



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY )  
REGULATORY COMMISSION'S OBLIGATIONS )  
PURSUANT TO HEA 1279 FOR THE )  
PROTECTION OF CERTAIN INFORMATION )  
PROVIDED IN RESPONSE TO THE 2011 )  
COMMUNICATIONS SURVEY AS TRADE )  
SECRET AND CONFIDENTIAL PURSUANT TO )  
IND. CODE 8-1-2.6-13 )

CAUSE NO. 43998

APPROVED: MAR 02 2011

BY THE COMMISSION:

Larry S. Landis, Commissioner

Loraine L. Seyfried, 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. 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 ("Legislature") 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, Ind. Code §§ 8-1-2.6-4 and 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, Ind. Code §§ 8-1-2.6-13(d)(9)(A)(ii), 8-1-32.5-6(a)(9)(B), and 8-1-32.5-6(d).

Consistent with these regulatory obligations, the Commission continues to employ 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. Ind. Code §§ 8-1-2.6-13(d)(9)(A)(ii) and 8-1-32.5-6(d). The Commission may also prescribe such regulation as it sees fit regarding the submission of confidential documents. 170 IAC 1-1.1-4. The Commission has previously found the types of information subject to the terms of this Order entitled to confidential protection.<sup>1</sup> Therefore, the Commission has jurisdiction over the subject matter of this proceeding to the extent provided by law.

**2. Commission Discussion and Findings.** The Commission has initiated this docket in order to allow for the timely collection of data needed for the 2011 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

<sup>1</sup> *TDS Metrocom*, Cause Nos. 42625, 42626, 42633, 42634, 42636, 42637, 42638, 2004 Ind. PUC LEXIS 252 at \*22 (IURC June 30, 2004) (finding that due to increased competition, information regarding access lines derived "independent economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use").

of the carriers or the Commission. Accordingly, the Commission issued an Order on February 28, 2007 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. In 2009, the Commission further refined the process in its February 25, 2009 Order in Cause No. 43644 to eliminate the need for carriers to request individual sub-dockets in those circumstances when a carrier desires confidential treatment of responses to the Survey. The Commission also added the option of filing documents through the confidential document function in the Commission's 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. General, or non-confidential, responses should be submitted directly to the Commission's Communications Division staff in accordance with the instructions on the survey form or submitted electronically using the Commission's EFS at: <https://myweb.in.gov/IURC/efs/>.**

Carriers that do not believe it is 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 (please note that the column designations have changed):

**Part II. Telecommunications Services**

**Part III. Interconnected Voice over Internet Protocol Communications Services**

**Part IV. Video Services.**

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

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

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

As such information has been accorded confidential treatment preliminary, carriers must use the following protocol to ensure that documentation is accorded appropriate treatment. **The confidential responses should be submitted simultaneously with the 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 II; Part III; and Part IV (C), (D), and (E) through the EFS at: <https://myweb.in.gov/IURC/efs/>. Carriers should access the "Docketed Cases" area of EFS, enter Cause Number 43998 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 Officers 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 21, 2011.** 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 Ind. Code § 8-1-2-29 and Ind. Code Ch. 5-14-3, and the efforts made to maintain the confidentiality of the material. 170 IAC 1-1.1-4(b). Trade secret information is generally defined as containing four 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 its secrecy. *Burk v. Heritage Food Serv. Equip., Inc.*, 737 N.E.2d 803, 813 (Ind. Ct. App. 2000). Such requests must comply with 170 IAC 1-1.1-4. Once the confidentiality request is received, the Presiding Officers will review the request and render a ruling within ten 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 2011 Communications Survey must file the responses as set forth herein.
2. This Order shall be effective on and after the date of its approval.

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

APPROVED: MAR 02 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