

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

Notice of Proposed Rulemaking
IURC RM #09-09
LSA #09-478

Comments of AT&T Indiana

Indiana Bell Telephone Company, Incorporated d/b/a AT&T Indiana (“AT&T Indiana”), by counsel, respectfully submits these comments on the Commission’s proposed amendments to 170 IAC 7 issued on March 3, 2010 in its Notice of Proposed Rulemaking No. 09-09 (RM#09-09). This rulemaking is necessary to amend the Commission’s Service Quality and Customer Rights and Responsibilities rules to comply with the sweeping deregulatory effect of House Enrolled Act 1279 (HEA 1279). Since its passage in 2006, HEA 1279 has redefined and limited the Commission’s jurisdiction over telecommunications services and providers. This rulemaking is the culmination of the Commission staff, industry, and other stakeholders’ collaborative efforts to develop rules consistent with the deregulatory intent of HEA 1279. AT&T Indiana appreciates the process initiated by the Commission and led by the staff, and applauds the Commission’s efforts to develop rules recognizing the new and substantially reduced regulatory authority of the Commission.

The result of the Commission’s effort to craft new rules is defined far more by what has been deleted from the rules than what has been retained. AT&T Indiana appreciates this fact. Nonetheless, there remain areas of concern regarding certain aspects of the proposed rules. AT&T Indiana takes this opportunity to discuss its remaining substantive concerns. For convenience, AT&T Indiana’s concerns are addressed in the order they appear in the proposed rule, as follows:

Rule 1.2 Obligations of Eligible Telecommunications Carriers; Local Exchange Carriers; Communications Service Providers

Rule 1.2, Section 1 - Applicability and scope.

AT&T Indiana submits that the opening subsection (a) of the rule as proposed may promote confusion as to the applicability of the entire rule to local exchange carriers (LECs). Proposed subsection (a) states that rule 1.2 applies “to any ETC or LEC that is now, or may hereafter be, designated as such by the commission, as further defined by this title....” However, the substantive requirements of rule 1.2, with one apparently inadvertent exception discussed below¹, refer only to ETCs [eligible telecommunications carriers]. Consequently, AT&T Indiana believes that it is unnecessary and confusing to make any reference to “LEC” [local exchange carrier] in subsection (a) and thus AT&T IN recommends that the term “LEC” be stricken from this portion of the rule.

First, in context with the balance of this rule, it appears that the intent (if not the clear reading) of subsection (a) is to indicate that rule 1.2 applies to: (1) any ETC; and (2) to a LEC when it becomes an ETC. Under this reading of subsection (a), no reference to LEC is necessary, as any communications carrier that is a LEC but not an ETC today would become subject to the rule at such time as it became an ETC in the future. Second, the newly proposed definition of ETC found at rule 1.2, subsection 2(10), covers local exchange carriers and common carriers “designated as an [ETC] by the commission” making any reference to an LEC in subsection (a) unnecessary and redundant. Third, the subsection as drafted could be misinterpreted to suggest that rule 1.2 applies to LECs *before* they are designated ETCs. However, given that rule 1.2 does not establish any requirements specific to LECs that are not also ETCs, this interpretation does not make sense.

¹ See discussion concerning Rule 7-1.2-3(g) on page 4.

Finally, any reference to LEC in subsection (a) is also redundant because subsection (b) of the rule makes clear that the rule applies to “all [Communications Service Providers (CSPs)] not listed in subsection (a) to the extent necessary to comply with IC 8-1-32.5 and IC 8-1-2.6-13.” Because a LEC by definition is also a CSP, the reference to LEC in subsection (a) is redundant and raises questions as to why LECs are singled out for reference in the part of the rule describing the “applicability and scope” of the entire rule when the balance of the rule does not make any meaningful reference to LECs. AT&T Indiana submits that the relevant part of subsection (a) of proposed rule 1.2 should be amended to read as follows: “This rule applies to any ETC designated by the commission.” Any other non-ETC CSPs that may fall within the “applicability and scope” of rule 1.2 are covered in subsection (b) and need not be addressed in subsection (a).

Sec. 1. (a) This rule applies to any ~~local exchange carrier~~ **ETC or LEC** that is now, or may hereafter be, ~~engaged in the business of rendering telecommunications services to the public under the jurisdiction of the designated~~ **as such by the commission, as further defined by this title.** This rule is intended to result in the provision of ~~reasonable quality~~ **safe and adequate** telecommunications services to the public and to establish the obligations of ~~both~~ the **ETC or LEC** and the customer. ~~The standards of service provided in this rule create a minimum level of service that an LEC must meet when providing reasonable quality telecommunications services within Indiana.~~

Rule 1.2, Section 3 - Records and reports

AT&T Indiana respectfully submits that the proposed reporting and record keeping rule requires clarification and certain minor changes to ensure the proposed rule is consistent with the Commission’s statutory authority.

Subsection 3(d). AT&T Indiana appreciates the staff’s efforts to develop a reporting rule that solicits information necessary for the Commission to annually certify ETCs for the purpose

of receiving federal universal service high-cost support, while at the same time minimizing the reporting burdens on ETCs that do not receive such support. In this regard, the proposed Rule 3(d) provides, in pertinent part:

. . . [a]s a part of an ETC's annual filing with the commission for certification to determine the ETC's eligibility for federal universal service support, such ETC shall report how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per one thousand (1,000) handsets or lines on forms prescribed by the commission.

AT&T Indiana believes that the wording above indicates that the Commission recognizes and wishes to maintain its current practice, requiring annual certification filings only by ETCs that receive federal high cost universal service support. AT&T has never been required by the Commission to make such an annual filing, as it does not receive federal high cost support in Indiana. However, the proposed rule does not specifically acknowledge or take into account this fact. Therefore, AT&T IN would respectfully request that the rule be clarified to require this reporting *only* by ETCs that actually receive high cost universal support.

~~(d) As part of an ETC's annual filing with the commission for certification to determine the ETC's eligibility for federal universal service support, the Any ETC that receives high cost universal service support shall report how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per one thousand (1,000) handsets or lines on forms prescribed by the commission.~~

Subsection 3(g). Finally, with respect to proposed subsection 3(g), changes are necessary to conform the rule to the limits on the Commission's jurisdiction or replace an inadvertent reference to "LEC" with "ETC." The proposed language states: "Each *LEC* shall maintain records reasonably sufficient to show the extent of its compliance with this rule as set forth in 47 CFR 54.202." (Emphasis added). Section 3 of the rule establishes record keeping and reporting requirements that apply only to ETCs. Moreover, the referenced FCC rule, 47 CFR 54.202, is

only relevant to applicants seeking ETC designation before the FCC. Thus, the reference to LEC in this subsection appears to be intended to be “ETC.” Regardless of the intent, the reference should be changed to “ETC” because the subsection does not make sense otherwise. Moreover, the Commission does not have the jurisdictional authority necessary to apply FCC-developed ETC regulations to non-ETC CSPs. *See gen. IC 8-1-2.6-13.*

(g) Each **ETC** ~~LEC~~ shall maintain records reasonably sufficient to show the extent of its compliance with this rule as set forth in 47 CFR 54.202(e).

Rule 1.2, Section 7 - Response to commission staff inquiries

Proposed section 7 of the rule establishes an obligation on all Communication Service Providers (CSPs) to provide certain types of information in response to inquiries from the Commission staff. The language tracks with IC 8-1-2.6-13(d)(9)(B) through (E) describing the types of information that may be collected by the Commission from CSPs. However, the statute expressly limits requests for such information by the Commission to once per year “or more frequently at the option of the provider.” The section as proposed is not limited as required by statute and, consequently, should be amended to reflect the statutory limitation. In the alternative, the section could be amended to delete references to specific types of information and simply state that CSPs, other than CMRS providers, shall respond to inquiries concerning matters as provided by statute, within the Commission’s jurisdiction.

170 IAC 7-1.2-7 Response to annual commission staff inquiries

Authority: IC 8-1

Affected: IC 8-1-2-53

Sec. 7. Each ~~LEC~~ **CSP, other than providers of commercial mobile service**, shall fully and promptly answer all annual inquiries received from the commission staff concerning: ~~service or any other matters pertaining to this rule.~~

(1) the types of service offered;

(2) service areas;

- (3) information needed by the commission to prepare its report to the regulatory flexibility committee; or**
- (4) any other information the commission is authorized to collect under state or federal law.**

Each LEC CSP shall fully and promptly answer such the requests, at the earliest possible date, not to exceed fifteen (15) calendar days after the LEC receives such an inquiry from the commission, unless otherwise directed by the or as requested by staff.

Or in the alternative:

170 IAC 7-1.2-7 Response to commission staff inquiries

Authority: IC 8-1

Affected: IC 8-1-2-53

Sec. 7. Each LEC CSP, other than providers of commercial mobile service, shall fully and promptly answer all inquiries received from the commission staff concerning services over which the commission has jurisdiction, as provided by the statute.; service or any other matters pertaining to this rule.

- ~~(1) the types of service offered;~~
- ~~(2) service areas;~~
- ~~(3) information needed by the commission to prepare its report to the regulatory flexibility committee; or~~
- ~~(4) any other information the commission is authorized to collect under state or federal law.~~

Each LEC CSP shall fully and promptly answer such the requests, at the earliest possible date, not to exceed fifteen (15) calendar days after the LEC receives such an inquiry from the commission, unless otherwise directed by the or as requested by staff.

Rule 1.3 Communications Customer Service Rights and Responsibilities

Rule 1.3, Section 5 - Notice of proposed rate change.

Proposed section 5 of the rule requires all CSPs with the exception of CMRS providers to furnish advance notice of rate increases. Although giving advance notice of rate increases seems to be a reasonable thing for a business to do, AT&T Indiana submits that an explicit regulatory requirement to provide customer notice is unnecessary given the intensely competitive market for communications services that exists in the state. In keeping with the deregulatory

intent of HEA 1279, competitors should be free to communicate with their customers without regulation in a manner that permits competitors to distinguish themselves in the market place. Moreover, the application of this section of the rule to all CSPs (other than CMRS) ignores the explicit prohibition on the Commission's exercise of jurisdiction contained in IC 8-1-2.6-1.1 over advanced services, broadband service, information services, and IP-enabled retail services. Therefore, AT&T IN respectfully submits that proposed section 5 should be eliminated. If not eliminated, the rule should be amended so that it does not apply to providers of advanced services, broadband services, information or IP-enabled retail services.

~~**170 IAC 7-1.3-5 Notice of proposed rate change**~~

~~Authority: IC 8-1-1-3; IC 8-1-32.5-11~~

~~Affected: IC 8-1-2-40~~

~~Sec. 5. (a) Each utility shall supply to each customer on an annual basis, without charge, a brief summary of the customer's rights and responsibilities contained in this rule. Each utility shall forward a copy to the commission annually to be kept on record with the commission's consumer affairs division.~~

~~(b) When a utility representative takes an order for new telephone service, the representative shall describe to the applicant the least expensive telephone service available. Such description shall include lifeline/link-up services for eligible customers.~~

~~(c) Each utility shall have a copy of this rule in all of its business offices that shall be available for inspection by applicants and customers.~~

~~**(a) This section shall apply to all CSPs with the exception of CMRS providers.**~~

~~(d) **(b)** Each utility **CSP** shall furnish **advance** notice of rate increases to its affected customers that fairly summarizes the nature and extent of the increase, within forty five (45) days of such request and prior to the date of the initial public hearing. If the rate change is one that does not require a hearing, then notice should be included in the first bill where the change is effective. *(Indiana Utility Regulatory Commission; 170 IAC 7-1.3-5; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4069, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later; readopted filed Oct 2, 2009, 11:04 a.m.: 20091028 IR 170090574RFA)*~~

Removing this section would also necessitate adding 170 IAC 7-1.3-5 in the DIGEST to the list of repealed sections as well as to the list of repealed sections contained in Section 17.

Rule 1.3, Section 9 - Customer complaints to the commission.

Subsection 9(a). AT&T Indiana believes that minor changes to the proposed customer complaint rule are necessary to clarify its intent, conform the rule to the statute, and avoid creating customer confusion, potentially resulting in unnecessary burden to the Commission staff and CSPs in dealing with complaints concerning matters beyond the Commission's jurisdiction. Proposed subsection 9(a) sets out the general scope of the customer complaint rule, stating that complaints will be accepted "with respect to any matter within the jurisdiction of the commission, *including but not limited to* slamming and cramming, numbering issues and video complaints under the federal communications commission's customer service standards...." (Italics added for emphasis.) AT&T Indiana respectfully submits that the proposed language, "including but not limited to," suggests that the Commission has authority to handle complaints on subjects that are beyond the bounds of the Commission's statutory authority. In addition, by using new undefined terms "slamming and cramming, numbering issues and video complaints," the language invites complaints on matters far beyond what is authorized by statute potentially burdening both Commission staff and CSPs with matters not appropriately brought to the Commission for resolution.

For example, the term, "numbering issues," suggests a very broad range of topics (e.g., obtaining vanity numbers) when in actuality the Commission's jurisdiction is quite limited by the express terms of the statute. The Commission's authority over "numbering issues" is limited to "administration of any universally applicable dialing code for any communications service." IC 8-1-2.6-13(d)(14). Changing the proposed language to simply indicate that the Commission will

handle informal complaints “with respect to matters within the Commission’s jurisdiction” without further elaboration, cuts off any speculation as to the extent of the Commission’s jurisdiction that is created by use of imprecise language.

Sec. 9. (a) An individual or entity may informally complain to the commission's consumer affairs division with respect to any matter within the jurisdiction of the commission, ~~Such including but not limited to slamming and cramming, numbering issues, and video complaints under the federal communications commission's customer service standards formally adopted by the commission in General Administrative Order 2007-2.~~

Subsection 9(b). Proposed subsection (b) limits the scope of the complaint rule by excluding certain types of CSPs from the application of the rule. The relevant language states “References to CSP in this section exclude radio common carriers, CMRS providers and information service providers.” Presumably, the exclusion of certain enumerated types of CSPs was predicated upon the fact that the services provided by those CSPs are outside the Commission’s complaint authority. AT&T Indiana agrees that the enumerated CSPs should be excluded from the rule, but submits that other providers should also be excluded pursuant to the statute. Subsection (b) should be amended to exclude CSPs providing any service listed in IC 8-1-2.6-1.1, i.e., advanced services, broadband services, information services, Internet protocol enabled services, CMRS services and any service not commercially available on March 28, 2006. *See* IC 8-1-2.6-1.1.

(b) References to CSP in this section exclude providers of:
(1) advanced services~~radio common carriers~~;
(2) broadband services;
(3) CMRS providers; and
(34) information services~~providers~~;
(5) Internet Protocol enabled retail services; and
(6) any service not commercially available on March 28, 2006.

Conclusion

AT&T Indiana applauds the yeoman's work of the Commission and its staff that has already wrought tremendous changes in what heretofore were significant regulatory requirements. AT&T appreciates the process crafted by the Commission and effectuated by the staff that allowed informal work to proceed through collaboration and negotiation to develop a set of rules that reflect the new post-HEA 1279 regulatory environment in Indiana. It is AT&T Indiana's belief that the modest changes proposed herein will further that effort and it urges the Commission to adopt the proposed rules with AT&T's proposed changes.

Respectfully submitted,

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