

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY ) CAUSE NO. 44023
REGULATORY COMMISSION'S INVESTIGATION )
OF WAL-MART FAMILY MOBILE AND ITS ) APPROVED:
COMPLIANCE WITH INDIANA CODE TITLE 8. )

BY THE COMMISSION:

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

Based upon information received from the Communications Division of the Indiana Utility Regulatory Commission ("Commission"), the Commission finds it appropriate to investigate the provision of telecommunications service by Wal-Mart Family Mobile ("WFM") and its compliance with Indiana law.

1. Commission Jurisdiction and Authority to Review. Indiana Code § 8-1-2-1(a)(1) defines a "public utility" to include telecommunications service providers:

"public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

- (1) conveyance of telegraph and telephone messages;

Indiana Code § 8-1-2-58 provides the Commission with broad authority to investigate public utilities:

Whenever the Commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory or . . . that an investigation of any matters relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same, with or without notice.

Further, Indiana Code § 8-1-2-59 provides the Commission with authority to conduct a formal hearing of a matter it investigates. In addition, Indiana Code § 8-1-2-32.5 grants the Commission authority over the issuance of a Certificate of Territorial Authority ("CTA") for communications service providers. Accordingly, this Commission has jurisdiction over WFM and the subject matter of this proceeding.

2. Background. In March 2011, a member of the Commission's Communications Division began seeing and hearing advertisements for WFM cellular phone service on television

and radio. The Commission's Communications Division reviewed the WFM website,<sup>1</sup> which indicates that WFM is reselling T-Mobile service. Consequently, the Commission's Communications Division contacted Wal-Mart Headquarters in order to obtain additional information in order to confirm WFM's provision of telecommunications service in Indiana. A representative of T-Mobile called the Commission's Communications Division in response to the inquiry directed to Wal-Mart, but little verifiable information was provided regarding WFM. Therefore, on March 8, 2011, the Commission's General Counsel sent a letter to Wal-Mart requesting a response by March 23, 2011. Wal-Mart has yet to respond to the March 8, 2011 letter.

**3. Scope of Proceeding.** Indiana Code § 8-1-32.5-3 defines "Communications service" to include telecommunications service and the reselling of such services. Additionally, Indiana Code § 8-1-32.5-4 defines "Communications service provider" to include a provider of commercial mobile service as defined in 47 U.S.C. 332. Also, any person or entity offering communications services in Indiana that is not certified with the Commission before July 1, 2009, is required to apply for a CTA. Indiana Code § 8-1-32.5-6. In addition, Applicants for CTAs are required to comply with other requirements including, but not limited to, payment of all public utility fees assessed by the Commission and payment of all required assessments into the Indiana Universal Service Fund.<sup>2</sup>

Based on the information received by the Commission's Communications Division and Office of General Counsel, WFM appears to be operating as a public utility in Indiana as defined by Indiana Code § 8-1-2-1(a)(1) and as such is required to comply with Indiana law, which includes having the appropriate and current authorizations to do business in Indiana and to offer telecommunications services in Indiana pursuant to Indiana Code Ch. 8-1-32.5.

Because these matters within the jurisdiction of the Commission are in controversy, we therefore find that it is appropriate to exercise the Commission's investigatory powers to examine these and all other related issues as may be determined during the course of the investigation.

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

1. As a result of the information received by the Commission as set forth herein, an investigation pursuant to Indiana Code §§ 8-1-2-1, 8-1-2-58, 8-1-2-59, 8-1-2-60, 8-1-2-115, 8-1-2.6-13, into these and all related issues is hereby commenced.

2. A Prehearing Conference is hereby scheduled in this Cause for June 21, 2011 at 1:30 p.m. in the Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.

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<sup>1</sup> <http://www.walmart.com/cp/Walmart-Family-Mobile/1076544>

<sup>2</sup> Indiana Code Ch. 8-1-6; *In the Matter of the Investigation*, Cause No. 42144, 2004 Ind. PUC LEXIS 61, at \*17-18 (IURC March 17, 2004).

3. This Order constitutes Notice of Matters under Investigation pursuant to Indiana Code § 8-1-2-59.

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

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

APPROVED: MAY 18 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