

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION )	CAUSE NO. 43677
INVESTIGATION OF E.COM TECHNOLOGIES, )	
LLC, d/b/a FIRSTMILE AND ITS COMPLIANCE )	<u>ORDER OPENING</u>
WITH THE ORDERS AND RULES OF THIS )	<u>INVESTIGATION</u>
COMMISSION, AND THE LAWS AND )	
REGULATIONS OF THE STATE OF INDIANA )	APPROVED

  
  


BY THE COMMISSION:

Larry S. Landis, Commissioner  
Lorraine Hitz-Bradley, Administrative Law Judge

Based on documentation received by the Indiana Utility Regulatory Commission ("Commission"), the Commission finds it appropriate to investigate the services provided by E.COM Technologies, LLC d/b/a FirstMile ("E.COM").

1. **Jurisdiction.** E.COM is a local exchange carrier ("LEC") with Certificates of Territorial Authority ("CTAs") to furnish resold and facilities-based, switched and dedicated local exchange, Commercial Mobile Radio Service ("CMRS" or "Wireless"), and resale of wide area telephone service ("WATS") and/or interexchange intrastate telecommunications services in Indiana. E.COM also has a Certificate of Franchise Authority to provide Video Services, issued under Cause No. 43175 VSP 01 (Dec. 20, 2006).

E.COM is therefore a public utility within the meaning of I.C. § 8-1-2-1, and is subject to the ongoing jurisdiction and oversight of the Commission. Under I.C. § 8-1-2-58, *et seq.*, the Commission has the authority to initiate a formal investigation into matters relating to any public utility. Pursuant to I.C. § 8-1-2-59, E.COM is notified that the Commission finds that sufficient grounds exist to warrant a formal investigation into E.COM's compliance with Commission Orders, the Indiana Administrative Code and the Statutes of the State of Indiana.

2. **Background.** The Commission granted E.COM's request for a CTA pursuant to the provisions of Ind. Code §§ 8-1-2-88 and 8-1-2.6 and 47 U.S.C. § 253, the federal Telecommunications Act of 1996 ("TA-'96"). On December 15, 1999, the Commission issued an *Interim Order* on E.COM's LEC CTA Petition. In its Order, the Commission found that E.COM's affiliate sold homes, provided alternative phone service, and installed the facilities to provide LEC services, all prior to receiving authority by the Commission to do so. The Commission noted that "E.COM will be the monopoly provider in the Centennial development; thus, E.COM looks like an ILEC [Incumbent Local Exchange Carrier], even though it does not conform to the definition of ILEC in TA'96." *In The Matter of the Petition of E.COM Technologies, LLC for A Certificate of Territorial Authority*, Cause No. 41462 (Dec. 18, 1999) (*Interim Order*)

and (May 25, 2000) (*Order on Reconsideration*). Based on these findings, the Commission found that E.COM should not be granted a CTA unless it agreed to one of two alternatives proposed by the Commission: either E.COM could agree to abide by the market opening provisions of Section 251(c) of TA-'96 and other provisions applicable to ILECs in TA-'96, or the Commission could file a petition with the FCC to declare E.COM an ILEC, pursuant to Section 251(h) of TA-'96. The Commission also found:

Our treatment of E.COM, which will be applied regardless of E.COM's decision regarding implementation of Section 251(c), would necessitate the following: The Commission's Telecommunication Division approving its initial rates, which must be at or below those of the current incumbents; rate changes to be processed in accordance with the Commission's thirty-day filing requirements for rate decreases and the filing of a petition for rate increase; the filing of an intrastate access tariff; ongoing tariff review and approval; Petitioner serving as the carrier of last resort for the Centennial development and seeking Commission certification as an Eligible Telecommunications Carrier; and the filing of an Annual Report.

*Interim Order*, at 9.

After making these findings, the Commission deemed it appropriate to issue E.COM a CTA for resale of local exchange services. The Commission also found that E.COM should not be issued a CTA to offer and furnish facilities-based, switched and dedicated, local exchange telecommunications service. On December 17, 1999, E.COM filed a letter stating its intent to comply with the marketing open provisions of Section 251(c) of TA'96.

On January 4, 2000, E.COM filed its *Petition for Rehearing, Reconsideration and Modification of Interim Order*. On May 25, 2000, the Commission issued an *Order on Reconsideration*, in which the Commission granted E.COM a CTA to offer and furnish facilities-based, switched and dedicated, local exchange telecommunications services in Indiana. The Commission found that E.COM is a CLEC which should be required to negotiate in good faith with other carriers that desire to provide service to the customers in the Centennial development for access to E.COM's network and for interconnection with E.COM at any technically feasible point. The Commission directed E.COM to file a number of documents with the Commission, as well as comply with the Commission's orders for facilities-based LECs.

In its *Order on Reconsideration*, the Commission noted that "a great deal of time has been spent on this Cause because Petitioner presented a difficult dilemma to the Commission. Hopefully in the future, Petitioner and any other developer-owned facilities-based carriers will allow open access to other providers while it is still meaningful, i.e. when the conduits and easements are still open." *Id.* at 11.

As the subsidiary of a residential developer The Estridge Companies ("Estridge"), E.COM had been given preferential treatment as the telecommunications provider in Estridge developments. To address the concerns regarding this preferential treatment, the

Commission ordered E.COM to provide information to potential home purchasers regarding the exclusive relationship. The Commission required E.COM and its affiliated developer to file their marketing materials for the Centennial and any future developments with the Commission for its review and approval. The Commission imposed this requirement while noting that failure to comply could result in the revocation of E.COM's CTA. This addressed the Commission's concern with E.COM's resistance at that time to disclosing its affiliated agreements.

On June 9, 2000 E.COM filed with the Commission a copy of a disclosure letter that it would provide to potential home buyers as well as what E.COM represented to be its marketing materials. The Commission received no marketing materials from any of E.COM's affiliates. Subsequently, the Commission stated its belief that E.COM had "not fully, and in good faith, complied with the Commission's *Interim Order* and *Order on Reconsideration*, the Indiana Administrative Code or the Statutes of the State of Indiana", and opened an investigation. See, *In the Matter of the Commission Investigation of E.COM Technologies, LLC*, Cause No. 42197 (Mar. 20, 2002). The investigation was dismissed on April 14, 2004 after E.COM agreed to file the requisite materials.

**3. Order Opening Investigation.** The Commission has since received complaints through its Consumer Affairs Division and via the Indiana Secretary of State regarding E.COM's service. Consumers complained regarding an inability to obtain service from any other provider than E.COM, and alleged that E.COM engaged in anti-competitive behavior by refusing to allow access to its facilities to competitors. Customers also complained regarding the quality of E.COM's service, as they assert that E.COM has made no upgrades to the services available in the eight years since the service first became active. Further, customers asserted that E.COM was installing its service in a new subdivision contiguous with Centennial.

E.COM responded to the Commission's inquiries regarding these matters. However, a number of E.COM's responses appear to be inconsistent with previous Commission findings regarding E.COM. In addition, the Commission previously ordered E.COM to file monthly quality of service reports. However, the Commission's records indicate that E.COM has not done so since 2004.

Based on the information received to date, the Commission finds that sufficient grounds exist to warrant further investigation into E.COM's compliance, pursuant to I.C. § 8-1-2-58, *et seq.* In addition, due to concerns expressed regarding lack of choice, we find it appropriate to join AT&T Indiana and Verizon as Respondents to this matter.

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

1. An investigation on the Commission's own motion is hereby commenced.
2. E.COM is hereby put on notice that this investigation will result in the Commission pursuing any and all available remedies against E.COM that are provided

by law, including I.C. §8-1-2-115 and Indiana law, applicable Administrative rules and Commission Orders.

3. A prehearing conference shall be held in this Cause on May 28, 2009, at 10:00 a.m. in Judicial Courtroom 224 of the National City Center, 115 W. Washington St., Indianapolis, Indiana.

4. This Order shall be effective on and after the date of its approval.

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

**APPROVED: MAY 13 2009**

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



**Brenda A. Howe**

**Secretary to the Commission**