

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: JUL 13 2011

BY THE COMMISSION:

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

On March 9, 2011, the Indiana Utility Regulatory Commission (“Commission”) issued an Order initiating this Investigation to allow the consideration of possible streamlining of the procedures and filing requirements for intrastate access tariffs that implement or maintain parity with interstate tariffs. All local exchange carriers (“LECs”) operating within the State of Indiana were named Respondents in this Cause and served a copy of the Commission’s Order.

Pursuant to notice and as provided for in 170 IAC 1-1.1-15, a Prehearing Conference in this Cause was held at 10:00 a.m. on March 21, 2011 in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for AT&T Indiana and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared and participated at the Prehearing Conference. In addition, several Respondents and potentially interested persons attended the Prehearing Conference.

In accordance with the Commission’s March 23, 2011 Prehearing Conference Order, a Technical Conference was held on April 18, 2011 to discuss the Commission’s current procedures and filing requirements for obtaining approval of intrastate access tariffs that mirror, adopt or concur in the rates, charges, terms and/or conditions set forth in an interstate tariff; and possible modifications or streamlining of those procedures and filing requirements. Counsel for AT&T Indiana, Sprint, Time Warner Cable and the OUCC appeared and participated at the Technical Conference. In addition, several Respondents and other potentially interested persons attended and participated.

On May 11, 2011, the Indiana Telecommunications Association (“ITA”) filed its Petition for Leave to Intervene, which was granted by the Presiding Officers in a May 16, 2011 Docket Entry.

Pursuant to notice published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing

was convened on Tuesday, May 31, 2011 at 1:00 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The ITA, AT&T Indiana, and the OUCC appeared by counsel. No members of the general public appeared or sought to testify at the evidentiary hearing. The ITA offered into evidence the prefiled direct testimony of its witness, Alan I. Matsumoto, which was admitted without objection.

The Commission, based upon the applicable law and the evidence herein, now finds:

1. Notice and Commission Jurisdiction. Due, legal and timely notice of the hearings and Technical Conference held in this Cause were given and published by the Commission as required by law. The local exchange carriers within the State of Indiana that were named Respondents in this Cause are “public utilities” as defined in the Public Service Commission Act, as amended, Ind. Code Ch. 8-1-2 and are subject to the jurisdiction of this Commission in the manner and to the extent as provided for by law.

2. Background and Overview. In Cause No. 39369, the Commission conducted an investigation into the maintenance of parity between intrastate carrier access charges and the equivalent interstate carrier access charges approved under price cap regulation. *In the Matter of the Investigation*, Cause No. 39369, 1993 Ind. PUC LEXIS 174 (IURC April 30, 1993), (hereinafter, “Third Order”). The Respondent Indiana incumbent local exchange carriers (“ILECs”) were parties in that proceeding. In the Third Order, the Commission reaffirmed, with certain exceptions, its policy of permitting access rate parity with streamlined tariff filing requirements.¹ *Id.* at *11. The Commission defined such access parity as “having the same rates, terms and conditions associated with the provision of access services in both the interstate and intrastate jurisdiction[s].” *Id.* at *9. The procedures established in the Third Order included the following:

1. LEC to file interstate tariff and support data package with the [Federal Communications Commission (“FCC”)] for approval, generally in 45 days.
2. Within 10 days after filing with the FCC, the LECs will file an intrastate mirroring package with the [Commission]. This package will be filed under the 30-day filing regulations and will include revised interstate tariff sheets, checklist, summary or narrative explaining the proposed changes and other required data. The narrative is to contain a statement as to the controversial nature, if any, of this filing.
3. Within five days after FCC approval of a LEC’s interstate filing, the LEC will notify the [Commission] Staff of the approval. Upon receipt of the notice, the Staff may then recommend approval of the pending mirroring filing via the Engineering minutes.
4. Use of the 30-day filing procedure would still allow for complete and thorough review of these filings. With the 30-day filing procedures, any party so desiring may, by timely verified filing with the Chief Engineer, request the Commission to reject the filing or request the matter be set for formal hearing.

¹ The Third Order was made final by the Commission’s June 2, 1993 Order in Cause No. 39369.

5. The LEC's intrastate access tariff will contain: 1) a statement of concurrence with its interstate access tariff; and 2) tariff sheets, as requested, to provide those access services that do not mirror the interstate services.

Id. at *19-20. (*emphasis in original omitted*)

The Commission approved an “instant mirroring” process for Indiana Bell Telephone Company, Incorporated, currently d/b/a AT&T Indiana (“AT&T”), in Cause No. 40849 on March 19, 2001, and reaffirmed on May 24, 2001; Cause No. 42405 (the successor to Cause No. 40849); and Cause No. 43262. As explained in the Commission’s Order in Cause No. 43262, under the approved “instant mirroring” process AT&T provides the Commission with electronic courtesy copies of any interstate access tariff filings that change interstate switched or special access services or rates that AT&T plans to mirror in Indiana. *Indiana Bell Telephone Company, Inc.*, Cause No. 43262, 2007 Ind. PUC LEXIS 193, *13 (IURC June 27, 2007). The intrastate tariff change has the same effective date as the mirrored interstate tariff change. No 30-day filing is required to gain approval of intrastate access tariff changes that mirror interstate access tariff changes. AT&T is not required to file any additional notice with the Commission when mirrored interstate access tariff changes are approved by the FCC. Since no filing is required at the state level, there is no need to reflect Commission staff recommendations in the Commission’s minutes regarding 30-day filings. *Id.* at *6 (IURC June 27, 2007). However, the streamlined process approved in Cause No. 43262 is only used when AT&T Indiana’s intrastate access tariff mirrors its interstate access tariff. *Id.* at *16. If any intrastate access tariff changes do not mirror FCC approved changes to interstate access tariffs, AT&T must use the Commission’s 30-day filing process. *Id.*

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.² Consequently, the Commission retains jurisdiction to determine the reasonableness of intrastate access charges.

In 2008, the Commission formalized its 30-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.³

² See, Ind. Code §§ 8-1-2.6-0.1 and 8-1-2.6-0.3.

³ But see, Emergency Rule #11-04 temporarily amending the Thirty Day Rule to exempt telecommunication carriers filing certain changes to intrastate access tariffs from complying with notice requirements. 20110316 IR 170110149.

Given the length of time since the Commission's Order in Cause No. 39369, the intervening changes in the law, and the increasingly frequent inquiries to Commission staff concerning intrastate access tariff filing requirements, the Commission found 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.

3. The Indiana Telecommunication Association's Evidence. The ITA prefiled the direct testimony of Alan I. Matsumoto, Manager for ITA member CenturyLink. Mr. Matsumoto noted the ITA is a non-profit trade association representing Indiana's telecommunications industry. The ITA's members include the ILECs operating within the State of Indiana that were named as respondents to this Cause.

Mr. Matsumoto cited to the Commission's Orders in Cause No. 40785 and Cause No. 42144 in support of his testimony that "mirroring" of access rates is consistent with Commission policy and past practice. He explained that "mirroring" of access rates was defined by the Commission in its Third Order as "having the same rates, terms and conditions associated with the provision of access services in both the interstate and intrastate jurisdictions." Mr. Matsumoto also pointed to recent legislative changes to Indiana's telecommunications regulatory statute under HEA 1279, specifically Ind. Code § 8-1-2.6-1.5(c), as support for continued mirroring of interstate access charges at the intrastate level under the new statute.

Mr. Matsumoto stated the ITA recommends the Commission approve an "instant mirroring" process for all LECs filing intrastate access tariffs that mirror interstate tariffs, rather than requiring the use of the Thirty Day Rule. He cited to the Commission's approval of "instant mirroring" for AT&T Indiana in Cause No. 43262 and for Communication Corporation of Indiana d/b/a TDS Telecom ("CCI") in Cause No. 43977, as the models for streamlining access tariff filing procedures.

Mr. Matsumoto indicated that he was not aware of any problems with AT&T Indiana's "instant mirroring" process. He noted this subject was also addressed at the Commission's April 18, 2011 Technical Conference and no issues regarding the AT&T Indiana "instant mirroring" process were raised.

Mr. Matsumoto stated the public interest would be served if "instant mirroring" were approved. He testified the Thirty Day Rule creates unnecessary work and administrative and regulatory costs that have no offsetting benefits to customers. He stated that given Commission and legislative support for mirrored access rates, using the Thirty Day Rule seems to undermine the previously recognized advantages of mirroring, i.e., simplicity, consistency, and administrative efficiency for the Commission, the carriers filing intrastate access tariffs, and intrastate access customers. Mr. Matsumoto indicated with "instant mirroring," changes apply to both interstate and Indiana intrastate access services simultaneously, eliminating the regulatory delay inherent in the thirty-day filing process and thereby mitigating the time and effort of intrastate access customers for monitoring the actions of another regulatory body. Mr. Matsumoto further noted the Commission would retain its authority over intrastate access rates as set forth in Indiana Code § 8-1-2-88.6, even after granting the further streamlining of tariff filing procedures.

Mr. Matsumoto testified the streamlined “instant mirroring” process is also supported by the legislative declaration of the Indiana General Assembly for HEA 1279, which provides that, “streamlining of, and flexibility in, the regulation of providers of telecommunications services . . . is essential to the well-being of Indiana, its economy, and its citizens . . .” Ind. Code § 8-1-2.6-1(6). In addition, he stated, Commission adoption of “instant mirroring” tariff filing procedures would promote “[c]ost minimization for providers to the extent that a provider’s quality of service and facilities are not diminished” as required by Ind. Code § 8-1-2.6-2(c)(1) and the public interest objectives of Ind. Code § 8-1-2.6-2(d)(2) in considering “whether the exercise of commission jurisdiction produces tangible benefits to the customers of providers.”

Mr. Matsumoto concluded by recommending the Commission maintain its thirty-day filing procedure for reviewing intrastate access tariffs that do not mirror interstate access tariffs. He also recommended that for intrastate access tariff filings that are administrative or clerical in nature, the Commission approve the use of the streamlined process approved for CCI in Cause No. 43977.

4. Commission Discussion and Findings. As noted earlier, the Commission has long permitted a streamlined processing of intrastate access tariffs that mirror interstate access tariffs. *See e.g.*, Third Order; *Indiana Bell Telephone Company, Inc.*, Cause No. 43262, 2007 Ind. PUC LEXIS 193 (IURC June 27, 2007); and *Communication Corporation of Ind.*, Cause No. 43977, 2011 Ind. PUC LEXIS 124 (IURC May 4, 2011). Based upon the evidence presented, the Commission agrees with the ITA that the public interest would be served if an “instant mirroring” process were approved for all LECs seeking Commission approval of intrastate access tariffs that mirror, adopt or concur in the rates, charges, terms and/or conditions set forth in an interstate access tariff. A more streamlined “instant mirroring” promotes both the cost minimization principles of Ind. Code § 8-1-2.6-2(c)(1) and the public interest objectives of Ind. Code § 8-1-2.6-2(d).

We note that the provisions of Ind. Code § 8-1-2.6-1.5(c), regarding the presumption of reasonableness of intrastate switched and special access rates and charges that mirror a provider’s corresponding interstate access rates and charges in the event of a dispute or when those intrastate access rates and charges are included in an interconnection agreement or a statement of terms and conditions, shows continued legislative support for mirroring interstate access tariffs at the intrastate level even after Indiana’s telecommunications regulatory law was significantly changed in 2006.

The Commission finds that, while the predicate factual conditions (a dispute or the inclusion of intrastate access rates and charges in an interconnection agreement or a statement of terms and conditions) are not before us, legislative intent would nevertheless be served by adopting “instant mirroring” tariff filing procedures as set forth herein, in that it preserves mirroring, while further streamlining the regulatory process. *See*, Indiana Code § 8-1-2.6-1(6). Accordingly, we find that, when changes to an interstate access tariff will be mirrored in a LEC’s intrastate access tariff, the LEC should provide electronic copies to the Commission staff of pertinent interstate tariffs and tariff filings and that such changes should be the same in their intrastate access tariff, with the same effective date as the interstate access tariff change. We further find that such carriers should provide the electronic copies of mirrored FCC filings to the Commission no later than five (5) business days after the effective date of the change to their interstate access tariff. While we find that electronic copies of the FCC filings are sufficient at

the present time, the Commission retains the authority to require that the filing include paper copies in the future, should that be deemed necessary. Finally, we find that “instant mirroring” or other streamlining (e.g., a one-day turn around administrative process) may be authorized at the sole discretion of the Commission or its staff for intrastate tariff changes that are solely administrative or clerical in nature.

As we noted in our May 4, 2011 Order in Cause No. 43977, there continues to be a great deal of uncertainty at the federal level regarding rates, rate structures and applicability of interstate switched and special access, in light of several FCC proceedings, including proceedings on intercarrier compensation, reform of universal service, phantom traffic and special access issues, among others. Ongoing federal proceedings could also have an impact on compensation paid to certain carriers and recovery of certain costs and/or revenues by certain carriers.

In the context of this decision, we find that authorizing LECs to engage in “instant mirroring” of certain interstate access charges does not indicate our review, consideration, support, or endorsement of FCC ratemaking methods and procedures for developing interstate rates for intrastate purposes. Nor does this Order in any way constitute a derogation of the Commission’s sole authority to set intrastate access charges pursuant to Section 251(g) of the Telecommunications Act of 1996, sole exercise of which is wholly reaffirmed. Furthermore, this Order in no way limits or abdicates the Commission’s authority over intrastate access charges as set forth in Ind. Code § 8-1-2-88.6.

This Order solely addresses the administrative process by which a LEC may seek Commission approval for changes in intrastate access tariffs that mirror interstate access tariffs. By continuing to accept the results of parity, we are not thereby accepting the methodology used to set the underlying interstate access rates or any particular methodology used to set the underlying interstate access rate structures. In addition, this Order does not address those situations in which a carrier’s intrastate access tariff does not mirror its interstate access tariff. We find that in such situations, carriers should continue to use the Commission’s Thirty Day Rule, consistent with the provisions of the Commission’s Third Order.

Pursuant to the evidence of record in this Cause, and being duly advised in the premises, we find that approval of this more streamlined “instant mirroring” process for intrastate access tariff changes that mirror a LEC’s interstate access tariff should be granted as set forth herein.

Finally, we note that the FCC has recently made significant modifications to the filing and publication requirements for non-ILEC interstate access tariffs. We are reviewing the FCC’s June 9 Report and Order in WC Docket No. 10-141 to determine what impact, if any, there may be on our own requirements and procedures related to access tariffs. If appropriate, we will respond to the FCC’s recent actions at a later date.

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

1. Subject to the findings and requirements set forth herein, all Indiana LECs are granted a waiver of certain requirements of the filing procedures established in 170 IAC 1-6 or referenced in Cause No. 39369 in those instances in which the LEC is proposing changes to its intrastate access tariff that mirrors, concurs in, or adopts changes to the applicable interstate access tariff, and all Indiana LECs are relieved of the obligation to follow Steps 2, 3 and 4 of the procedures shown on page 9 of the Commission's Third Order and the obligation to follow the Commission's Thirty Day Rule, in those same instances.

2. When changes to a LEC's interstate access tariff will be mirrored, concurred in, or adopted in its intrastate access tariff, such LEC shall submit electronic copies to the Commission staff of said applicable interstate access tariff filing. Such changes will be the same in the LEC's intrastate access tariff, with the same effective date as the mirrored interstate access tariff change. The LEC shall submit electronic copies of its mirrored interstate access tariff filings to the Commission no later than five (5) business days after the effective date of the change to the interstate access tariff.

3. For any new intrastate access tariff that is not based on an interstate access tariff or that represents an exception to the intrastate mirroring of a LEC's interstate access tariff, the LEC shall continue to use the Commission's Thirty Day Rule at 170 IAC 1-6. In addition, all LECs shall submit interstate access tariff pages and related materials in a manner consistent with Steps 2, 3, and 4 shown on Page 9 of the Third Order in Cause No. 39369. However, objections to such a filing shall be filed and addressed consistent with the requirements set forth at 170 IAC 1-6-7, rather than Step 4 on Page 9 of the Third Order.

4. For intrastate access tariff changes that are solely administrative or clerical in nature, instant mirroring or other streamlining of the 30-day process (e.g., a 1-day turn-around administrative process) may be authorized, at the sole discretion of the Commission or its staff.

5. The provisions of GAO 1998-2 remain in effect and applicable to switched and special intrastate and interstate carrier access tariffs for all LECs. The requirement to provide Internet access to interstate carrier access tariffs is only for informational purposes.

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

ATTERHOLT, LANDIS AND ZIEGNER CONCUR; BENNETT AND MAYS ABSENT:
APPROVED: JUL 13 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