

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S INVESTIGATION)
INTO STREAMLINING THE PROCEDURES AND)
FILING REQUIREMENTS FOR INTRASTATE)
ACCESS TARIFFS THAT IMPLEMENT OR)
MAINTAIN PARITY WITH INTERSTATE TARIFFS)

CAUSE NO. 44004

APPROVED: MAR 09 2011

BY THE COMMISSION:

Kari A.E. Bennett, Commissioner
Larry S. Landis, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

In accordance with Ind. Code § 8-1-2-88.6(b), the Indiana Utility Regulatory Commission (“Commission”) is required to review and make a determination concerning the reasonableness of access charges paid by an interexchange carrier for interconnection to local exchange facilities. The Commission’s April 30, 1993 Order in Cause No. 39369, which was made final by the Commission’s June 2, 1993 Order in that same cause, established the procedure for the Commission’s review of intrastate access tariffs and authorized the use of a thirty-day filing procedure to seek approval for changes to intrastate access tariffs that did not mirror interstate carrier access charges, as well as provided for a slightly streamlined process for changes to intrastate access tariffs that did involve mirroring.

On March 14, 2006, the Governor of the State of Indiana signed into law House Enrolled Act 1279 (“HEA 1279”), which made significant changes to the Commission’s authority and responsibilities related to communications providers and services. While Ind. Code § 8-1-2.6-13 rescinded Commission jurisdiction after June 30, 2009 over most rates and charges of communications service providers, it retained Commission jurisdiction over communications service providers to the extent such jurisdiction was expressly granted by state or federal statute. HEA 1279 did not repeal Ind. Code § 8-1-2-88.6. Furthermore, access services are not included in the statutory definitions of either “basic telecommunications services,” which involves only retail residential customers, or of “non-basic telecommunications services,” from which access services are specifically excluded.¹ Consequently, the Commission retains jurisdiction to determine the reasonableness of intrastate access charges.

In 2008, the Commission formalized its thirty-day filing procedure through the promulgation of 170 IAC 1-6, the Thirty-Day Administrative Filing Procedures and Guidelines (“Thirty-Day Rule”). While this rule codified the Commission’s existing thirty-day filing procedure, it also imposed additional notification and other requirements. On November 30, 2010, the Commission adopted an Emergency Rule temporarily amending 170 IAC 1-6-5(a)(5) and 170 IAC 1-6-6 to exempt certain carriers filing changes to intrastate access tariffs from complying with the Thirty-Day Rule’s notice requirements. Today, the Commission is also approving an Emergency Rule addressing similar issues.

¹ See, Ind. Code §§ 8-1-2.6-0.1 and 8-1-2.6-0.3.

In addition, the Communications Division staff has advised the Commission that inquiries have been received on an increasingly frequent basis from both incumbent local exchange carriers and competitive local exchange carriers concerning the Commission's intrastate access tariff filing requirements.

Given the length of time since the Commission's Order in Cause No. 39369, the intervening changes in the law, and the information provided by Commission staff, the Commission finds it appropriate to initiate this investigation to provide a forum for considering possible streamlining of the procedures and filing requirements for intrastate access tariffs that implement or maintain parity with interstate tariffs.

1. **Commission Jurisdiction.** Pursuant to Ind. Code § 8-1-2-58, the Commission has authority to initiate an investigation into matters relating to any public utility. If the Commission becomes satisfied that sufficient grounds exist to warrant a hearing pertinent to the matters investigated, Ind. Code § 8-1-2-59 requires that the public utility involved be furnished a statement notifying it of the matters under investigation. A public utility, as defined in Ind. Code § 8-1-2-1(a)(1) includes those entities that own, operate, manage or control any plant or equipment within the state for the conveyance of telegraph or telephone messages. In addition to the foregoing statutory provisions, the Commission notes that the Indiana Court of Appeals has specifically found that inherent in this grant of power is the implicit power and authority to "do that which is necessary to effectuate the regulatory scheme." *South Eastern Indiana Natural Gas v. Ingram*, 617 N.E.2d 943, 948 (Ind. Ct. App. 1993). Accordingly, the Commission has jurisdiction over the subject matter of this investigation.

2. **Parties.** As this investigation will consider the procedures or filing requirements applicable for the Commission's review of intrastate access tariffs, the Commission finds that all local exchange carriers within the State of Indiana and under the jurisdiction of the Commission should be named Respondents in this Cause and served with a copy of this Order. Additionally, the Indiana Office of Utility Consumer Counselor should be included on the service list and participate in this proceeding pursuant to Ind. Code Ch. 8-1-1.1.

3. **Scope of Investigation.** As noted above, since the issuance of the Commission's June 2, 1993 Order in Cause No. 39369, several changes in the law have occurred. While HEA 1279 retained Commission jurisdiction for intrastate access charges under Ind. Code § 8-1-2-88.6, it also requires, under certain circumstances, that the Commission "consider the provider's rates and charges for intrastate switched or special access service to be just and reasonable if the intrastate rates and charges mirror the provider's interstate rates and charges for switched or special access service." Ind. Code § 8-1-2.6-1.5(c).

In addition, the Commission has already approved a streamlined filing process for at least one telecommunications carrier when mirroring is involved. The Commission approved an instant mirroring process for AT&T Indiana's intrastate access tariff in Cause No. 43262.² For these mirroring

² *Indiana Bell Telephone Co., Inc.*, Cause No. 43262, 2007 Ind. PUC LEXIS 193 (IURC June 27, 2007).

changes to its intrastate access tariffs, AT&T Indiana simply provides a copy of its interstate tariff filing to the Commission and does not utilize the Commission's Thirty-Day Rule.

The purpose of this investigation is to review and consider whether the Commission's current procedures and filing requirements for obtaining Commission approval of intrastate access tariffs that mirror, adopt or concur in the rates, charges, terms and/or conditions set forth in an interstate tariff should be modified or further streamlined. The Commission believes it is appropriate to consider the public notice and other requirements that apply to the filing of both intrastate and interstate access tariffs and to determine what requirements remain appropriate and necessary. The Commission is not currently contemplating using this investigation to modify or streamline the procedures and filing requirements for instances in which a proposed intrastate access tariff or tariff change does not mirror, adopt or concur in the rates, charges, terms and/or conditions set forth in an interstate tariff.

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

1. An investigation is hereby commenced to allow the Commission to consider possible streamlining of the procedures and filing requirements for intrastate access tariffs that implement or maintain parity with interstate tariffs.

2. All local exchange carriers operating within the State of Indiana shall be made Respondents in this Cause and shall be served with a copy of this Order.

3. A preliminary hearing and prehearing conference to determine a procedural schedule for this investigation is scheduled for March 21, 2011 at 10:00 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.

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

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

APPROVED: MAR 09 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