

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6974

BILL NUMBER: SB 245

NOTE PREPARED: Jan 5, 2006

BILL AMENDED:

SUBJECT: Telecommunications.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill contains the following provisions:

Tax Abatement: It provides a five-year deduction from the assessed value of communications service property, including: (1) real property; (2) personal property; and (3) the distributable property of a public utility company. It provides that the deduction is available if the installation, development, or redevelopment of the property is: (1) initiated after December 31, 2005, and before January 1, 2009; and (2) completed within two years.

The bill provides that the amount of the deduction for a year equals the assessed value of the property, multiplied by a specified percentage. It provides that a taxpayer that seeks the deduction for property (other than the distributable property of a public utility company) must apply to the Utility Regulatory Commission (IURC) for certification that: (1) the property is communications service property; and (2) the taxpayer has installed, developed, or redeveloped the property within the prescribed time frames. It prescribes application and filing procedures for deductions for real, personal, and distributable property.

IURC Jurisdiction: The bill specifies that a person that transmits communications through Internet Protocol-enabled services is not a public utility. It prohibits the IURC from exercising jurisdiction over: (1) advanced and broadband services; and (2) information services. It prohibits, after March 27, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service. The bill also prohibits, after June 30, 2009, the IURC from exercising jurisdiction over basic telecommunications service.

The bill makes conforming changes to the laws concerning rural telephone cooperatives. It prohibits, after

March 27, 2006, the IURC from determining the rates, terms, and conditions for unbundled network elements. It prohibits the IURC from exceeding the authority delegated to it under federal law with respect to: (1) interconnection; and (2) the resale of telecommunications service. It requires the IURC to biennially identify and eliminate obsolete telecommunications regulations. It also preserves the IURC's duties with respect to: (1) dual-party relay services; (2) the 211 dialing code; (3) slamming and cramming laws; (4) universal service; (5) certificates of territorial authority; (6) mediating or arbitrating disputes between providers; and (7) interconnection agreements.

The bill allows the IURC to require communications service providers to report, not more often than quarterly, information on: (1) service quality and performance; and (2) the provider's dark fiber in Indiana. It allows a provider of last resort to meet its obligations using any available technology. After June 30, 2009, it requires a communications service provider to obtain a certificate of territorial authority from the IURC before offering communications service in Indiana. The bill also requires the IURC to issue a certificate not later than 30 days after receiving a complete and accurate application from a provider. The bill provides that the IURC may not require a provider to file a tariff as a condition of receiving a certificate. It allows the IURC to condition the issuance of a certificate on a provider's agreement to provide advance notice to customers of changes in rates or services.

Rate Increase: It provides that during the period beginning March 28, 2006, and ending June 30, 2009, a provider may increase the flat monthly rate for basic telecommunications service: (1) not more than once; and (2) by not more than \$1; every 12 months. It provides that not later than 18 months after a provider's first rate increase in a local exchange area, the provider must offer broadband service to at least 50% of households in the local exchange area. It requires an incumbent local exchange carrier (ILEC) to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on March 27, 2006.

Consumer Protection Division: It provides that on July 1, 2009, certain consumer protection duties of the IURC and the Office of Utility Consumer Counselor are transferred to the Consumer Protection Division of the Attorney General's office.

Access to Property: It prohibits a communications service provider from entering into an agreement requiring any person to restrict or limit the ability of another provider to obtain: (1) easements or rights-of-way; or (2) access to real property. It provides that the IURC may not require a provider to provide communications service to occupants of multitenant real estate if the owner, operator, or developer of the property does any of the following to benefit another provider: (1) Permits only one provider to install communications facilities or equipment on the premises. It also (2) Accepts incentives from a provider in exchange for allowing the provider the exclusive right to provide service to the premises. (3) Collects charges from occupants for communications service. (4) Enters into a prohibited agreement with a provider.

Video Services: It provides that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana. It provides that the holder of a state-issued franchise must comply with state and local laws governing the use of rights-of-way. It provides that such laws may not: (1) discriminate against a provider based on the technology used to deliver service; or (2) allow a video service system owned or operated by a local unit to use rights-of-way on more favorable terms. The bill also prohibits the IURC from requiring a provider to satisfy any build-out requirements.

The bill allows the holder of a local franchise on June 30, 2006, to: (1) continue providing service under the

local franchise until the local franchise expires; or (2) terminate the local franchise and apply to the IURC for a state-issued franchise. It provides that a provider that terminates a local franchise remains subject to any obligations owed to a private person under the franchise until the time the terminated franchise would ordinarily expire. It requires the holder of a state-issued franchise to pay a quarterly franchise fee to each local unit included in the holder's service area. The bill also provides that the fee to be paid to a unit equals 5% of the provider's gross revenue from providing video service in the unit.

The bill prescribes requirements concerning public, educational, and governmental channel capacity and financial support. It prohibits a provider from denying access to video service to any group of potential subscribers based on income.

Local Broadband Internet Service: It prohibits a political subdivision that does not provide communications service on June 30, 2006, from providing communications service, other than broadband service, after June 30, 2006. It prohibits a political subdivision from controlling, owning, or operating facilities for providing broadband service unless the political subdivision: (1) conducts an inquiry into the availability of broadband service from other providers in the area; (2) holds a public hearing; and (3) determines the costs and benefits of the proposed facilities. It prohibits a political subdivision that provides communications service from requiring a nonsubscriber to pay any of the costs of providing the service.

The bill also repeals superseded statutes.

Effective Date: Upon passage; January 1, 2006 (retroactive); July 1, 2006; July 1, 2009.

Explanation of State Expenditures: *IURC:* This bill contains provisions that will add responsibilities to the IURC and others that will remove responsibilities from the IURC. Because the Commission's responsibilities encompass all utility types, it is unknown what proportion of the Commission's spending is related to telecommunications.

The bill also requires the IURC to report to the Regulatory Flexibility Committee on its analysis of various issues concerning the telecommunications industry, including the status of competition in the industry and the availability of various telecommunication services in Indiana. The bill requires the IURC to report to the Committee by November 15, 2007, and may be made in conjunction with its annual report to the Committee. Beginning with the annual report that is due July 1, 2008, the IURC will be required to report to the Committee every even-numbered year thereafter.

Consumer Protection Division: This bill shifts the consumer protection responsibilities, related to telecommunications, of the IURC and the Office of the Utility Consumer Counselor (OUCC) to the Consumer Protection Division of the Attorney General's office after July 1, 2009. Because one of the main responsibilities of the IURC is to hold hearings for consumer complaints and utility petitions for all utilities, it is unknown what proportion of the IURC's spending is telecommunications-related. The purpose of the OUCC is to represent the consumer in the Commission's hearing, and it is also unknown what proportion of the OUCC's spending is telecommunications-related.

While reducing the administrative burden on the Commission and the OUCC, the Division will experience an increase in expenditures related to administering the new responsibilities. These expenses will not occur until FY 2010.

Tax Abatement: The Department of Local Government Finance (DLGF) would be required to adopt rules governing communication service property abatements. The IURC would be permitted to adopt rules governing the Commission's certification of communication service property for abatement purposes.

Explanation of State Revenues: *Public Utility Fund:* The operating budgets of the IURC and the OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2005, fees from the utilities and fines generated approximately \$11.7 M.

This bill removes entities that transmit communications over the Internet from the definition of a public utility. Therefore, these entities will no longer be required to pay the Public Utility Fee. Revenue to the Public Utility Fund will not decrease, however. Because the Commission bases its Public Utility Fee on the gross revenue of public utilities, the rate will increase for the remaining public utilities to create a fee that will generate the necessary amount of revenue.

Rates & Charges: Although the Commission will retain its jurisdiction over the provision of dual-party relay services, 211 services, slamming and cramming laws, interconnection agreements, and rates charged to pay phone service providers, telecommunications carriers providing basic telecommunications will no longer be subject to the Commission's approval for setting rates and charges for service. Such services are subject to the state Sales Tax. Revenues generated by telecommunications carriers' services may increase or decrease subject to fluctuation in the carriers' rates and charges. State Sales Tax revenue is deposited in the following funds: General Fund, Property Tax Replacement Fund, Public Mass Transportation Fund, Industrial Rail Service Fund, and the Commuter Rail Service Fund.

The IURC is to retain jurisdiction over the rates that may be charged by an incumbent local exchange carrier to a pay phone service provider.

Access to Property: The bill allows the IURC to impose a civil penalty of not more than \$500 per violation if a telecommunications provider enters a contract, agreement, or other arrangement that requires a person to restrict or limit the ability of a provider to obtain easements or rights-of-way on property used to provide communications services. Civil penalties are to be deposited in the Communications Service Provider Account.

Territorial Authority: One of the main telecommunications-related responsibilities of the Commission after June 30, 2009, will be to continue issuing territorial authority certificates to telecommunications carriers wishing to provide telecommunications services to customers in Indiana. Currently, a hearing must be held before the certificate may be issued. This provision eliminates this requirement and should further reduce the Commission's administrative burden.

Rate Increase: The bill allows certain telecommunications providers to increase their flat monthly rates by a predetermined amount. If utility rates are increased as a result of the bill, state General Fund revenue from the state's 1.4% Utility Receipts Tax could also increase.

Local Broadband Internet Service: A person may file an action against a political subdivision if affected by the political subdivision allegedly violating the provisions of this bill. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed

when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures: *Local Broadband Internet Service:* This provision would require a political subdivision to conduct an inquiry into the availability of telecommunication services, hold a hearing, and determine the costs and benefits before deciding to take an interest in providing broadband internet service. Once it has been decided to take an interest in the service, a political subdivision may issue bonds to finance the capital costs of needed facilities. The bonds are to be paid only from revenues generated by the political subdivision from providing the service.

The fiscal impact of this provision is dependent on local action and can vary based on the manner in which a political subdivision chooses to carry out the provisions. This bill will only affect those political subdivisions wishing to take interest in providing broadband internet service after June 30, 2006.

Public Utility Fund: Municipal utilities are not subject to the state's Public Utility Fee.

Explanation of Local Revenues: *Video Service Franchises:* For video service providers who have local franchises, the provider may choose to continue providing the video service until the local franchise expires or terminate the local franchise to apply for a certificate from the IURC. If a provider chooses to terminate its local franchise, the provider will be required to pay any accrued but unpaid franchise fees still due under the local franchise and will remain subject to the rights, duties, and obligations of the local franchise.

Those providers that receive a certificate from the IURC will be assessed a fee of five percent of the provider's gross revenue received from providing service in a unit to be paid to that unit. Those providers who continue providing video service under their current local franchise will not be required to pay the five percent of gross revenue fee, but rather the fee set in the local franchise agreement. The fiscal impact of these provisions could vary among local units depending on the provisions contained in their current franchise agreements.

Background Information: Some municipalities, in their municipal code, allow for a franchise fee provision to be included in cable franchise agreements. One municipality in Indiana charges a franchise fee of 5% of the operator's gross revenue, less taxes and other fees charged by the unit. Other units allow for the fee to be set in the agreement, but not all units address the agreements in detail.

Local Broadband Internet Service: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

Tax Abatement: Under this proposal, owners of real or personal communications service property would be entitled to an abatement on the property that the taxpayer installs, develops, or redevelops. To qualify for an abatement:

For real property, physical work on development or redevelopment would have to begin between January 1, 2006, and December 31, 2008, and the property must qualify for assessment within two years after the work begins.

Personal property must be acquired or produced by the taxpayer between January 1, 2006, and December 31, 2008, and the property must be installed within two years after acquisition. Personal property must never have been used by its owner in Indiana for any purpose before its installation.

The taxpayer would be required to obtain certification from the IURC that the taxpayer's real or personal property qualifies as communications service property and was installed, developed, or redeveloped within the allotted time. No certification would be necessary for distributable property.

The amount of real property AV eligible for abatement would equal the increase in AV due to the development. The amount of personal or distributable property AV eligible for abatement would equal the AV of that property.

The abatement would be available for 5 years. The eligible AV would be multiplied by a decreasing percentage each year to determine the abatement amount. The percentages are: 100% in year 1; 80% in year 2; 60% in year 3; 40% in year 4; and 20% in year 5.

The taxpayer would file a deduction application with the county auditor. The auditor may approve, deny, or alter the amount claimed after considering the township assessor's recommendation. The county auditor's action would be appealable.

Generally speaking, the addition of assessed value to the tax base provides a tax shift from existing property to new property by spreading the tax levy over a larger tax base. The proposed abatement would slow this shift as it pertains to property that would have been put in place regardless of the deduction. This shift could also be accelerated if the availability of the abatement results in an increase in development. The actual amount of abatements and tax shifts under this proposal is unknown.

State Agencies Affected: Indiana Utility Regulatory Commission; Attorney General; Department of Local Government Finance.

Local Agencies Affected: Certain political subdivisions, trial courts, city and town courts.

Information Sources: Indiana Utility Regulatory Commission.

Fiscal Analyst: Valerie Ruda, 317-232-9867; Bob Sigalow, 317-232-9859.