



**INDIANA TELECOMMUNICATIONS ASSOCIATION, INC.**

54 MONUMENT CIRCLE • SUITE 200 • INDIANAPOLIS, IN 46204 • (317) 635-1272 • FAX (317) 635-0285 • [www.itainfo.org](http://www.itainfo.org)

January 8, 2010

Ms. Pamela D. Taber  
Director – Communications Division  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500E  
Indianapolis, IN 46204-3407

Re: Indiana Telecommunications Association Response to the IURC's 12/29/09 Strawman

Dear Ms. Taber:

The Indiana Telecommunications Association (ITA) hereby provides further comments on the Commission staff's 12/29/09 "Strawman" proposal to eliminate and/or modify certain of the IURC rules regarding service quality and customer rights and responsibilities. The ITA appreciates the opportunity to work collaboratively with the staff on the elimination of rules that are no longer necessary in today's competitive environment and on the modification of remaining rules in order to fully reflect the deregulatory intent of HEA 1279.

However, as previously indicated by ITA members during their 12/3/2009 meeting with the staff, the ITA has critical threshold concerns surrounding the extent of the Commission's authority to retain, enact, or modify many of the rules contained in the Strawman proposal. The jurisdictional issues are not minor – the Strawman would actually expand regulation to entities not currently covered by the rules – and need to be seriously considered. To the extent that such jurisdictional issues are resolved, many of the ITA's substantive issues regarding the rules will also be eliminated.

As ITA intends to participate in the workshop on January 14, 2009, specifically scheduled to deal with jurisdictional issues, we will not fully enumerate each and every jurisdictional issue and concern at this time. However, as one example, Indiana Code 8-1-26-13(e)(1) provides that

**"[a]fter June 30, 2009, the commission does not have Jurisdiction over...[r]ates and charges for communications service provided by the communication service provider, including the filing of schedules or tariffs setting forth the provider's rates and charges."** [Emphasis added.]

In contravention of this jurisdictional bar, the Strawman proposal requires certain communications service providers to submit lists of "current rates and charges."<sup>1</sup> A "list" of current rates and charges which is required to be submitted to the IURC does not differ substantively from a "schedule or tariff" of rates and charges. There is no specific authority permitting the Commission to require the filing of rates and charges (or authorizing many of the other provisions contained in the Strawman Proposal). In fact, the statute contains specific language limiting the Commission's jurisdiction.<sup>2</sup> The ITA respectfully submits that it is essential to address the jurisdictional issues prior to attempting to resolve each and every substantive issue with the proposed rules.

Nevertheless, based on the 12/29/09 version of the Strawman proposal, ITA believes the following issues need to be addressed:

### **Rule 1.2**

- The requirements outlined in Sections 3(e) and 3(f)(1) should only apply to those ETCs who receive IUSF disbursements.
- Section 4(a) should refer to "Basic Exchange Service" rather than "local exchange service."
- Section 4(b) should refer to "Basic Exchange Service" rather than "basic telecommunications service."
- Section 4(b) should include the option of posting rates for Basic Exchange Service on an ETC's website in lieu of submitting a price list to the IURC.
- Section 7 should be limited to services within the jurisdiction of the Commission.
- Section 9(b)(2) should refer to "Basic Exchange Service" rather than "basic communications service."

### **Rule 1.3**

- The title of Section 6 should use "telecommunication" rather than "utility."
- It would be beneficial to clearly specify when Section 9 applies (e.g., slamming and/or cramming complaint).

---

<sup>1</sup> The Commission is a creature of statute. Unless a grant of power can be found, it must be concluded that there is none. *Indiana Telephone Corp. v. Indiana Bell Telephone Co.*, 171 Ind.App. 616, 358 N.E.2d 218, modified at 171 Ind. App. 638, 360 N.E.2d 610.

<sup>2</sup> See e.g., IC 8-1-26-13.

Finally, it would not be practical or efficient at this time to attempt to assess the costs or savings that may accrue as a result of the proposed elimination/modifications to the rules. As stated above, the resolution of the threshold jurisdictional issues may result in the elimination of many of the proposed requirements, which would significantly affect the costs or cost savings created by the adoption of a revised proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Koppin", is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John E. Koppin  
President  
Indiana Telecommunications Association