



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

CITY OF WESTFIELD,)
)
 Petitioner,)
 v.)
)
 INDIANA BELL TELEPHONE COMPANY)
 INCORPORATED d/b/a AT&T INDIANA,)
 BRIGHT HOUSE NETWORKS, LLC,)
 COMCAST OF ILLINOIS/INDIANA/)
 OHIO, LLC d/b/a COMCAST CABLE,)
 AND E.COM TECHNOLOGIES, LLC d/b/a)
 FIRSTMILE TECHNOLOGIES,)
)
 Respondents.)

CAUSE NO. 43877

PREHEARING CONFERENCE ORDER

APPROVED: APR 05 2011

BY THE COMMISSION:

Larry S. Landis, Commissioner
David E. Veleta, Administrative Law Judge

On March 31, 2010, the City of Westfield (“Complainant”) filed its Complaint with the Indiana Utility Regulatory Commission (“Commission”) against Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana (“AT&T”), Bright House Networks, LLC (“Bright House”), Comcast of Illinois/Indiana/Ohio, LLC d/b/a Comcast Cable (“Comcast”), and E.Com Technologies, LLC d/b/a FirstMile Technologies (“FirstMile”) (collectively, “Respondents”) in this matter.

On October 27, 2010, the Commission issued an Order in this Cause requiring the Respondents to file their calculations of the amount of gross revenues and their statement for explaining the basis for the calculation of the franchise fee, for their operations within Westfield. Additionally, the Commission required Complainant, after receiving the Respondents’ filings, to notify the Commission if the amount of gross revenues is still in dispute. Finally, the Commission requested the Parties file a proposed procedural schedule for addressing any remaining dispute.

On December 17, 2010, Complainant notified the Commission that the amount of revenues is still in dispute. On January 24, 2011, the Respondents filed Respondents’ Joint Motion to Dismiss (“Motion to Dismiss”) requesting that this Cause be dismissed because Complainant’s complaint is premature and cannot be maintained against Respondents based on each Respondents’ individual circumstances.

On January 28, 2011, Complainant filed its Response arguing that Respondents have failed to present substantial grounds for their Motion to Dismiss. On January 31, 2011, the Complainant filed Complainant’s Motion for Approval of Procedural Schedule.

On February 4, 2011, the Respondents filed Respondents' Joint Reply to Westfield's Response to their Joint Motion to Dismiss and Request for Oral Argument on Motion. The Respondents argued that Complainant did not make a good faith attempt to reach agreement on a procedural schedule. The Respondents also suggested that the Presiding Officers would benefit from hearing oral argument on the Motion to Dismiss.

On February 8, 2011, Complainant filed its Reply to Respondents' Reply arguing the Commission's October 27, 2010 Order in this Cause provided guidance to the parties on how to proceed and no oral argument is needed. On February 9, 2011, the Respondents filed Respondents' Joint Objection to Westfield's Proposed Procedural Schedule and Joint Request for a Prehearing or Attorneys' Conference. The Respondents argued against Complainant's Proposed Procedural Schedule and requested a Prehearing or Attorneys' Conference be held.

Pursuant to notice and as provided for in 170 IAC 1-1.1-15, a Prehearing Conference in this Cause was held in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana at 10:00 a.m. on March 17, 2011. Proofs of publication of the notice of the Prehearing Conference have been incorporated into the record and placed in the official files of the Commission. The Complainant, Respondents AT&T, Comcast, and FirstMile, and the Office of Utility Consumer Counselor ("Public") appeared and participated at the Prehearing Conference. No members of the general public appeared.

Prior to addressing the procedural schedule, the Parties made oral argument on Respondents' Motion to Dismiss. The Presiding Officers took the Motion to Dismiss under advisement. Additionally, due to the Parties agreeing on a procedural schedule in this Cause, the Presiding Officers denied Complainant's Motion for Approval of a Procedural Schedule.

Based upon the agreement of the parties, the Commission now enters the following Findings and Order which should become a part of the record in this proceeding:

1. **Notification by Complainant of intent to proceed.** The Parties have agreed that Complainant will review the books and records of Respondents to ensure that Respondents' have properly calculated the gross revenues upon which the remitted franchise fee is based. Then, Complainant will notify the Commission of whether or not it intends to proceed with this Complaint on April 28, 2011.

2. **Complainant's Prefiling Date.** Complainant shall prefile with the Commission its prepared testimony and exhibits constituting its case-in-chief on or before June 3, 2011. Copies of same shall be served upon all parties of record.

3. **Respondent's, Public's and Intervenors' Prefiling Date.** The Respondents, the Public and all Intervenors shall prefile with the Commission the prepared testimony and exhibits constituting their respective cases-in-chief on or before August 3, 2011. Copies of same shall be served upon all parties of record.

4. **Complainant's Rebuttal Prefiling.** Complainant shall prefile with the Commission its prepared rebuttal testimony on or before August 24, 2011. Copies of same shall be served upon all parties of record.

5. **Evidentiary Hearing on the Parties' Cases-In-Chief.** In the event this Cause is not settled the cases-in-chief of the Complainant, Respondents, Public and any Intervenors shall be presented in an evidentiary hearing to commence at 10:30 a.m. on September 23, 2011, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.¹ At such time, the direct evidence of the respective parties should be presented and their respective witnesses examined. Thereafter, Complainant should present its prefiled rebuttal evidence as well as any additional evidence rebutting evidence adduced on cross-examination of Respondents', Public's or Intervenors' witnesses. If the parties reach settlement, the agreement and supporting testimony and exhibits shall be submitted to the Commission five (5) business days prior to the Evidentiary Hearing.

6. **Sworn Testimony.** Any witness testimony to be offered into the record of this proceeding shall be made under oath or affirmation. In accordance with 170 IAC 1-1.1-18(h), if the prefiled testimony of a witness is to be offered into evidence at the Evidentiary Hearing, and the witness sponsoring the prefiled testimony is not required to, and does not, attend the Evidentiary Hearing, the prefiled testimony shall be accompanied by the witness's sworn affidavit or written verification at the time the evidence is offered into the record.

7. **Discovery.** Discovery is available for all parties and shall be conducted on an informal basis. Any response or objection to a discovery request shall be made within ten (10) business days of the receipt of such request. Following the submission of rebuttal testimony, discovery shall be responded to within seven (7) business days.

8. **Prefiling of Workpapers.** When prefiling technical evidence with the Commission, each party shall concurrently file copies of the work papers used to produce that evidence. Copies of same shall also be provided to any other party requesting such in writing. When submitting workpapers to the Commission, two (2) copies of each document shall be filed with the Secretary of the Commission.

9. **Number of Copies/Corrections.** With the exception of work papers, the parties shall file with the Commission an original and five (5) copies of all prefiled testimony and exhibits. Any corrections to prefiled testimony shall be made in writing as soon as possible after discovery of the need to make such corrections. Although the Commission's rules require that original copies be one-sided, it is the Commission's preference that duplicate copies use both sides of the paper.

Parties may also elect to file documents with the Commission using the Commission's Electronic Filing System in lieu of filing paper documents. Pursuant to the terms and conditions of the Electronic Filing System, documents filed electronically are deemed filed the date they are submitted, subject to verification and acceptance by the Commission, and will receive an electronic file stamp. For

¹ At the March 17, 2011 prehearing conference, the Parties agreed that the evidentiary hearing would be held on September 22, 2011. However, that date is no longer available.

filings greater than thirty (30) pages in length, a party shall file with the Commission an original and one (1) paper copy within two (2) business days of the electronic filing. When supplying such copies, the party must provide a copy of the email reflecting the electronic filing was accepted by the Commission.

10. **Objections to Prefiled Testimony and Exhibits.** Any objections to the admissibility of prefiled testimony or exhibits shall be filed with the Commission and served on all parties of record no less than two (2) business days prior to the date scheduled for commencement of the hearing at which the testimony or exhibit will be offered into the record.

11. **Intervenors.** Any party permitted to become an Intervenor in this Cause shall be bound by the record as it stands at the time its Petition to Intervene is granted, pursuant to 170 IAC 1-1.1-11.

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

1. The determinations of the Prehearing Conference set forth in this Order are made a part of the record in this Cause and shall be binding on all present and future parties of record during the proceedings of this Cause.

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

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT ABSENT:

APPROVED: APR 05 2011

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



Brenda A. Howe
Secretary to the Commission