential documents. 170 I.A.C. § 1-1.1-4. Therefore, the Commission has jurisdiction over the subject matter of this proceeding to the extent provided by law.

2. **Commission Discussion and Findings.**

*A. The Commission's Communications Survey for Calendar Year 2008*

The Commission has initiated this docket in order to allow for the timely collection of data needed for the 2009 Report to the Regulatory Flexibility Committee. In 2007, the Commission determined that receiving multiple individual requests for confidentiality of portions of Survey responses was not in the best interest of the carriers or the Commission. Accordingly, the Commission issued an Order in Cause No. 43227 to provide a streamlined

process to allow for the timely and orderly submission of responses which carriers believed should be accorded confidential treatment. This year the Commission has further refined the process to eliminate the need for carriers to request individual subdockets in those circumstances when a carrier desires confidential treatment of responses to the Survey. In addition, the Commission is adding the option of filing documents through the confidential document function in the Commission's new Electronic Filing System (EFS).

The purpose of this docket is to allow for continued submission of confidentiality requests, and subsequent filing of confidential responses to the Survey. **This cause is not for submission of general responses to the Survey itself – i.e., responses for which companies are not seeking confidential treatment. These general responses should be submitted directly to the Commission's Communications Division staff or electronically using the Commission's EFS at: <http://iurcweb.unc.in.gov/efs>**

We note that Commission staff has revised portions of the Survey since last year. Those revisions are reflected in the types of responses that may be accorded preliminary confidentiality. Those carriers that do not feel it necessary to seek confidential treatment for their responses to the Survey need not file anything in this cause, and may simply complete the survey and submit it to the Commission's staff directly or by using the "General Submissions" section of EFS.

The Commission has determined that the following information, requested as part of the Survey, may meet the standards of confidentiality under our statutes. As such, we find it appropriate to grant confidential treatment on a **preliminary** basis to information in the following categories.

**Part III. Video Services.**

Column (B). Number of subscribers purchasing basic analog service.

Column (C). Number of subscribers purchasing other analog video services or packages.

Column (D). Number of subscribers purchasing video digital service.

**Part IV. Broadband Connection Service.**

Section (A). Broadband Availability and Subscribership.

As such information has been accorded preliminary confidentiality, carriers must use the following protocol to ensure that documentation is accorded appropriate treatment. **The confidential responses should be submitted simultaneously with the Communications Survey, hand delivered to the Presiding Officer in a sealed envelope that is clearly marked "confidential" with the Cause Number of this case noted thereon. The confidential responses must be submitted on light green paper, thereby readily identifying the information as confidential. In the alternative, carriers may submit confidential responses to Part III (B),(C), and (D) through the EFS at <http://iurcweb.unc.in.gov/efs>.** Carriers should access the "Docketed Cases" area of EFS, enter Cause Number 43644 and check the "Confidential Filing" tab. Carriers must use the date of this order to indicate the date that confidentiality was granted, and will then be able to upload an electronic copy of the confidential material to the EFS. Once uploaded, this material will be available *only* to the Presiding Officer and will not be subject to public disclosure.

If submitted in this manner, the above-described survey responses will be deemed preliminarily confidential to allow for review by the Commission. **Concurrently, the carrier must submit a copy of the Survey to the Commission's Communications Division, with the confidential sections redacted.**

Carriers may also request confidential treatment of other sections of the Survey using the standard confidentiality protocol. **The Commission finds that carriers desiring confidential treatment for other sections of the Survey must file a written request for confidential treatment on or before March 13, 2009.** The request must contain a sworn statement that describes the nature of the confidential information, the reasons why the material should be treated as confidential pursuant to I.C. § 8-1-2-29 and I.C. § 5-14-3, and the efforts made to maintain the confidentiality of the material. 170 I.A.C. § 1-1.1-4(b). Trade secret information is generally defined as containing four (4) elements: 1) information; 2) deriving independent economic value; 3) not generally known, or readily ascertainable by proper means by others who can obtain economic value from the information's disclosure or use; and 4) the subject of efforts, reasonable under the circumstances, to maintain it secrecy. *Burk v. Heritage Food Serv. Equip., Inc.*, 737 N.E.2d 803, 813 (Ind. App. 2000). Such requests must also comply with 170 I.A.C. § 1-1.1-4, as set forth above. Once the confidentiality request is received, the Presiding Officer will review the request, and render a ruling within ten (10) business days of receipt as to whether the documentation should be accorded confidential treatment.

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

1. All communications carriers requesting confidential treatment of their responses to the Commission's Calendar Year 2008 Communications Survey must file the responses as set forth herein.
2. This Order shall be effective on and after the date of its approval.

**HARDY, GOLC, LANDIS, AND ZIEGNER CONCUR; SERVER ABSENT:**

**APPROVED:** FEB 25 2009

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



**Stacy Hunter**  
**Acting Secretary to the Commission**