



January 12, 2006

SENATE BILL No. 245

DIGEST OF SB 245 (Updated January 10, 2006 5:26 pm - DI 101)

Citations Affected: IC 4-6; IC 8-1; IC 35-45; IC 36-1; noncode.

Synopsis: Telecommunications. Specifies that a person that transmits communications through Internet Protocol enabled services is not a public utility. Specifies that requirements concerning the use of a communications service provider's facilities or equipment do not apply to: (1) rural electric membership corporations (REMCs); or (2) rural telephone cooperatives; that have withdrawn from the jurisdiction of the utility regulatory commission (IURC). Specifies that pole attachment and interconnection requirements do not apply to a communications service provider that is an REMC. Prohibits the IURC from exercising jurisdiction over: (1) advanced and broadband services; and (2) information services. Prohibits, after March 27, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service. Specifies that "basic telecommunications service" does not include functionally equivalent service provided by a person that transmits communications through Internet Protocol enabled services. 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. 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. 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

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Effective: Upon passage; July 1, 2006; July 1, 2009.

**Hershman, Wyss, Hume, Rogers,
Landske, Kruse, Paul, Nugent,
Weatherwax, Lewis, Heinold**

January 9, 2006, read first time and referred to Committee on Homeland Security, Utilities, and Public Policy.
January 11, 2006, amended, reported favorably — Do Pass.

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offers basic telecommunications service on March 27, 2006. Prohibits, after June 30, 2009, the IURC from exercising jurisdiction over basic telecommunications service. Makes conforming changes to the laws concerning rural telephone cooperatives. Prohibits the IURC from exceeding the authority delegated to it under federal law with respect to: (1) interconnection; (2) the resale of telecommunications service; and (3) unbundled network elements. Requires the IURC to biennially identify and eliminate obsolete telecommunications regulations. 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. Allows the IURC to require communications service providers to report, not more often than quarterly, information on: (1) service quality and performance; (2) the provider's dark fiber in Indiana; and (3) the types of communications service offered by the provider and the areas in Indiana in which those services are offered. Allows the IURC to revoke a certificate of territorial authority issued to a communications service provider if the provider fails or refuses to comply with the reporting requirements. 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 (division). Provides that after June 30, 2009, communications service providers are not subject to the public utility fee. Establishes the communications service provider account within the state general fund to pay the expenses of the IURC and the division in fulfilling their duties with respect to communications service providers. Requires the general assembly to annually appropriate to the IURC and the division the amounts needed to fulfill such duties. Allows a provider of last resort to meet its obligations using any available technology. After June 30, 2009, requires a communications service provider to obtain a certificate of territorial authority from the IURC before offering communications service in Indiana. Requires the IURC to issue a certificate not later than 30 days after receiving a complete and accurate application from a provider. Provides that the IURC may not require a provider to file a tariff as a condition of receiving a certificate. 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. Provides that a certificate of public convenience and necessity issued to an REMC may serve as a certificate of territorial authority for communications service provided by the REMC, subject to the IURC's right to require the REMC to provide certain information about the communications services provided. 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. 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. (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. Provides that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana. Provides that the holder of a state issued franchise must comply with state and local laws governing the use of rights-of-way. Provides that such laws may not: (1) discriminate against a provider based on

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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. Prohibits the IURC from requiring a provider to satisfy any build-out requirements. 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. 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. 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. 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. Prescribes requirements concerning public, educational, and governmental channel capacity and financial support. Prohibits a provider from denying access to video service to any group of potential subscribers based on income. 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. 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. Provides that before a political subdivision may provide broadband service in a designated area in its jurisdiction, the political subdivision must determine that there are not at least two persons that provide or intend to provide broadband service in the designated area. Prohibits a political subdivision that provides communications service from requiring a nonsubscriber to pay any of the costs of providing the service. Repeals superseded statutes.

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January 12, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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SENATE BILL No. 245



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-9-4 IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The division has the
 3 following powers and duties:
 4 (1) The power to investigate any written consumer complaint
 5 made by a nonmerchant arising from a transaction between a
 6 merchant as defined in the Uniform Commercial Code and a
 7 nonmerchant concerning sales, leases, assignments, awards by
 8 chance, or other dispositions of goods, services, or repairs, and
 9 intangibles to a person for purposes that are primarily personal,
 10 familial, household, charitable, or agricultural, or a solicitation to
 11 supply any of the above things. When a consumer trades in or
 12 sells a motor vehicle to another consumer or nonconsumer, ~~he~~ **the**
 13 **consumer** shall be deemed to be a nonconsumer and shall be
 14 subject to the provisions of this chapter. The division shall have
 15 no jurisdiction over matters concerning utilities subject to

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1 regulation by the utility regulatory commission or by an agency of
2 the United States except that the provisions of subdivision (5)
3 shall apply and except as provided in:

4 (A) IC 8-1-29; and

5 (B) after June 30, 2009:

6 (i) IC 8-1-2.6-13(e); and

7 (ii) IC 8-1-2.9-2.

8 (2) For complaints filed after August 31, 1984, the duty to
9 ascertain from the consumer whether the consumer consents to
10 public disclosure by the division of the filing of the complaint,
11 including the consumer's identity and telephone number, if any.

12 (3) The duty to notify the merchant of the nature of the complaint
13 by written communication and request a written reply.

14 (4) Upon receipt of reply, the duty to act as mediator between the
15 parties and attempt to resolve all complaints in a conciliatory
16 manner. The director of the division and the attorney general have
17 discretion whether to mediate complaints involving a de minimis
18 amount of money.

19 (5) If no reply is received or if the parties are unable to resolve
20 their differences, and no violation of federal or state statute or rule
21 is indicated, the duty to provide the complainant with a copy of all
22 correspondence relating to the matter.

23 (6) Whenever a violation of a state or federal law or
24 administrative rule is indicated, the duty to forward to the
25 appropriate state or federal agency a copy of the correspondence
26 and request that the agency further investigate the complaint and
27 report to the division upon the disposition of the complaint.

28 (7) The power to initiate and prosecute civil actions on behalf of
29 the state whenever an agency to which a complaint has been
30 forwarded fails to act upon the complaint within ten (10) working
31 days after its referral, or whenever no state agency has jurisdiction
32 over the subject matter of the complaint.

33 (b) All complaints and correspondence in the possession of the
34 division under this chapter are confidential unless disclosure of a
35 complaint or correspondence is:

- 36 (1) requested by the person who filed the complaint;
- 37 (2) consented to, in whole or in part, after August 31, 1984, by the
- 38 person who filed the complaint;
- 39 (3) in furtherance of an investigation by a law enforcement
- 40 agency; or
- 41 (4) necessary for the filing of an action by the attorney general
- 42 under IC 24-5-0.5.

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1 (c) Notwithstanding subsection (b), the division may publicly
2 disclose information relating to the status of complaints under
3 subsection (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7).

4 SECTION 2. IC 8-1-2-1 IS AMENDED TO READ AS FOLLOWS
5 [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) **Except as provided in**
6 **section 1.1 of this chapter**, "public utility", as used in this chapter,
7 means every corporation, company, partnership, limited liability
8 company, individual, association of individuals, their lessees, trustees,
9 or receivers appointed by a court, that may own, operate, manage, or
10 control any plant or equipment within the state for the:

- 11 (1) conveyance of telegraph or telephone messages;
- 12 (2) production, transmission, delivery, or furnishing of heat, light,
13 water, or power; or
- 14 (3) collection, treatment, purification, and disposal in a sanitary
15 manner of liquid and solid waste, sewage, night soil, and
16 industrial waste.

17 The term does not include a municipality that may acquire, own, or
18 operate any of the foregoing facilities.

19 (b) "Municipal council", as used in this chapter, means the
20 legislative body of any town or city in Indiana wherein the property of
21 the public utility or any part thereof is located.

22 (c) "Municipality", as used in this chapter, means any city or town
23 of Indiana.

24 (d) "Rate", as used in this chapter, means every individual or joint
25 rate, fare, toll, charge, rental, or other compensation of any utility or
26 any two (2) or more such individual or joint rates, fares, tolls, charges,
27 rentals, or other compensation of any utility or any schedule or tariff
28 thereof, but nothing in this subsection shall give the commission any
29 control, jurisdiction, or authority over the rate charged by a municipally
30 owned utility except as in this chapter expressly provided.

31 (e) "Service" is used in this chapter in its broadest and most
32 inclusive sense and includes not only the use or accommodation
33 afforded consumers or patrons but also any product or commodity
34 furnished by any public or other utility and the plant, equipment,
35 apparatus, appliances, property, and facility employed by any public or
36 other utility in performing any service or in furnishing any product or
37 commodity and devoted to the purposes in which such public or other
38 utility is engaged and to the use and accommodation of the public.

39 (f) "Commission", as used in this chapter, means the commission
40 created by IC 8-1-1-2.

41 (g) "Utility", as used in this chapter, means every plant or equipment
42 within the state used for:

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- 1 (1) the conveyance of telegraph and telephone messages;
- 2 (2) the production, transmission, delivery, or furnishing of heat,
- 3 light, water, or power, either directly or indirectly to the public;
- 4 or
- 5 (3) collection, treatment, purification, and disposal in a sanitary
- 6 manner of liquid and solid waste, sewage, night soil, and
- 7 industrial waste.

8 The term does not include a municipality that may acquire, own, or
 9 operate facilities for the collection, treatment, purification, and disposal
 10 in a sanitary manner of liquid and solid waste, sewage, night soil, and
 11 industrial waste. A warehouse owned or operated by any person, firm,
 12 limited liability company, or corporation engaged in the business of
 13 operating a warehouse business for the storage of used household
 14 goods is not a public utility within the meaning of this chapter.

15 (h) "Municipally owned utility", as used in this chapter, includes
 16 every utility owned or operated by a municipality.

17 (i) "Indeterminate permit", as used in this chapter, means every
 18 grant, directly or indirectly from the state, to any corporation, company,
 19 partnership, limited liability company, individual, association of
 20 individuals, their lessees, trustees, or receivers appointed by a court, of
 21 power, right, or privilege to own, operate, manage, or control any plant
 22 or equipment, or any part of a plant or equipment, within this state, for
 23 the:

- 24 (1) production, transmission, delivery, or furnishing of heat, light,
- 25 water, or power, either directly or indirectly to or for the public;
- 26 (2) collection, treatment, purification, and disposal in a sanitary
- 27 manner of liquid and solid waste, sewage, night soil, and
- 28 industrial waste; or
- 29 (3) furnishing of facilities for the transmission of intelligence by
- 30 electricity between points within this state;

31 which shall continue in force until such time as the municipality shall
 32 exercise its right to purchase, condemn, or otherwise acquire the
 33 property of such public utility, as provided in this chapter, or until it
 34 shall be otherwise terminated according to law.

35 SECTION 3. IC 8-1-2-1.1 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]: **Sec. 1.1. A person or an entity that:**

- 38 (1) transmits communications through Internet Protocol
- 39 enabled services, including:
- 40 (A) voice;
- 41 (B) data;
- 42 (C) video; or

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1 **(D) any combination of voice, data, and video**
 2 **communications; or**
 3 **(2) provides the necessary software, hardware, transmission**
 4 **service, or transmission path for communications described**
 5 **in subdivision (1);**
 6 **is not a public utility solely by reason of engaging in any activity**
 7 **described in subdivisions (1) through (2).**

8 SECTION 4. IC 8-1-2-5 IS AMENDED TO READ AS FOLLOWS
 9 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) **This section does not**
 10 **apply to a corporation that has withdrawn from the jurisdiction of**
 11 **the commission under:**

- 12 **(1) IC 8-1-13-18.5; or**
 13 **(2) IC 8-1-17-22.5.**

14 **(b) Every public utility, and every communications service**
 15 **provider (as defined in IC 8-1-2.6-13(b)), every municipality, and**
 16 **every person, association, limited liability company, or corporation**
 17 **having tracks, conduits, subways, poles, or other equipment on, over,**
 18 **or under any street or highway shall for a reasonable compensation,**
 19 **permit the use of the same by any other public utility, by any**
 20 **communications service provider, or by a municipality owning or**
 21 **operating a utility, whenever public convenience and necessity require**
 22 **such use, and such use will not result in irreparable injury to the owner**
 23 **or other users of such equipment, nor in any substantial detriment to**
 24 **the service to be rendered by such owners or other users. Every public**
 25 **utility for the conveyance of telephone messages shall permit a physical**
 26 **connection or connections to be made; and telephone service to be**
 27 **furnished; before any telephone system operated by it; and the**
 28 **telephone toll line operated by another such public utility or between**
 29 **its toll line and the telephone system of another such public utility; or**
 30 **between its toll line and the toll line of another such public utility; or**
 31 **between its telephone system and the telephone system of another such**
 32 **public utility, whenever public convenience and necessity require such**
 33 **physical connection or connections and such physical connection or**
 34 **connections will not result in irreparable injury to the owner or other**
 35 **users of the facilities of such public utilities; nor in any substantial**
 36 **detriment to the service to be rendered by such public utilities.**

37 **(c) This subsection does not apply to a communications service**
 38 **provider that is a corporation organized under IC 8-1-13 (or a**
 39 **corporation organized under IC 23-17-1 that is an electric**
 40 **cooperative and that has at least one (1) member that is a**
 41 **corporation organized under IC 8-1-13). A communications service**
 42 **provider that holds a certificate of territorial authority under**

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IC 8-1-32.5 shall:

(1) permit interconnection with the provider's facilities and equipment; and

(2) provide for:

(A) physical collocation; or

(B) virtual collocation, as permitted by the commission acting under authority lawfully delegated by federal law; of equipment necessary for interconnection;

to the extent required by 47 U.S.C. 251 and any regulations adopted by the Federal Communications Commission.

(d) If any prospective consumers or patrons of any public utility for the production, transmission, delivery, or furnishing of light or power, living in territory outside of cities and towns, and within not to exceed one-half (1/2) mile of the transmission line of ~~such~~ the utility, shall agree to and shall construct and install the necessary equipment, in compliance with plans and specifications prescribed by ~~such~~ the utility, ~~such~~ the public utility shall permit the necessary physical connection or connections to be made and service to be furnished to the person or persons who have constructed and installed ~~such~~ the necessary equipment. The term "physical connection", as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such public utilities.

~~(b)~~ **(e) In case of failure to agree upon: such**

(1) the terms and conditions of, or compensation for, the use of equipment under subsection (b);

(2) the rates, terms, and conditions for interconnection under subsection (c);

(3) the use of a customer's equipment or a public utility's transmission lines under subsection (d), or the conditions or compensations for ~~such~~ that use; or in case of failure to agree upon such

(4) the physical connection or connections between the customer's equipment and the public utility's transmission lines under subsection (d), or the terms and conditions upon which the ~~same~~ physical connection shall be made;

any public utility, **communications service provider**, or any person, association, limited liability company, or corporation interested may apply to the commission ~~and~~ **to determine the matter.**

(f) Subject to subsection (h), if, after investigation, the commission shall ~~ascertain~~ determines that public convenience and necessity require ~~such~~ the use or ~~such~~ physical connections **proposed, and that**

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1 ~~such the~~ use or ~~such physical~~ connection or connections would not
2 result in irreparable injury to the owner or other users of ~~such the~~
3 equipment or the facilities of ~~such public the owner or~~ utilities
4 **involved**, nor in any substantial detriment to the service to be rendered
5 by ~~such the~~ owner or ~~other public any~~ utilities, or other users of ~~such~~
6 **the** equipment or facilities, it shall by order:

7 (1) direct that ~~such the~~ use be permitted and prescribe reasonable
8 conditions and compensations for ~~such joint the use proposed;~~
9 and

10 (2) **direct** that ~~such physical the necessary~~ connection or
11 connections be made and determine:

12 (A) how and within what time ~~such the~~ connection or
13 connections shall be made; and

14 (B) by whom the expense of making and maintaining ~~such the~~
15 connection or connections shall be paid.

16 ~~(c) Such (g) The use so~~ ordered by **the commission under**
17 **subsection (f)** shall be permitted by **the owners or utilities involved**
18 and ~~such physical the~~ connection or connections ~~so~~ ordered shall be
19 made. ~~and such Subject to subsection (h), the~~ conditions and
20 compensation ~~so~~ prescribed by **the commission** for ~~such the~~ use
21 **ordered**, and ~~such the~~ terms and conditions upon which ~~such physical~~
22 **the** connection or connections ~~shall be~~ **are to be** made, as ~~so~~
23 determined ~~shall be by the commission, constitute the~~ lawful
24 conditions and compensations for ~~such the use ordered~~ and the lawful
25 terms and conditions upon which ~~such physical the~~ connection or
26 connections shall be made. ~~to The terms, conditions, and~~
27 **compensations ordered by the commission** shall be observed,
28 followed, and paid by **the parties involved**, subject to recourse to the
29 courts upon the complaint of any interested party as provided in
30 sections 73 and 74 of this chapter and IC 8-1-3. ~~and such statute~~
31 **IC 8-1-3**, so far as applicable, shall apply to any action arising on ~~such~~
32 **a** complaint ~~so~~ made **under this subsection**. Any ~~such~~ order of the
33 commission **under subsection (f)** may be from time to time revised by
34 the commission upon application of any interested party or upon ~~its the~~
35 **the commission's** own motion.

36 (h) **In determining the rates, terms, and conditions for any use**
37 **or connection described in this section, the commission shall not:**

38 (1) **exceed the authority delegated to the commission under**
39 **federal laws and regulations; or**

40 (2) **require any person to comply with this section if the**
41 **person is exempt from federal laws or regulations concerning**
42 **rates and conditions for pole attachments or other**

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connections to facilities.
SECTION 5. IC 8-1-2-88.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 88.7. (a) As used in this section, "financial assistance" means:

- (1) a loan or loan guarantee; or
- (2) a lien accommodation provided to secure a loan made by another lender;

that is made by the Rural Electrification Administration of the United States Department of Agriculture (REA) or by the Rural Telephone Bank.

(b) As used in this section, "REA borrower" means a telephone company ~~regulated under~~ **subject to** this chapter that is the recipient of financial assistance.

(c) ~~In determining rates for a telephone company that is regulated under this chapter and that is An REA borrower once the commission determines that property of the REA borrower is used and useful for the provision of telephone service and has been placed in service; the commission shall approve rates to be charged by~~ **shall charge rates sufficient to enable** the REA borrower ~~that will enable it to:~~

- (1) satisfy its reasonable expenses and obligations; and
- (2) earn a rate of return on the property sufficient to cover the REA borrower's cost of capital, including any financial assistance and the interest thereon.

(d) So long as there remains any unpaid portion of any financial assistance associated with the property of an REA borrower, ~~determined under subsection (c) to be used and useful and placed in service;~~ the rates of the REA borrower shall be set at a level sufficient to repay the financial assistance regardless of any change in the regulatory status of the property, including ~~without limitation;~~ the full or partial retirement of the property or any other change in the status of the property. ~~as reasonably necessary or used and useful.~~

SECTION 6. IC 8-1-2.6-0.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.1. (a) **As used in this chapter, "basic telecommunications service" means stand alone telephone exchange service (as defined in 47 U.S.C. 153(47)) that:**

- (1) **is provided to a residential customer through the customer's primary line; and**
- (2) **is:**
 - (A) **the sole service purchased by the customer;**
 - (B) **not part of a package of services, a promotion, or a contract; or**

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- (C) not otherwise offered at a discounted price.**
 - (b) The term includes, at a minimum, the following:**
 - (1) Voice grade access to the public switched telephone network with minimum bandwidth of three hundred (300) to three thousand (3,000) hertz.**
 - (2) Dual tone multifrequency signaling and single party service.**
 - (3) Access to:**
 - (A) emergency services, including access to 911 and enhanced 911 if provided by the local government having jurisdiction in the service area;**
 - (B) operator services;**
 - (C) local directory assistance;**
 - (D) telephone relay services; and**
 - (E) interexchange service.**
 - (4) Toll limitation services for qualifying low income customers.**
 - (c) The term does not include a functionally equivalent service provided by a person or an entity described in IC 8-1-2-1.1.**
- SECTION 7. IC 8-1-2.6-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.2. As used in this chapter, "incumbent local exchange carrier" has the meaning set forth in 47 U.S.C. 251(h).**
- SECTION 8. IC 8-1-2.6-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.3. (a) As used in this chapter, "nonbasic telecommunications service" means retail telecommunications service other than:**
- (1) basic telecommunications service, except when the service is purchased by the customer:**
 - (A) in conjunction with another service;**
 - (B) as part of a package of services, a promotion, or a contract; or**
 - (C) at an otherwise discounted price;**
 - (2) commercial mobile radio service (as defined in 47 CFR 51.5);**
 - (3) services outside the jurisdiction of the commission under section 1.1 of this chapter; and**
 - (4) switched and special access services.**
- (b) The term includes services included in:**
 - (1) customer specific contracts;**

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- 1 (2) volume, term, and discount pricing options; and
- 2 (3) packages, bundles, and promotions, including offers
- 3 designed to win new customers, retain existing customers, or
- 4 win back former customers.

5 SECTION 9. IC 8-1-2.6-0.4 IS ADDED TO THE INDIANA CODE
 6 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 7 UPON PASSAGE]: **Sec. 0.4. As used in this chapter, "provider"**
 8 **means a person or an entity that offers basic or nonbasic**
 9 **telecommunications service.**

10 SECTION 10. IC 8-1-2.6-0.5 IS ADDED TO THE INDIANA
 11 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 12 [EFFECTIVE UPON PASSAGE]: **Sec. 0.5. As used in this chapter,**
 13 **"rates and charges", with respect to basic telecommunications**
 14 **service, means the monthly charge to a customer for basic**
 15 **telecommunications service, including:**

- 16 (1) recurring charges for flat rate and message rate service;
- 17 and
- 18 (2) any nonrecurring charge for installation or a line or
- 19 service connection.

20 SECTION 11. IC 8-1-2.6-0.6 IS ADDED TO THE INDIANA
 21 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 22 [EFFECTIVE UPON PASSAGE]: **Sec. 0.6. As used in this chapter,**
 23 **"telecommunications" has the meaning set forth in 47 U.S.C.**
 24 **153(43).**

25 SECTION 12. IC 8-1-2.6-0.7 IS ADDED TO THE INDIANA
 26 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 27 [EFFECTIVE UPON PASSAGE]: **Sec. 0.7. As used in this chapter,**
 28 **"telecommunications service" has the meaning set forth in 47**
 29 **U.S.C. 153(46).**

30 SECTION 13. IC 8-1-2.6-1 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1. The Indiana**
 32 **general assembly hereby declares that:**

- 33 (1) the maintenance of universal telephone service is a continuing
- 34 goal of the commission in the exercise of its jurisdiction;
- 35 (2) competition has become commonplace in the provision of
- 36 **certain telephone telecommunications** services in Indiana and the
- 37 United States;
- 38 (3) **advancements in and the convergence of technologies that**
- 39 **provide voice, video, and data transmission, including:**
- 40 (A) **landline, wireless, cable, satellite, and Internet**
- 41 **transmissions; and**
- 42 (B) **transmissions involving voice over Internet Protocol**

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1 **(VOIP), Internet Protocol enabled services, and voice over**
2 **power lines;**
3 **are substantially increasing consumer choice, reinventing the**
4 **marketplace with unprecedented speed, and making available**
5 **highly competitive products and services and new methods of**
6 **delivering local exchange service;**
7 ~~(3)~~ **(4) traditional commission regulatory policies, and practices,**
8 **and existing statutes are not designed to deal with a competitive**
9 **environment and technological advancements;**
10 ~~(4)~~ **(5) an environment in which Indiana consumers will have**
11 **available the widest array of state-of-the-art telephone**
12 **communications services at the most economic and reasonable**
13 **cost possible will necessitate full and fair facilities based**
14 **competition in the delivery of certain telephone**
15 **telecommunications services throughout the state; Indiana; and**
16 ~~(5)~~ **(6) streamlining of, and flexibility in, the regulation of**
17 **providers of telephone telecommunications services, regardless**
18 **of the technology used, is essential to the well-being of the state;**
19 **Indiana, its economy, and its citizens and that the public interest**
20 **requires that the commission be authorized to formulate and adopt**
21 **rules and policies as will permit the commission, in the exercise**
22 **of its expertise, to regulate and control the provision of telephone**
23 **telecommunications services to the public in an increasingly**
24 **competitive and technologically changing environment, giving**
25 **due regard to the interests of consumers and the public, the**
26 **ability of market forces to encourage innovation and**
27 **investment, and to the continued universal availability of**
28 **universal telephone basic telecommunications service.**

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29 SECTION 14. IC 8-1-2.6-1.1 IS ADDED TO THE INDIANA
30 CODE AS A NEW SECTION TO READ AS FOLLOWS
31 [EFFECTIVE UPON PASSAGE]: **Sec. 1.1. The commission shall not**
32 **exercise jurisdiction over:**

- 33 **(1) advanced services (as defined in 47 CFR 51.5);**
- 34 **(2) broadband service, however defined or classified by the**
35 **Federal Communications Commission;**
- 36 **(3) information services (as defined in 47 U.S.C. 153(20));**
- 37 **(4) Internet Protocol enabled services:**
 - 38 **(A) regardless of how the service is classified by the**
39 **Federal Communications Commission; and**
 - 40 **(B) except as expressly permitted under IC 8-1-2.8; or**
 - 41 **(5) any service not commercially available on March 28, 2006.**

42 SECTION 15. IC 8-1-2.6-1.2 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: **Sec. 1.2.** Except as provided in
3 sections 1.5(c), 12, and 13 of this chapter, after March 27, 2006, the
4 commission shall not exercise jurisdiction over any nonbasic
5 telecommunications service except as follows:

6 (1) A provider may elect to file and maintain with the
7 commission tariffs for nonbasic telecommunications service
8 offered by the provider in Indiana. The commission shall
9 permit a provider to implement a tariff, or a modification to
10 a tariff, on the first day immediately following the date of
11 filing with the commission.

12 (2) The commission may investigate, on a formal or an
13 informal basis, a complaint concerning a provider's
14 compliance with a tariff filed with the commission under
15 subdivision (1). The commission's investigation shall be
16 limited to the sole issue of the provider's compliance with the
17 filed tariff. The commission shall conduct a formal
18 investigation only upon the request of any class satisfying the
19 standing requirements of IC 8-1-2-54.

20 SECTION 16. IC 8-1-2.6-1.3 IS ADDED TO THE INDIANA
21 CODE AS A NEW SECTION TO READ AS FOLLOWS
22 [EFFECTIVE UPON PASSAGE]: **Sec. 1.3.** (a) As used in this section,
23 "broadband service" means a connection to the Internet that
24 provides capacity for transmission at an average speed of at least
25 one and one-half (1.5) megabits per second downstream and at
26 least three hundred eighty-four (384) kilobits per second upstream,
27 regardless of the technology or medium used to provide the
28 connection. The term includes a connection to the Internet
29 provided by wireless technology, copper wire, fiber optic cable,
30 coaxial cable, broadband over power lines, or other facilities or
31 future technologies. The term does not include any of the following:

32 (1) Value added services in which computer processing
33 applications are used to act on the form, content, code, or
34 protocol of any information transmitted.

35 (2) Value added services providing text, graphic, video, or
36 audio program content for a purpose other than transmission.

37 (3) The transmission of video programming or other
38 programming:

- 39 (A) provided by; or
- 40 (B) generally considered comparable to programming
41 provided by;
- 42 a television broadcast station or a radio broadcast station,

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including cable TV, direct broadcast satellite, and digital television.

(4) A connection to the Internet provided through satellite technology.

(b) As used in this section, "rate transition period" refers to the period beginning March 28, 2006, and ending June 30, 2009, during which a provider may act under this section to increase the provider's flat monthly rate for basic telecommunications service offered in one (1) or more local exchange areas in Indiana.

(c) This subsection applies to a provider that offers basic telecommunications service in one (1) or more local exchange areas in Indiana on March 27, 2006. Subject to subsection (e), during the rate transition period, a provider may act without the prior approval of the commission to increase the provider's flat monthly rate for basic telecommunications service in any local exchange area in which the provider offers basic telecommunications service on March 27, 2006. A provider may increase the provider's flat monthly rate for basic telecommunications service in a local exchange area as follows:

(1) The provider may increase the flat monthly rate not more frequently than once during each successive twelve (12) month period during the period beginning March 28, 2006, and ending June 30, 2009. The amount of any increase imposed during a twelve (12) month period described in this subdivision may not exceed one dollar (\$1). If a provider:

(A) does not impose an increase during any twelve (12) month period described in this subdivision; or

(B) imposes an increase less than the maximum one dollar (\$1) increase allowed under this subdivision during any twelve (12) month period described in this subdivision;

the provider may not impose the unused increase in any subsequent twelve (12) month period described in this subdivision.

(2) The provider may increase the flat monthly rate not more frequently than three (3) times during the entire rate transition period. The amount of the total increase in the flat monthly rate during the transition period may not exceed three dollars (\$3), as calculated based on the flat monthly rate in effect in the local exchange area on March 27, 2006.

The provider shall provide the commission and all affected customers thirty (30) days advance notice of each rate increase under this subsection.

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1 (d) This subsection applies to a provider that, at any time during
 2 the rate transition period, begins offering basic
 3 telecommunications service in a local exchange area in Indiana in
 4 which the provider did not offer basic telecommunications service
 5 on March 27, 2006. In accordance with the procedures set forth in
 6 IC 8-1-2, the commission shall approve the initial rates and charges
 7 for basic telecommunications service first offered by the provider
 8 in a local exchange area at any time during the rate transition
 9 period. Subject to subsection (e), beginning twelve (12) months
 10 after the commission approves the initial rates and charges for the
 11 local exchange area, the provider may increase the initial flat
 12 monthly rate for basic telecommunications service in accordance
 13 with subsection (c). However, subsection (c)(2) does not apply to a
 14 rate increase under this subsection. The provider may not increase
 15 the flat monthly rate under this subsection during the rate
 16 transition period more frequently than the number of twelve (12)
 17 month periods remaining in the rate transition period at the time
 18 the provider is first eligible to increase the initial flat monthly rate
 19 under this subsection. The amount of the total increase in the flat
 20 monthly rate during the rate transition period may not exceed the
 21 product of:

- 22 (1) one dollar (\$1); multiplied by
- 23 (2) the number of twelve (12) month periods remaining in the
- 24 rate transition period at the time the provider is first eligible
- 25 to increase the initial flat monthly rate under this subsection.

26 The provider shall provide the commission and all affected
 27 customers thirty (30) days advance notice of each rate increase
 28 under this subsection.

29 (e) This subsection applies to a provider that acts under
 30 subsection (c) or (d) to increase the provider's flat monthly rate for
 31 basic telecommunications service in a local exchange area in
 32 Indiana. Not later than eighteen (18) calendar months after the
 33 provider's first rate increase in the local exchange area under
 34 subsection (c) or (d), the provider must offer broadband service to
 35 at least fifty percent (50%) of the households located in the local
 36 exchange area, at the average speeds set forth in subsection (a), as
 37 determined by the commission after notice and an opportunity for
 38 hearing. The commission may extend the eighteen (18) month
 39 period allowed under this subsection by not more than nine (9)
 40 additional calendar months for good cause shown by the provider.
 41 The commission shall hold a hearing and make a finding as to
 42 whether the provider offers broadband service to at least fifty

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1 percent (50%) of the households in the local exchange area not
 2 later than the earlier of the following:

3 (1) Ninety (90) days after a request by the provider for a
 4 hearing and determination by the commission. The provider
 5 may request a hearing and determination under this
 6 subdivision at any time before the expiration of:

7 (A) the eighteen (18) month period allowed by this
 8 subsection; or
 9 (B) any extension of the eighteen (18) month period
 10 allowed by the commission under this subsection.

11 (2) Ninety (90) days after the expiration of:

12 (A) the eighteen (18) month period allowed by this
 13 subsection; or
 14 (B) any extension of the eighteen (18) month period
 15 allowed by the commission under this subsection;
 16 if the provider does not request a hearing and determination
 17 under subdivision (1).

18 (f) If, after a hearing under subsection (e), the commission
 19 determines that the provider does not offer broadband service to
 20 at least fifty percent (50%) of the households in the local exchange
 21 area not later than eighteen (18) months after the provider's first
 22 rate increase in the local exchange area under subsection (c) or (d),
 23 the commission may require the provider to:

24 (1) refund to customers; or
 25 (2) pay to the commission as a civil penalty;
 26 an amount equal to the incremental revenue accruing to the
 27 provider as a result of all rate increases imposed by the provider
 28 in the local exchange area under subsection (c) or (d). A
 29 determination by the commission under this subsection is subject
 30 to appeal under IC 8-1-3.

31 (g) This subsection applies to an incumbent local exchange
 32 carrier that offers basic telecommunications service in one (1) or
 33 more local exchange areas in Indiana on March 27, 2006.
 34 Throughout the rate transition period, the incumbent local
 35 exchange carrier shall continue to make available a flat monthly
 36 rate with unlimited local calling for basic telecommunications
 37 service in all local exchange areas in which the incumbent local
 38 exchange carrier offers basic telecommunications service on March
 39 27, 2006, regardless of whether the incumbent local exchange
 40 carrier increases the flat monthly rate in any of those local
 41 exchange areas under subsection (c). Throughout the transition
 42 period, an extended area of service in which the incumbent local

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1 exchange carrier offers basic telecommunications service on March
2 27, 2006, may not be reduced in area or scope without the approval
3 of the commission after notice and hearing.

4 SECTION 17. IC 8-1-2.6-1.4 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE UPON PASSAGE]: Sec. 1.4. Except as provided in
7 sections 1.5(c), 12, and 13 of this chapter, after June 30, 2009, the
8 commission shall not exercise jurisdiction over basic
9 telecommunications service, except as follows:

10 (1) A provider may elect to file and maintain with the
11 commission tariffs for basic telecommunications service
12 offered by the provider in Indiana. The commission shall
13 permit a provider to implement a tariff or a modification to
14 a tariff on the first day immediately following the date of
15 filing with the commission. A provider may withdraw without
16 the approval of the commission any tariff filed under this
17 subdivision.

18 (2) The commission may investigate, on a formal or an
19 informal basis, a complaint concerning a provider's
20 compliance with a tariff filed with the commission under
21 subdivision (1). The commission's investigation shall be
22 limited to the sole issue of the provider's compliance with the
23 filed tariff. The commission shall conduct a formal
24 investigation only upon the request of any class satisfying the
25 standing requirements of IC 8-1-2-54.

26 SECTION 18. IC 8-1-2.6-1.5 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE UPON PASSAGE]: Sec. 1.5. (a) In acting to impose
29 any requirements or set any prices concerning:

30 (1) interconnection with the facilities and equipment of
31 providers for purposes of 47 U.S.C. 251(c)(2);

32 (2) the resale of telecommunications service for purposes of 47
33 U.S.C. 251(c)(4); or

34 (3) the unbundled access of one (1) provider to the network
35 elements of another provider for purposes of 47 U.S.C.
36 251(c)(3);

37 the commission shall not exceed the authority delegated to the
38 commission under federal laws and regulations with respect to
39 those actions.

40 (b) Subject to any regulations adopted by the Federal
41 Communications Commission, this section does not affect:

42 (1) the commission's authority to mediate a dispute between

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- 1 providers under 47 U.S.C. 252(a);
- 2 (2) the commission's authority to arbitrate a dispute between
- 3 providers under 47 U.S.C. 252(b);
- 4 (3) the commission's authority to approve an interconnection
- 5 agreement under 47 U.S.C. 252(e);
- 6 (4) the commission's authority to review and approve a
- 7 provider's statement of terms and conditions under 47 U.S.C.
- 8 252(f); or
- 9 (5) a provider's ability to file a complaint with the commission
- 10 to have a dispute decided by the commission:
- 11 (A) after notice and hearing; and
- 12 (B) in accordance with this article.
- 13 (c) If a provider's rates and charges for intrastate switched or
- 14 special access service are:
- 15 (1) at issue in a dispute that the commission is authorized to
- 16 mediate, arbitrate, or otherwise determine under state or
- 17 federal law; or
- 18 (2) included in an interconnection agreement or a statement
- 19 of terms and conditions that the commission is authorized to
- 20 review or approve under state or federal law;
- 21 the commission shall consider the provider's rates and charges for
- 22 intrastate switched or special access service to be just and
- 23 reasonable if the intrastate rates and charges mirror the provider's
- 24 interstate rates and charges for switched or special access service.
- 25 SECTION 19. IC 8-1-2.6-2 IS AMENDED TO READ AS
- 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a)
- 27 Notwithstanding any other statute, the commission may:
- 28 (1) on its own motion;
- 29 (2) at the request of the utility consumer counselor;
- 30 (3) at the request of one (1) or more telephone companies; or
- 31 (4) at the request of any class satisfying the standing requirements
- 32 of IC 8-1-2-54;
- 33 enter an order, after notice and hearing, that the public interest requires
- 34 the commission to commence an orderly process to decline to exercise,
- 35 in whole or in part, its jurisdiction over telephone companies or certain
- 36 telephone services:
- 37 (a) This section applies to rules and orders that:
- 38 (1) concern telecommunications service or providers of
- 39 telecommunications service; and
- 40 (2) may be adopted or issued by the commission under the
- 41 authority of state or federal law.
- 42 (b) Rules and orders described in this section:

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1 **(1) may be adopted or issued only after notice and hearing;**
2 **and**
3 **(2) must be:**
4 **(A) consistent with this chapter; and**
5 **(B) in the public interest, as determined by the commission**
6 **under subsection (d).**
7 **(c) Rules and orders described in this section must promote one**
8 **(1) or more of the following:**
9 **(1) Cost minimization for providers to the extent that a**
10 **provider's quality of service and facilities are not diminished.**
11 **(2) A more accurate evaluation by the commission of a**
12 **provider's physical or financial conditions or needs as well as**
13 **a less costly regulatory procedure for either the provider, the**
14 **provider's customers, or the commission.**
15 **(3) Development of depreciation guidelines and procedures**
16 **that recognize technological obsolescence.**
17 **(4) Increased provider management efficiency beneficial to**
18 **customers.**
19 **(5) Regulation consistent with a competitive environment.**
20 **(b) (d) In determining whether the public interest will be served, as**
21 **required under subsection (b), the commission shall consider:**
22 **(1) whether technological change, competitive forces, or**
23 **regulation by other state and federal regulatory bodies render the**
24 **exercise of jurisdiction by the commission unnecessary or**
25 **wasteful;**
26 **(2) whether the exercise of commission jurisdiction produces**
27 **tangible benefits to ~~telephone company~~ the customers of**
28 **providers; and**
29 **(3) whether the exercise of commission jurisdiction inhibits a**
30 **regulated entity from competing with unregulated providers of**
31 **functionally similar ~~telephone~~ telecommunications services or**
32 **equipment.**
33 **(c) The commission may:**
34 **(1) on its own motion;**
35 **(2) at the request of the utility consumer counselor;**
36 **(3) at the request of one (1) or more telephone companies; or**
37 **(4) at the request of any class satisfying the standing requirements**
38 **of IC 8-1-2-54;**
39 **enter an order notifying any telephone company or class of telephone**
40 **companies jurisdiction over which was either limited or not exercised**
41 **according to this section that the commission will proceed to exercise**
42 **jurisdiction over the telephone company, class of telephone companies,**

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1 or class of telephone services provided by telephone companies to the
2 extent the commission considers appropriate unless one (1) or more of
3 those telephone companies formally request a hearing within fifteen
4 (15) days following the date of such order.

5 SECTION 20. IC 8-1-2.6-4 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A regulatory
7 flexibility committee is established to monitor competition in the
8 **telephone telecommunications** industry.

9 (b) The committee is composed of the members of a house standing
10 committee selected by the speaker of the house of representatives and
11 a senate standing committee selected by the president pro tempore of
12 the senate. In selecting standing committees under this subsection, the
13 speaker and president pro tempore shall determine which standing
14 committee of the house of representatives and the senate, respectively,
15 has subject matter jurisdiction that most closely relates to the
16 electricity, gas, energy policy, and telecommunications jurisdiction of
17 the regulatory flexibility committee. The chairpersons of the standing
18 committees selected under this subsection shall co-chair the regulatory
19 flexibility committee.

20 (c) The commission shall, by July 1 of each year, prepare for
21 presentation to the regulatory flexibility committee ~~an analysis of a~~
22 **report that includes the following:**

23 **(1) An analysis of the effects of competition and technological**
24 **change on universal service and on pricing of all telephone**
25 **telecommunications services under the jurisdiction of the**
26 **commission offered in Indiana.**

27 **(2) An analysis of the status of competition and technological**
28 **change in the provision of video service (as defined in**
29 **IC 8-1-34-14) to Indiana customers, as determined by the**
30 **commission in carrying out its duties under IC 8-1-34. The**
31 **commission's analysis under this subdivision must include a**
32 **description of:**

33 **(A) the number of multichannel video programming**
34 **distributors offering video service to Indiana customers;**

35 **(B) the technologies used to provide video service to**
36 **Indiana customers; and**

37 **(C) the effects of competition on the pricing and**
38 **availability of video service in Indiana.**

39 **(3) Beginning with the report due July 1, 2007, and in each**
40 **report due in an odd-numbered year after July 1, 2007:**

41 **(A) an identification of all telecommunications rules and**
42 **policies that are eliminated; and**

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1 **(B) a justification for all telecommunications rules and**
 2 **policies that are retained;**
 3 **by the commission under section 4.1 of this chapter during the**
 4 **two (2) most recent state fiscal years.**

5 (d) In addition to reviewing the commission report prepared under
 6 subsection (c), the regulatory flexibility committee shall also issue a
 7 report and recommendations to the legislative council by November 1
 8 of each year that is based on a review of the following issues:

9 (1) The effects of competition **and technological change** in the
 10 ~~telephone~~ **telecommunications** industry and impact of
 11 competition on available subsidies used to maintain universal
 12 service.

13 (2) The status of modernization of the ~~public telephone network~~
 14 **publicly available telecommunications infrastructure** in
 15 Indiana and the incentives required to further enhance this
 16 infrastructure.

17 (3) The effects on economic development and educational
 18 opportunities of ~~this the~~ modernization **described in subdivision**
 19 **(2).**

20 (4) The current ~~method~~ **methods** of regulating ~~telephone~~
 21 ~~companies~~ **providers, at both the federal and state levels,** and
 22 the ~~method's~~ effectiveness **of the methods.**

23 (5) The economic and social effectiveness of current ~~telephone~~
 24 **telecommunications** service pricing.

25 (6) All other telecommunications issues the committee deems
 26 appropriate.

27 The report and recommendations issued under this subsection to the
 28 legislative council must be in an electronic format under IC 5-14-6.

29 (e) The regulatory flexibility committee shall meet on the call of the
 30 co-chairpersons to study telecommunications issues described in
 31 subsection (d). The committee shall, with the approval of the
 32 commission, retain the independent consultants the committee
 33 considers appropriate to assist the committee in the review and study.
 34 The expenses for the consultants shall be paid by the commission.

35 SECTION 21. IC 8-1-2.6-4.1 IS ADDED TO THE INDIANA
 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE UPON PASSAGE]: **Sec. 4.1. (a) Not later than:**

38 **(1) July 1, 2007; and**

39 **(2) July 1 of each odd-numbered year after July 1, 2007;**

40 **the commission shall, through a rulemaking proceeding under**
 41 **IC 4-22-2 or another commission proceeding, identify and**
 42 **eliminate rules and policies concerning telecommunications service**

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1 and telecommunications service providers that are no longer
2 necessary or appropriate as a result of technological advancement
3 and competition in the telecommunications industry.

4 (b) In carrying out this section, the commission shall promote
5 the policies and purposes set forth in this chapter. Beginning in
6 2007, and in each even-numbered year after 2007, the commission's
7 annual report to the regulatory flexibility committee under section
8 4 of this chapter must:

- 9 (1) identify any regulation or policy eliminated; and
 - 10 (2) justify any regulation or policy that is retained;
- 11 by the commission under this section during the two (2) most
12 recent state fiscal years.

13 SECTION 22. IC 8-1-2.6-8 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in
15 this section, "rate reduction" means a decrease in either recurring or
16 nonrecurring rates or charges.

17 (b) Notwithstanding any other provision of this chapter or any other
18 statute, a ~~telephone company provider~~ may ~~subject to the prior~~
19 ~~approval of the commission~~, participate in any rate reduction program
20 for residential customers funded from revenues provided by any
21 governmental entity or other revenues administered by an agency of
22 that entity.

23 SECTION 23. IC 8-1-2.6-12 IS ADDED TO THE INDIANA CODE
24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
25 UPON PASSAGE]: Sec. 12. This chapter does not terminate or
26 otherwise change the terms and conditions of a settlement
27 agreement approved by the commission under this chapter before
28 July 29, 2004. However, a provider may do either of the following:

- 29 (1) Renegotiate the terms and conditions of the settlement
30 agreement at any time before the expiration of the settlement
31 agreement.
- 32 (2) Increase the provider's flat monthly rate for basic
33 telecommunications service in a local exchange area under
34 section 1.3 of this chapter if the provider meets the
35 requirements of section 1.3(e) of this chapter at any time
36 before or after the expiration of the settlement agreement and
37 during the rate transition period described in section 1.3 of
38 this chapter.

39 SECTION 24. IC 8-1-2.6-13 IS ADDED TO THE INDIANA CODE
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
41 UPON PASSAGE]: Sec. 13. (a) As used in this section,
42 "communications service" has the meaning set forth in

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1 **IC 8-1-32.5-3.**

2 (b) As used in this section, "communications service provider"
 3 means a person or an entity that offers communications service to
 4 customers in Indiana, without regard to the technology or medium
 5 used by the person or entity to provide the communications service.
 6 The term includes a provider of commercial mobile service (as
 7 defined in 47 U.S.C. 332).

8 (c) As used in this section, "dark fiber" refers to unused
 9 capacity in a communications service provider's communications
 10 network, including fiber optic cable or other facilities:

11 (1) in place within a public right-of-way; but

12 (2) not placed in service by a communications service
 13 provider.

14 (d) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the
 15 commission shall continue to have authority to do the following
 16 both during and after the rate transition period described in
 17 section 1.3 of this chapter:

18 (1) Subject to section 12 of this chapter, enforce the terms of
 19 a settlement agreement approved by the commission before
 20 July 29, 2004. The commission's authority under this
 21 subdivision continues for the duration of the settlement
 22 agreement.

23 (2) Fulfill the commission's duties under IC 8-1-2.8
 24 concerning the provision of dual party relay services to
 25 hearing impaired and speech impaired persons in Indiana.

26 (3) Fulfill the commission's duties under IC 8-1-19.5
 27 concerning the administration of the 211 dialing code for
 28 communications service used to provide access to human
 29 services information and referrals.

30 (4) Fulfill the commission's responsibilities under IC 8-1-29 to
 31 adopt and enforce rules to ensure that a customer of a
 32 telecommunications provider is not:

33 (A) switched to another telecommunications provider
 34 unless the customer authorizes the switch; or

35 (B) billed for services by a telecommunications provider
 36 that without the customer's authorization added the
 37 services to the customer's service order.

38 (5) Fulfill the commission's obligations under:

39 (A) the federal Telecommunications Act of 1996 (47 U.S.C.
 40 151 et seq.); and

41 (B) IC 20-20-16;

42 concerning universal service and access to

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- 1 telecommunications service and equipment, including the
 2 designation of eligible telecommunications carriers under 47
 3 U.S.C. 214.
 4 (6) Perform any of the functions described in section 1.5(b) of
 5 this chapter.
 6 (7) Perform the commission's responsibilities under
 7 IC 8-1-32.5 to:
 8 (A) issue; and
 9 (B) maintain records of;
 10 certificates of territorial authority for communications service
 11 providers offering communications service to customers in
 12 Indiana.
 13 (8) Perform the commission's responsibilities under IC 8-1-34
 14 concerning the issuance of certificates of franchise authority
 15 to multichannel video programming distributors offering
 16 video service to Indiana customers.
 17 (9) Require a communications service provider to report to
 18 the commission, not more often than quarterly, any of the
 19 following information:
 20 (A) Service quality goals and performance data. The
 21 commission shall make any information or data submitted
 22 under this subsection available:
 23 (i) for public inspection and copying at the offices of the
 24 commission under IC 5-14-3; and
 25 (ii) electronically through the computer gateway
 26 administered by the office of technology established by
 27 IC 4-13.1-2-1;
 28 to the extent the information or data are not exempt from
 29 public disclosure under IC 5-14-3-4(a).
 30 (B) Information concerning the:
 31 (i) capacity;
 32 (ii) location; and
 33 (iii) planned or potential use of;
 34 the communications service provider's dark fiber in
 35 Indiana.
 36 (C) Information concerning the communications service
 37 offered by the communications service provider in Indiana,
 38 including:
 39 (i) the types of service offered; and
 40 (ii) the areas in Indiana in which the services are offered.
 41 (D) Any information needed by the commission to prepare
 42 the commission's report to the regulatory flexibility

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committee under section 4 of this chapter.

(E) Any other information that the commission is authorized to collect from a communications service provider under state or federal law.

The commission may revoke a certificate issued to a communications service provider under IC 8-1-32.5 if the communications service provider fails or refuses to report any information required by the commission under this subdivision. However, this subdivision does not empower the commission to require a communications service provider to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subdivision.

(10) Perform the commission's duties under IC 8-1-32.4 with respect to telecommunications providers of last resort, to the extent of the authority delegated to the commission under federal law to perform those duties.

(e) On July 1, 2009, the following activities and responsibilities shall be transferred to the division of consumer protection of the office of the attorney general to be carried out in accordance with the division's authority under IC 4-6-9, to the extent not preempted by federal law:

(1) Except for the responsibilities of the commission described in subsection (d)(4), the activities of the commission's consumer affairs division involving the investigation and mediation of disputes between customers and telecommunications providers.

(2) The responsibilities of the commission under IC 8-1-2.9 to:
(A) approve a telecommunications provider's petition to provide caller ID service; and
(B) approve either per-call or per-line blocking of caller ID service for law enforcement and crisis intervention agencies.

(3) The responsibilities of the office of utility consumer counselor under IC 8-1-1.1 with respect to telecommunications providers.

(f) After June 30, 2009, the commission does not have jurisdiction over any of the following with respect to a communications service provider:

(1) Rates and charges for communications service provided by

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the communications service provider, including the filing of schedules or tariffs setting forth the provider's rates and charges. However, if the provider has elected to file a tariff with the commission under:

- (A) section 1.2 of this chapter;
- (B) section 1.4 of this chapter; or
- (C) IC 8-1-32.5-11;

the commission shall have jurisdiction to enforce the tariff to the extent allowed under the statutes described in clauses (A) through (C).

(2) Depreciation schedules for any of the classes of property owned by the communications service provider.

(3) Quality of service provided by the communications service provider, other than the imposition of a reporting requirement under subsection (d)(9)(A).

(4) Long term financing arrangements or other obligations of the communications service provider.

(5) Except as provided in subsection (d) any other aspect regulated by the commission under this title before July 1, 2009.

(g) After June 30, 2009, the commission has jurisdiction over a communications service provider only to the extent that jurisdiction is:

(1) expressly granted by state or federal law, including:

- (A) a state or federal statute;
- (B) a lawful order or regulation of the Federal Communications Commission; or
- (C) an order or a ruling of a state or federal court having jurisdiction; or

(2) necessary to administer a federal law for which regulatory responsibility has been delegated to the commission by federal law.

SECTION 25. IC 8-1-2.6-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14. This chapter does not affect the rights and obligations of any person or entity concerning the payment of switched network access rates or other carrier compensation concerning:**

- (1) Internet Protocol enabled services;
- (2) advanced services (as defined in 47 CFR 51.5);
- (3) broadband service; or
- (4) other Internet access services.

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1 SECTION 26. IC 8-1-2.6-15 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: **Sec. 15. (a) Except as provided in subsection (b),
 4 if there is a conflict between this chapter and another provision of
 5 this article, this chapter controls.**

6 **(b) This chapter does not affect the rights of:**

7 **(1) a provider that has withdrawn from the commission's**
 8 **jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5 before**
 9 **March 28, 2006, to remain outside the jurisdiction of the**
 10 **commission during the transition period described in section**
 11 **1.3 of this chapter; or**

12 **(2) a provider that:**

13 **(A) has not withdrawn from the commission's jurisdiction**
 14 **under IC 8-1-2-88.5 or IC 8-1-17-22.5 before March 28,**
 15 **2006; and**

16 **(B) is otherwise eligible to withdraw from the commission's**
 17 **jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5;**
 18 **to withdraw from the commission's jurisdiction under**
 19 **IC 8-1-2-88.5 or IC 8-1-17-22.5 at any time during the**
 20 **transition period described in section 1.3 of this chapter.**

21 **Except as provided in section 13(d)(5) of this chapter, after June**
 22 **30, 2009, section 1.4 of this chapter applies to a provider described**
 23 **in this subsection.**

24 SECTION 27. IC 8-1-2.8-3 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a) As used in**
 26 **this chapter, "dual party relay services" means ~~telephone~~**
 27 **telecommunications** transmission services that provide the ability for
 28 a person who has a hearing impairment or speech impairment to
 29 engage in communication **by wire or radio** with a hearing person in a
 30 manner that is functionally equivalent to the ability of an individual
 31 who does not have a hearing impairment or speech impairment to
 32 communicate using voice communication services. **by wire or radio.**

33 **(b) The term includes services that enable two-way communication**
 34 **between a person who uses a telecommunications device for the deaf**
 35 **or other nonvoice terminal and a person who does not use such a**
 36 **device.**

37 SECTION 28. IC 8-1-2.8-8 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8. As used in this**
 39 **chapter, "local exchange ~~telephone~~ company" or "LEC" means a**
 40 **company authorized by the commission to provide, among other**
 41 **services, ~~local exchange access service.~~ refers to any**
 42 **communications service provider (as defined in IC 8-1-2.6-13(b))**

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that:

- (1) has a certificate of territorial authority on file with the commission; and
- (2) is required to provide dual party relay services to hearing impaired and speech impaired persons under federal law.

SECTION 29. IC 8-1-2.8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. The general assembly finds and declares the following:

- (1) That it is in the public interest of the state to promptly provide hearing impaired or speech impaired persons with access to ~~telephone~~ **telecommunications** services that are functionally equivalent to those provided to hearing persons.
- (2) That Title IV of the ADA mandates that each telephone company providing telephone service within the state must provide dual party relay services on or before July 26, 1993, to hearing impaired and speech impaired persons within the territorial area or areas it serves in a manner that meets or exceeds the requirements of regulations prescribed by the FCC.
- (3) That the most efficient, cost effective, and fair method for LECs to provide dual party relay services to hearing impaired and speech impaired persons and to comply with the federal mandate without the use of tax revenues is the establishment of the Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired under this chapter.
- (4) That the provision of dual party relay services to hearing impaired and speech impaired persons can be enhanced by providing in appropriate circumstances in the sole discretion of the InTRAC telecommunications devices that facilitate access to the dual party relay services.

SECTION 30. IC 8-1-2.8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. The articles of incorporation of the InTRAC must provide the following:

- (1) The name of the corporation shall be "Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired".
- (2) The sole purpose for which the InTRAC shall be organized and operated is to provide at the lowest cost reasonably possible:
 - (A) on behalf of ~~telephone companies~~ **LECs** and the citizens of Indiana; and
 - (B) in conjunction with ~~telephone companies;~~ **LECs;** adequate and dependable dual party relay services that may include in appropriate circumstances in the sole discretion of the InTRAC telecommunications devices to hearing impaired and

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1 speech impaired persons within the territorial area that ~~telephone~~
 2 ~~companies~~ **LECs** serve in a manner that meets or exceeds the
 3 requirements of regulations prescribed by the FCC.

4 (3) The InTRAC must have authority to perform any lawful act
 5 that is necessary, convenient, or expedient to accomplish the
 6 purpose for which the InTRAC is formed.

7 (4) No part of the net earnings of the InTRAC may inure to the
 8 benefit of any member, director, or officer of the InTRAC, nor
 9 shall any member of the InTRAC receive any earnings from the
 10 corporation except as follows:

11 (A) A member may be an independent contractor, a supplier,
 12 a vendor, or an authorized agent of the InTRAC and may
 13 receive fair and reasonable compensation for the member's
 14 provision of goods or services.

15 (B) An officer may receive reasonable compensation for
 16 services that the officer performs in the officer's capacity as an
 17 officer of the InTRAC.

18 (C) A director may be reimbursed for expenses incurred by the
 19 director in the performance of the director's duties.

20 (5) The InTRAC may not:

21 (A) make an advancement for services to be performed in the
 22 future; or

23 (B) make a loan of money or property to any director or officer
 24 of the corporation.

25 (6) No member, director, or officer of the InTRAC or any private
 26 individual may share in the distribution of any of the assets of the
 27 InTRAC upon its dissolution.

28 (7) If there is a dissolution of the InTRAC, any of the assets of the
 29 InTRAC available for distribution shall be distributed to a charity:

30 (A) selected by the board of directors of the InTRAC; and

31 (B) having a purpose that includes providing services to
 32 hearing impaired and speech impaired persons.

33 (8) The InTRAC shall have one (1) class of members consisting
 34 of those ~~telephone companies~~ **communications service**
 35 **providers** that are designated as authorized LECs by the
 36 commission.

37 (9) Each member of the InTRAC shall serve as a member for as
 38 long as the commission finds that the member is a LEC. A
 39 member's:

40 (A) right to vote at meetings of the members of the InTRAC;
 41 and

42 (B) right, title, and interest in or to the corporation;

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1 cease on the termination of a member's membership.
 2 (10) Each member present in person or by proxy at a meeting of
 3 the members of the InTRAC may cast one (1) vote upon each
 4 question voted upon at:
 5 (A) all meetings of the members; and
 6 (B) in any election of a director of the InTRAC.
 7 (11) The board of directors of the InTRAC consists of seven (7)
 8 directors selected as follows:
 9 (A) Six (6) directors elected by the members of the InTRAC.
 10 (B) The director of the state office of deaf and hearing
 11 impaired services.
 12 (12) The business, property, and affairs of the InTRAC are
 13 managed and controlled by the board of directors of the InTRAC.
 14 SECTION 31. IC 8-1-2.8-20 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. (a) In pursuit
 16 of its purpose, the InTRAC may do the following:
 17 (1) Perform audits and tests of the accounts of a LEC to verify the
 18 amounts described in section 12 of this chapter.
 19 (2) Provide by contract dual party relay services to ~~telephone~~
 20 **companies communications service providers** operating outside
 21 ~~of the state Indiana~~ if the effect of the contract:
 22 (A) is to decrease the amount of surcharges imposed on the
 23 customers of members of the InTRAC; and
 24 (B) does not sacrifice the quality of service that InTRAC
 25 provides for those customers in the absence of a contract.
 26 (b) The actions described in subsection (a) are examples and are not
 27 intended to limit in any way the scope or types of actions that the
 28 InTRAC may take in pursuit of its purposes.
 29 SECTION 32. IC 8-1-2.8-21 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. The InTRAC
 31 shall do the following:
 32 (1) Establish, implement, and administer, in whole or in part, a
 33 statewide dual party relay service system. Any contract for the
 34 supply or operation of a dual party relay service system or for the
 35 supply of telecommunications devices shall be provided through
 36 a competitively selected vendor.
 37 (2) Determine the terms and manner in which each LEC shall pay
 38 to the InTRAC the surcharge required under this chapter.
 39 (3) Annually review the costs it incurred during prior periods,
 40 make reasonable projections of anticipated funding requirements
 41 for future periods, and file a report of the results of the review and
 42 projections with the commission by May 1 of each year.

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1 (4) Annually employ an independent accounting firm to prepare
 2 audited financial statements for the end of each fiscal year of the
 3 InTRAC to consist of:
 4 (A) a balance sheet;
 5 (B) a statement of income; and
 6 (C) a statement of cash flow;
 7 and file a copy of these financial statements with the commission
 8 before May 2 of each year.
 9 (5) Enter into contracts with any ~~telephone company~~ authorized
 10 ~~by the commission to provide services within Indiana LEC~~ to
 11 provide dual party relay services for the ~~telephone company~~;
 12 **LEC**, upon request by the ~~telephone company~~. **LEC**. However,
 13 the InTRAC:
 14 (A) shall require reasonable compensation from the ~~telephone~~
 15 ~~company LEC~~ for the provision of these services;
 16 (B) is not required to contract with its members; and
 17 (C) shall provide dual party relay services to InTRAC
 18 members for no consideration other than the payment to the
 19 InTRAC of the surcharges collected by the member under this
 20 chapter.
 21 (6) Send to each of its members and file with the governor and the
 22 general assembly before May 2 of each year an annual report that
 23 contains the following:
 24 (A) A description of the InTRAC's activities for the previous
 25 fiscal year.
 26 (B) A description and evaluation of the dual party relay
 27 services that the InTRAC provides.
 28 (C) A report of the volume of services the InTRAC provided
 29 during the previous fiscal year.
 30 (D) A copy of the financial statements that subdivision (4)
 31 requires.
 32 A report filed under this subdivision with the general assembly
 33 must be in an electronic format under IC 5-14-6.
 34 SECTION 33. IC 8-1-2.8-22 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. If:
 36 (1) a ~~telephone company~~ **communications service provider** that
 37 is not a member of InTRAC originates, carries, or terminates, in
 38 whole or in part, any telecommunication message that uses the
 39 InTRAC's dual party relay services; and
 40 (2) refuses to:
 41 (A) enter into a contract with the InTRAC as provided in
 42 section 21(5) of this chapter; or

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1 (B) pay any sums due under such a contract;
2 the InTRAC may apply to the commission for an order requiring just
3 and reasonable payments or the payments that are due under the
4 contract. The InTRAC may enforce this order in the courts of the state.

5 SECTION 34. IC 8-1-2.8-25 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. The following
7 are not liable in any civil action for any injuries or loss to persons or
8 property incurred by any person as a result of any act or omission of
9 any person or entity listed in subdivisions (1) through (3) in connection
10 with the development, adoption, implementation, maintenance, or
11 operation of any system that provides dual party relay services or
12 telecommunications devices, except for injuries or losses incurred as
13 a result of willful or wanton misconduct:

- 14 (1) The InTRAC.
- 15 (2) A ~~telephone company~~ LEC providing dual party relay
16 services.
- 17 (3) An employee, a director, an officer, or an agent of an entity
18 listed in subdivision (1) or (2).

19 SECTION 35. IC 8-1-2.9-0.2 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE UPON PASSAGE]: **Sec. 0.2. As used in this chapter,**
22 **"division" refers to the division of consumer protection of the**
23 **office of the attorney general created by IC 4-6-9-1.**

24 SECTION 36. IC 8-1-2.9-0.5 IS ADDED TO THE INDIANA
25 CODE AS A NEW SECTION TO READ AS FOLLOWS
26 [EFFECTIVE UPON PASSAGE]: **Sec. 0.5. As used in this chapter,**
27 **"telecommunications service provider" means a person that offers**
28 **telecommunications service (as defined in 47 U.S.C. 153(46)).**

29 SECTION 37. IC 8-1-2.9-1 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this
31 chapter, "caller ID service" means an optional service provided by a
32 ~~telephone company~~ **telecommunications service provider** that permits
33 a ~~telephone~~ **telecommunications service** customer equipped with a
34 display device to view the telephone number ~~of the telephone~~ from
35 which a call is being placed before answering the ~~telephone~~ **call.**

36 SECTION 38. IC 8-1-2.9-2 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **Except as**
38 **provided in subsection (b),** the commission shall approve any
39 ~~telephone company~~ **petition by a telecommunications service**
40 **provider** for commission approval of caller ID service. The
41 commission may not require that caller ID service be provided with
42 blocking, except that the commission may approve either per-call or

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1 per-line blocking for law enforcement and crisis intervention agencies
2 that are certified by the commission.

- 3 **(b) In accordance with IC 8-1-2.6-13(e), after June 30, 2009:**
- 4 **(1) a petition described in subsection (a) shall be filed with the**
- 5 **division; and**
- 6 **(2) the responsibilities of the commission to approve a petition**
- 7 **filed under this section are transferred to the division.**

- 8 **(c) Notwithstanding subsection (b)(2), the commission shall**
- 9 **retain jurisdiction over a petition that:**
- 10 **(1) is filed under subsection (a) before July 1, 2009; and**
- 11 **(2) has not been finally determined by the commission before**
- 12 **July 1, 2009.**

13 ~~(b)~~ **(d) Rates and charges for caller ID services are not subject to**
14 **commission or division approval under this section.**

15 SECTION 39. IC 8-1-6-2.5 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2009]: **Sec. 2.5. (a) As used in this section, "communications**
18 **service provider" refers to a communications service provider (as**
19 **defined in IC 8-1-32.5-4) that has a certificate of territorial**
20 **authority on file with the commission under IC 8-1-32.5.**

21 **(b) As used in this section, "division" refers to the division of**
22 **consumer protection of the office of the attorney general created**
23 **by IC 4-6-9-1.**

24 **(c) The communications service provider account is established**
25 **in the state general fund to pay the expenses of:**

- 26 **(1) the commission in:**
- 27 **(A) performing any duties described in IC 8-1-2.6-13(d);**
- 28 **and**
- 29 **(B) performing any other duties lawfully assigned to the**
- 30 **commission under state or federal law with respect to**
- 31 **communications service providers; and**
- 32 **(2) the division in performing any of the division's duties**
- 33 **under IC 8-1-2.6-13(e).**

34 **The commission shall administer the account.**

- 35 **(d) The account consists of the following:**
- 36 **(1) Amounts appropriated by the general assembly under**
- 37 **subsection (f).**
- 38 **(2) Any funds received from the federal government for the**
- 39 **commission's use in performing any duties lawfully assigned**
- 40 **to the commission with respect to communications service**
- 41 **providers.**
- 42 **(e) All appropriations paid out of the account are subject to the**

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1 prior approval of the general assembly, the governor, and the
2 budget agency.

3 (f) There is annually appropriated to the commission and the
4 division from the state general fund an amount not in excess of the
5 respective annual expenses of the commission and the division
6 described in subsection (c). The expenses described in subsection
7 (c) shall be determined by totaling:

8 (1) the commission's annual budget with respect to
9 communications service providers, as approved by the
10 governor and the budget agency; and

11 (2) the division's annual budget with respect to
12 communications service providers, as approved by the
13 governor and the budget agency;

14 plus any amount approved by the governor and the budget agency
15 to be used for contingencies.

16 SECTION 40. IC 8-1-6-3 IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The term "public utility", as
18 used in this chapter, shall mean and embrace every corporation,
19 company, cooperative organization of any kind, individual, association
20 of individuals, their lessees, trustees, or receivers appointed by any
21 court whatsoever that on or after March 15, 1969, may own, operate,
22 manage, or control any plant or equipment within the state for the
23 conveyance of telegraph or telephone messages; or for the production,
24 transmission, delivery, or furnishing of heat, light, water, or power or
25 for the collection, treatment, purification, and disposal in a sanitary
26 manner of liquid and solid waste, sewage, night soil, and industrial
27 waste, for service directly or indirectly to the public, but said term shall
28 not include a municipality that may after March 14, 1969, acquire,
29 own, or operate any of the foregoing facilities.

30 (b) The term "gross revenue", as used in this chapter, shall include
31 all intrastate operating revenue received by a public utility for the
32 conveyance of telegraph or telephone messages or for the production,
33 transmission, delivery, or furnishing of heat, light, water, or power or
34 for the collection, treatment, purification, or disposal in any sanitary
35 manner of liquid or solid waste, sewage, night soil, and industrial waste
36 for service directly or indirectly to the public. Provided, however, that
37 such term shall not include revenue derived by a public utility in the
38 sale of public utility services, products, or commodities to another
39 public or municipal utility for resale by the latter.

40 SECTION 41. IC 8-1-17-2.1 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.1. (a) If the
42 requirements of subsection (b) are met, a local cooperative telephone

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1 corporation formed under Acts 1935, c.157 is considered to have been
2 formed under this chapter and is subject to its requirements and not the
3 requirements of IC 23-7-1.1 (before its repeal August 1, 1991) or
4 IC 23-17.

5 (b) A local cooperative telephone corporation described in
6 subsection (a) shall amend its articles of incorporation in accordance
7 with IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17 to
8 conform to the requirements of this chapter and shall submit a copy of
9 its amended articles to the commission for approval. After examining
10 the articles, the commission shall approve the amended articles if they
11 conform to the requirements of this chapter. The commission may
12 approve the amended articles without conducting a hearing. The
13 secretary of state may not issue a certificate of amendment before the
14 commission approves the amended articles under this subsection.

15 (c) The certificate of public convenience and necessity or certificate
16 of territorial authority previously issued to a local cooperative
17 telephone corporation described in subsection (a) shall serve as the
18 certificate required under section 6 of this chapter **(before its repeal
19 effective July 1, 2009).**

20 (d) Subsection (a) applies to a local telephone cooperative
21 corporation as of the date the secretary of state issues a certificate of
22 amendment under IC 23-7-1.1-26 (before its repeal August 1, 1991) or
23 IC 23-17-17.

24 (e) The local cooperative telephone corporation shall record the
25 amended articles of incorporation in the county where the local
26 cooperative telephone corporation has its principal office.

27 SECTION 42. IC 8-1-17-3 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this
29 chapter, the following terms have the following meanings unless a
30 different meaning clearly appears from the context:

31 (1) "Acquire" means to obtain by construction, purchase, lease,
32 devise, gift, eminent domain, or by any other lawful means.

33 (2) "Board" means the board of directors of a cooperative
34 corporation.

35 (3) "Cooperative corporation" means a corporation formed under
36 this chapter.

37 **(4) "Facilities based local exchange carrier" has the meaning
38 set forth in IC 8-1-32.4-5.**

39 ~~(4)~~ (5) "General cooperative corporation" means a cooperative
40 corporation formed to render services to local cooperative
41 corporations.

42 ~~(5)~~ (6) "Improve" includes construct, reconstruct, extend, enlarge,

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1 alter, better, or repair.

2 ~~(6)~~ (7) "Local cooperative corporation" means a cooperative

3 corporation formed to render telephone services within Indiana.

4 ~~(7)~~ (8) "Member" includes each individual signing the articles of

5 incorporation of a cooperative corporation and each person

6 admitted to membership of the cooperative corporation under law

7 or the corporation's bylaws.

8 ~~(8)~~ (9) "Obligations" includes negotiable bonds, notes,

9 debentures, interim certificates or receipts, and other evidences of

10 indebtedness, either issued or the payment of which is assumed

11 by a cooperative corporation.

12 ~~(9)~~ (10) "Person" or "inhabitant" includes an individual, a firm, an

13 association, a corporation, a limited liability company, a business

14 trust, and a partnership.

15 ~~(10)~~ (11) "Service" or "services", when not accompanied by the

16 word "telephone", means construction, engineering, financial,

17 accounting, or educational services incidental to telephone

18 service.

19 ~~(11)~~ (12) "System" includes any plant, works, system, facilities,

20 or properties, together with all parts of and appurtenances to the

21 plant, works, system, facilities, or properties, used or useful in

22 telephone service.

23 ~~(12)~~ "Telephone company" means an individual, a firm, an

24 association, a corporation, or a partnership owning, leasing, or

25 operating any lines, facilities, or systems used in the furnishing of

26 telephone service within Indiana.

27 (13) "Telephone facilities" includes all buildings, plants, works,

28 structures, improvements, fixtures, apparatus, materials, supplies,

29 machinery, tools, implements, poles, posts, crossarms, conduits,

30 ducts, underground or overhead lines, wires, cables, exchanges,

31 switches, desks, testboards, frames, racks, motors, generators,

32 batteries, and other items of central office equipment, paystations,

33 protectors, instruments, connections, and appliances, office

34 furniture and equipment, work equipment, and all other property

35 used in connection with the provision of telephone ~~service~~ **and**

36 **other telecommunications services.**

37 (14) "Telephone service" ~~means that refers to~~

38 **telecommunications service (as defined in 47 U.S.C. 153(46))**

39 ~~provided by a telephone cooperative corporation. whereby the~~

40 ~~transmission of intelligence between at least two (2) points~~

41 ~~through the use of electricity is the intended use.~~ The term

42 includes all ~~telephone~~ facilities or systems used in the rendition

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of the service.
SECTION 43. IC 8-1-17-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The individuals executing the articles of incorporation of a local cooperative corporation shall be residents of the area in which the operations of the cooperative corporation are to be conducted and shall be persons desirous of using telephone service to be furnished by the cooperative corporation.

(b) The individuals executing the articles of incorporation of a general cooperative corporation shall be members or prospective members of one (1) or more local cooperative corporations which are prospective members of such general cooperative corporation.

(c) The articles shall be executed in at least six (6) originals and shall be acknowledged by the subscribers before an officer authorized by law to take acknowledgments of deeds. When so acknowledged, three (3) originals of said articles shall be submitted to the commission. At the time the articles of incorporation are filed, ~~a petition~~ **an application for a certificate of territorial authority under IC 8-1-32.5** shall be filed with the commission ~~which petition if the applicant will operate as a local cooperative corporation. The application~~ shall be executed by one (1) or more of the individuals executing the said articles, and shall ~~pray the commission to grant a certificate of public convenience and necessity for the organization and operation of the proposed cooperative corporation.~~ **comply with the requirements of IC 8-1-32.5-6, as applicable.**

(d) Upon the ~~submission receipt~~ **of such any articles to, and filing of such petition with, of incorporation and application for a certificate of territorial authority,** the commission it shall set the said petition for public hearing and give notice of the time, place and purpose thereof by publication in at least one (1) newspaper printed and published in each of the counties in which the said cooperative corporation proposed to operate. The publication shall be at least ten (10) days prior to the date set for said hearing. The cost of such publication shall be paid by the petitioners at or before the time of such hearing. ~~conduct the review required under IC 8-1-32.5-8. If it be the applicant is a local cooperative corporation, in addition to such published notice,~~ the commission shall give written notice, by United States registered mail, of the time, place and purpose of such hearing; **filing of the application** to each ~~telephone company facilities based local exchange carrier~~ operating in territory contiguous to the area in which the ~~respective cooperative corporation proposed proposes~~ to render telephone service. The commission shall ~~keep maps or records~~

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1 from which it can readily ascertain which telephone companies should
2 receive notice as last provided; and information so available shall be
3 used in the mailing of the aforesaid notices: **use the record**
4 **maintained by the commission under IC 8-1-32.5-13 to determine**
5 **which facilities based local exchange carriers are entitled to notice**
6 **under this subsection.**

7 (e) Any interested person may appear at such hearing; either in
8 person or by attorney; and support or oppose the prayer of said petition:
9 **If the commission, after hearing the evidence introduced at said**
10 **conducting the review required by IC 8-1-32.5-8 and any hearing**
11 **shall enter a finding that the convenience and necessity of the public**
12 **proposed to be served in the territory in which the operations of the**
13 **cooperative corporation are proposed to be conducted either will or will**
14 **not be served by the organization and operation of the proposed**
15 **cooperative corporation: If such finding be in the affirmative; allowed**
16 **under IC 8-1-32.5-9, determines that the applicant meets the**
17 **requirements for the issuance of a certificate of territorial**
18 **authority under IC 8-1-32.5-8, the commission shall:**

- 19 (1) **issue a certificate of territorial authority under**
20 **IC 8-1-32.5; and**
- 21 (2) **enter an order approving the organization of such the**
22 **cooperative corporation and the proposed articles of**
23 **incorporation.**

24 (f) **If the said finding be in the negative; the commission, after**
25 **conducting the review required by IC 8-1-32.5-8 and any hearing**
26 **allowed under IC 8-1-32.5-9, determines that the applicant does not**
27 **meet the requirements for the issuance of a certificate of territorial**
28 **authority under IC 8-1-32.5-8, the commission shall: enter an order**
29 **denying the approval of said articles of incorporation:**

- 30 (1) **request the applicant to provide additional information; or**
- 31 (2) **notify the applicant of the applicant's right to:**
 - 32 (A) **appeal the commission's determination under IC 8-1-3;**
 - 33 **or**
 - 34 (B) **file another application at a later date, without**
35 **prejudice;**

36 **under IC 8-1-32.5-8.**

37 (g) **If the commission approves the said articles of incorporation**
38 **as provided in under subsection (e), the cooperative corporation**
39 **shall submit the following documents, along with two (2) copies of**
40 **each, to the secretary of state for filing:**

- 41 (1) **One (1) of the original articles of incorporation together with**
42 **an attached executed by the corporation under subsection (c).**

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- 1 (2) A certified copy of the order of the commission ~~shall be~~
- 2 proffered in triplicate to the secretary of state for filing in his
- 3 office. After ~~under subsection (e)(2).~~
- 4 (3) A certified copy of the certificate of territorial authority
- 5 issued by the commission under subsection (e)(1).

6 If the secretary of state finds said articles and ~~order~~ **determines that**

7 **the documents described in subdivisions (1) through (3)** comply

8 with law, ~~he the secretary of state~~ shall forthwith endorse his approval

9 ~~thereon the documents~~ and file one (1) set of such articles and order

10 **the documents** in his ~~the secretary of state's~~ office and deliver the

11 other two (2) sets, ~~thereof, endorsed with his the secretary of state's~~

12 approval, ~~endorsed thereon,~~ to the incorporators. The incorporators

13 shall record one (1) of the approved ~~originals~~ **original or certified**

14 **copies** of said articles with attached certified copy of the commission's

15 ~~order documents~~ in the office of the recorder of the county in which

16 the cooperative corporation has, or ~~is to will~~ have, its principal office.

17 ~~(g)~~ **(h)** As soon as the provisions of this section have been complied

18 with, the proposed cooperative corporation, described in the articles of

19 incorporation ~~so~~ recorded **under subsection (g)**, under its designated

20 name, ~~shall be~~ **is** a body corporate.

21 SECTION 44. IC 8-1-17-13 IS AMENDED TO READ AS

22 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. A cooperative

23 corporation may do any and all acts or things necessary or convenient

24 for carrying out the purpose for which it was formed, including the

25 following:

- 26 (1) To sue and be sued.
- 27 (2) To have a seal and alter the same at pleasure.
- 28 (3) To acquire, hold, and dispose of property, real and personal,
- 29 tangible and intangible, or any interest in the property and to pay
- 30 in cash or credit, and to secure and procure payment of all or any
- 31 part of the purchase price on the terms and conditions as the
- 32 board shall determine.
- 33 (4) If it is a local cooperative corporation, to furnish, improve, and
- 34 expand telephone service to its members, to governmental
- 35 agencies and political subdivisions, and to other persons.
- 36 (5) If it is a local cooperative corporation, to construct, purchase,
- 37 lease as lessee, or otherwise acquire, and to improve, expand,
- 38 install, equip, maintain, and operate, and to sell, assign, convey,
- 39 lease as lessor, mortgage, pledge, or otherwise dispose of or
- 40 encumber telephone facilities or systems, lands, buildings,
- 41 structures, plants and equipment, exchanges, and any other real
- 42 or personal property, tangible or intangible which ~~shall be deemed~~

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1 is necessary or appropriate to accomplish the purpose for which
 2 the local cooperative corporation is organized.
 3 (6) To cease doing business and to dissolve and surrender its
 4 corporate franchise.
 5 (7) If it is a local cooperative corporation, to construct, operate,
 6 and maintain its telephone facilities across or along any street or
 7 public highway, or over lands that are the property of this state or
 8 a political subdivision of the state. Before telephone facilities are
 9 constructed across or along a highway in the state highway
 10 system, the local cooperative corporation shall first obtain the
 11 permit of the Indiana department of transportation to do so, and
 12 the location and setting of the telephone facilities shall be
 13 approved by and subject to the supervision of the Indiana
 14 department of transportation. Before telephone facilities are
 15 constructed on or across land belonging to the state, the local
 16 cooperative corporation shall first obtain the permit of the
 17 department of state having charge of the lands to do so, and the
 18 location and setting of the telephone facilities shall be approved
 19 by and subject to the supervision of the department. The
 20 telephone facilities shall be erected and maintained so as not to
 21 interfere with the use and maintenance of the streets, highways,
 22 and lands, and no pole or appliance shall be located so as to
 23 interfere with the ingress or egress from any premises on the
 24 street or highway. Nothing in this section contained shall deprive
 25 the body having charge of the street or highway of the right to
 26 require the relocation of any pole or appliance which may affect
 27 the proper use of the street or highway for public travel, for
 28 drainage, or for the repair, construction, or reconstruction of the
 29 street or highway. The local cooperative corporation shall restore
 30 the street, highway, or lands to ~~its~~ **their** former condition or state
 31 as near as may be and shall not use the same in a manner to
 32 impair unnecessarily ~~its~~ **their** usefulness or to injure the property
 33 of others.
 34 (8) To accept gifts or grants of property, real or personal, from
 35 any person, municipality, or federal agency and to accept
 36 voluntary and uncompensated services.
 37 (9) If it is a local cooperative corporation, to connect and
 38 interconnect its telephone facilities or systems with other
 39 telephone facilities or systems. A connection or interconnection
 40 shall be in a manner and according to specifications as will avoid
 41 interference with or hazards to existing telephone facilities or
 42 systems.

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- 1 (10) To issue membership certificates.
- 2 (11) To borrow money and otherwise contract indebtedness, and
- 3 to issue or guarantee notes, bonds, and other evidences of
- 4 indebtedness and to secure the payment thereof by mortgage,
- 5 pledge, or deed of trust of, or any other encumbrance upon, any
- 6 or all of its then owned or after-acquired real or personal property,
- 7 assets, franchises, or revenues.
- 8 (12) To make any and all contracts necessary or convenient for
- 9 the full exercise of the powers in this chapter granted, including,
- 10 without limiting the generality of the foregoing, contracts with
- 11 any person, federal agency, municipality, or other corporation for
- 12 the interconnection of telephone service; for the management and
- 13 conduct of the business of the cooperative corporation; **and** for
- 14 the fixing of the rates, fees, or charges for service rendered or to
- 15 be rendered by the local cooperative corporation. ~~subject to the~~
- 16 ~~approval of the commission as to all rates, fees, or charges for~~
- 17 ~~telephone service in the same manner and to the same extent as~~
- 18 ~~is provided by law for the regulation of rates, fees, or charges of~~
- 19 ~~telephone companies.~~
- 20 (13) To levy and collect reasonable fees, rents, tolls, and other
- 21 charges for telephone service rendered. ~~subject to the approval of~~
- 22 ~~the commission as provided in this section.~~
- 23 (14) If it is a local cooperative corporation, to exercise the right
- 24 of eminent domain in the manner provided by law for the exercise
- 25 thereof by ~~telephone companies.~~ **communications service**
- 26 **providers (as defined in IC 8-1-2.6-13(b)).**
- 27 (15) To adopt, amend, and repeal bylaws.
- 28 (16) If it is a local cooperative corporation, to become a member
- 29 of a general cooperative corporation and if it is a general
- 30 cooperative corporation, to have local cooperative corporations as
- 31 its members.
- 32 (17) To recover, after a period of two (2) years, any unclaimed
- 33 stocks, dividends, capital credits, patronage refunds, utility
- 34 deposits, membership fees, account balances, or book equities for
- 35 which the owner cannot be found and are the result of
- 36 distributable savings of the corporation returned to the members
- 37 on a pro rata basis pursuant to section 20 of this chapter.

38 SECTION 45. IC 8-1-17-14 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. ~~No~~ A local
 40 cooperative corporation may **not** sell, lease, exchange, mortgage,
 41 pledge, or otherwise sell all, or substantially all, of its property unless
 42 the ~~same shall be~~ **transaction is** authorized by a resolution duly

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1 adopted at a meeting of ~~its~~ **the corporation's** members duly called and
 2 held as provided in section 9 of this chapter. ~~which~~ **The** resolution ~~shall~~
 3 ~~have received~~ **must receive** the affirmative vote of at least
 4 three-fourths (3/4) of ~~its~~ **the corporation's** members who are present
 5 at ~~such~~ **the** meeting and the affirmative vote of at least three-fourths
 6 (3/4) of ~~its~~ **the corporation's** directors who are present at a meeting of
 7 ~~its~~ **the** board of directors duly called and held as provided in ~~its~~ **the**
 8 **corporation's** bylaws. ~~and subject to the approval of the commission~~
 9 ~~as provided by law applicable to a similar transaction by a public~~
 10 ~~utility.~~

11 SECTION 46. IC 8-1-17-15 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) ~~Subject to the~~
 13 ~~approval of the commission~~ A cooperative corporation shall have
 14 power and is hereby authorized, from time to time, to issue its
 15 obligations for any corporate purpose. ~~Said~~ **The** obligations may be
 16 authorized by resolution or resolutions of the board, and may bear such
 17 date or dates, mature at such time or times, not exceeding forty (40)
 18 years from their respective dates, bear interest at any rate, payable
 19 semi-annually, be in such denominations, be in such form, either
 20 coupon or registered, carry such registration privileges, be executed in
 21 such manner, be payable in such medium of payment, at such place or
 22 places, and be subject to such terms of redemption, not exceeding the
 23 principal amount ~~thereof of the obligations~~ plus accrued interest, as
 24 ~~such~~ **the board's** resolution or resolutions may provide.

25 (b) ~~Such~~ **The** obligations may be sold in such manner and upon such
 26 terms as the board may determine at not less than the principal amount
 27 ~~thereof of the obligations~~ plus accrued interest.

28 (c) Any provision of law to the contrary notwithstanding, any
 29 obligations and ~~the related~~ interest coupons, ~~appertaining thereto;~~ if
 30 any, issued pursuant to this act shall possess all the qualities of
 31 negotiable instruments. ~~however;~~ The commission's approval shall not
 32 be required for the issuance by a cooperative corporation of its bonds,
 33 notes, or other evidences of indebtedness. ~~which are:~~

- 34 (1) payable in less than one (1) year from date of execution; and
- 35 (2) in the aggregate do not exceed ten per cent (10%) of its net
- 36 plant account.

37 SECTION 47. IC 8-1-17-18 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Any two (2) or
 39 more cooperative corporations created under the provisions of this
 40 chapter and operating or authorized to operate in contiguous territory
 41 may enter into an agreement for the consolidation of ~~such~~ **the**
 42 cooperative corporations, which agreement shall be submitted for the

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1 ~~approval~~ **review** of the commission in the manner provided for in
 2 section 5 of this chapter. ~~Such~~ **The** agreement shall set forth the terms
 3 and conditions of the consolidation, the name of the proposed
 4 consolidated cooperative corporation, the number of its directors, not
 5 less than three (3), the time of the annual election, and the names of the
 6 persons, not less than three (3), to be directors until the first annual
 7 meeting. Each ~~such~~ cooperative corporation **participating in the**
 8 **consolidation** shall duly call and hold a meeting of its members, as
 9 provided in section 9 of this chapter, at which the proposal of ~~such~~ **the**
 10 consolidation shall be presented. If at each ~~such~~ meeting, the ~~aforsaid~~
 11 **consolidation** agreement is approved by a resolution duly adopted and
 12 receiving the affirmative vote of at least three-fourths (3/4) of the
 13 members ~~of the respective cooperative corporation,~~ who attend ~~such~~
 14 **each** meeting, the directors named in the agreement shall subscribe and
 15 acknowledge articles conforming substantially to the original articles
 16 of incorporation. ~~except that it~~ **The new articles** shall be entitled and
 17 endorsed "Articles of Consolidation of _____" (the blank space
 18 being filled in with the names of the cooperative corporations being
 19 consolidated) and ~~shall~~ **must** state:

- 20 (1) the names of the cooperative corporations being consolidated;
- 21 (2) the name of the consolidated cooperative corporation;
- 22 (3) a statement that each consolidating cooperative corporation
- 23 agrees to the consolidation;
- 24 (4) the names and addresses of the directors of the new
- 25 cooperative corporation; and
- 26 (5) the terms and conditions of the consolidation and the mode of
- 27 carrying the ~~same~~ **consolidation** into effect, including the manner
- 28 in which members of the consolidating cooperative corporations
- 29 may or shall become members of the new cooperative
- 30 corporation.

31 ~~and~~ **The new articles of incorporation** may contain any provisions not
 32 inconsistent with this chapter ~~deemed that are~~ necessary or advisable
 33 for the conduct of the business of the new cooperative corporation.

34 (b) ~~If~~ **After** the commission approves the ~~said~~ articles of
 35 consolidation ~~such~~ **under section 5 of this chapter, the** articles of
 36 consolidation or a certified copy or copies ~~thereof of the articles~~ shall
 37 be filed, together with the attached copy of the order of the commission
 38 **under section 5(e)(2) of this chapter,** in the same place as original
 39 articles of incorporation. ~~and thereupon~~ **Upon the filings required**
 40 **under section 5(g) of this chapter,** the proposed consolidated
 41 cooperative corporation, under its designated name, ~~shall be and~~
 42 **constitute** is a body corporate with all the powers of a cooperative

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1 corporation as originally formed under this chapter. ~~If the commission~~
2 ~~does not approve the said articles of consolidation, permission for such~~
3 ~~consolidation shall be denied by the commission.~~

4 SECTION 48. IC 8-1-17-19 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 19. (a) In case of a
6 consolidation, the existence of the consolidating cooperative
7 corporations shall cease and the articles of consolidation ~~shall be~~
8 ~~deemed to be~~ **are considered** the articles of incorporation of the new
9 cooperative corporation.

10 (b) All rights, privileges, immunities, and franchises and all
11 property, real and personal, including without limitation applications
12 for membership, all debts due on whatever account and all other choses
13 in action, of each of the consolidating cooperative corporations ~~shall be~~
14 ~~deemed to be~~ **are** transferred to and vested in the new cooperative
15 corporation without further act or deed.

16 (c) The new cooperative corporation shall be responsible and liable
17 for all the liabilities and obligations of each of the consolidating
18 cooperative corporations. Any claim existing or action or proceeding
19 pending by or against any of the consolidating cooperative corporations
20 may be prosecuted as if the consolidation had not taken place but the
21 new cooperative corporation may be instituted in its place.

22 (d) The new cooperative corporation ~~shall be authorized to may~~
23 operate in all the areas in which the consolidating cooperative
24 corporations ~~shall have been were~~ authorized to operate. ~~and shall not~~
25 ~~be authorized to~~ **Before the new corporation may** operate in any other
26 area, ~~until or unless so authorized by it shall submit to the~~
27 ~~commission:~~

- 28 (1) ~~an application for a new certificate of public convenience~~
- 29 ~~and necessity issued by the commission as provided in section 6~~
- 30 ~~of this chapter: territorial authority under IC 8-1-32.5; or~~
- 31 (2) ~~a notice of change under IC 8-1-32.5-12(7), as allowed by~~
- 32 ~~the commission.~~

33 (e) ~~Neither~~ The rights of creditors ~~nor and~~ any liens upon the
34 property of any ~~such consolidating~~ cooperative corporations shall **not**
35 be impaired by ~~such consolidations: the consolidation.~~

36 SECTION 49. IC 8-1-17-20 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. (a) A local
38 cooperative corporation shall be required to furnish reasonably
39 adequate telephone services and facilities. The charge made by any
40 local cooperative corporation for any service rendered or to be
41 rendered, either directly or in connection ~~therewith,~~ **with the service,**
42 shall be nondiscriminatory, reasonable, and just, and every

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1 discriminatory, unjust, or unreasonable charge for telephone service is
 2 prohibited and declared unlawful. ~~A~~ Reasonable and just ~~charge~~
 3 **charges** for telephone service within the meaning of this section ~~shall~~
 4 **be such are those** charges ~~as shall that~~ produce sufficient revenue to
 5 pay all legal and other necessary expense incident to the operation of
 6 the local cooperative corporation's system, ~~to include; but not limited~~
 7 ~~to; including~~ maintenance costs, operating charges, upkeep, repairs,
 8 interest charges on bonds or other obligations, to provide a sinking
 9 fund for the liquidation of bonds or other evidences of indebtedness, to
 10 provide adequate funds to be used as working capital, as well as funds
 11 for making extensions and replacements, and also for the payment of
 12 any taxes that may be assessed against ~~such the~~ cooperative
 13 corporation or its property. ~~it being the intent and purpose hereof that~~
 14 ~~such~~ Charges ~~shall described in this section must~~ produce an income
 15 sufficient to maintain ~~such the~~ local cooperative corporation's property
 16 in sound physical and financial condition to render adequate and
 17 efficient service. Any rate too low to meet the foregoing requirements
 18 ~~shall be is~~ unlawful. Revenues and receipts not needed for the ~~above~~
 19 ~~and foregoing~~ purposes **described in this section**, or not needed in
 20 reserves for ~~such those~~ purposes, shall be returned to the patrons on a
 21 pro rata basis according to the amounts paid by them for telephone
 22 service. ~~such returns~~ **Amounts returned under this section** shall be
 23 either in cash or in abatement of current charges for telephone service,
 24 as the board may decide.

25 (b) As used in ~~subsections (d) and (e); subsection (d)~~, "financial
 26 assistance" means:

- 27 (1) a loan or loan guarantee; or
 28 (2) a lien accommodation provided to secure a loan made by
 29 another lender;

30 including ~~but not limited to~~ loans made by the Rural Electrification
 31 Administration of the United States Department of Agriculture (REA)
 32 or by the Rural Telephone Bank.

33 (c) As used in subsections (d) and (e), "REA borrower" means a
 34 corporation created under this chapter that is the recipient of financial
 35 assistance.

36 (d) In determining rates under this section, ~~once the commission~~
 37 ~~determines that property of an REA borrower is reasonably necessary~~
 38 ~~for the provision of telephone service and has been placed in service;~~
 39 ~~the commission shall approve rates to be charged by the an~~ REA
 40 borrower **must charge rates** sufficient to enable the REA borrower to:

- 41 (1) satisfy its reasonable expenses and obligations; and
 42 (2) repay the full amount of any financial assistance and the

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interest thereon.
(e) So long as there remains any unpaid portion of any financial assistance associated with the property of an REA borrower, ~~determined under subsection (d) to be reasonably necessary and placed in service;~~ the rates of the REA borrower shall be set at a level sufficient to repay the financial assistance, regardless of ~~any change in the regulatory status of the property; including, without limitation;~~ the full or partial retirement of the property or any other change in the status of the property. ~~as reasonably necessary or used and useful.~~

SECTION 50. IC 8-1-17-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) A cooperative corporation may amend its articles of incorporation to change its corporate name, to increase or reduce the number of its directors, or **to** change any other provisions therein, ~~provided;~~ **that set forth in the articles. However,** any change of location of the principal office ~~may~~ **shall** be effected in the manner set forth in section 24 of this chapter. ~~and further provided that no cooperative corporation shall amend its articles of incorporation to embody therein any purpose, power, or provision which would not be authorized if its original articles of incorporation, including such additional or changed purpose, power, or provision, were offered for filing at the time articles under this section are offered. Such~~ **An amendment under this section** may be accomplished by filing articles of amendment, ~~which along with any notice of change required under IC 8-1-32.5-12, with the commission. The articles of amendment shall be entitled and endorsed "Articles of Amendment of _____" (the blank space being filled in with the name of the cooperative corporation) and state:~~ **must include the following:**

- (1) The name of the cooperative corporation, and if it has been changed, the name under which it was originally incorporated.
- (2) The date of filing the articles of incorporation in each public office where filed.
- (3) Whether the statement of counties within which ~~its the~~ **corporation's** operations are to be conducted is to be changed, and if so ~~the a~~ **a** new statement of ~~such the~~ **the** counties ~~in which the~~ **corporation will operate.**
- (4) ~~The officer executing such articles of amendment shall make and annex thereto~~ **An affidavit, signed by the officer executing the articles of amendment,** stating that the provisions of this section ~~in respect to the amendment set forth in such articles were~~ **complied with.**

~~(b) Such~~ **The amended** articles shall be subscribed in the name of

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1 the cooperative corporation by the appropriate officers of the
 2 cooperative corporation, who shall make and annex an affidavit stating
 3 that they have been authorized to execute and file ~~such the amended~~
 4 articles by a resolution duly adopted at a meeting of the cooperative
 5 corporation duly called and held as provided in section 9 of this
 6 chapter. If by any ~~such~~ amendment to ~~the~~ articles of incorporation, the
 7 territory proposed to be served by the cooperative corporation is to be
 8 increased or decreased, ~~the articles of amendment, together with a~~
 9 ~~petition executed by the appropriate officers of the cooperative~~
 10 ~~corporation and praying for the permission of the commission shall be~~
 11 ~~submitted submit~~ to the commission: Thereupon;

12 (1) an application for a new certificate of territorial authority
 13 under IC 8-1-32.5-6; or

14 (2) a notice of change under IC 8-1-32.5-12(7), as allowed by
 15 the commission.

16 (c) Upon receipt of an application or a notice of change under
 17 subsection (b), the commission shall set said petition for public
 18 hearing and shall give notice of the time and place thereof one (1) time
 19 in at least one (1) newspaper published in each of the counties in which
 20 lies any of the territory proposed to be added or omitted by such
 21 amendment, which publication shall be at least ten (10) days before
 22 such hearing. The cost of publication shall be paid by the petitioner
 23 when filing such petition. Also conduct the review required under
 24 IC 8-1-32.5-8. If the applicant is a local cooperative corporation,
 25 the commission shall give written notice of the time and place of such
 26 hearing shall be mailed proposed change in the corporation's
 27 territory to each telephone company facilities based local exchange
 28 carrier operating in contiguous territory in the manner provided in
 29 section 5 of this chapter. Any interested person may appear, personally
 30 or by attorney, at such hearing and aid or oppose the prayer of the
 31 petition. After such hearing, the commission shall grant or deny the
 32 petition and make its order accordingly. ~~No~~ If the commission, after
 33 conducting the review required by IC 8-1-32.5-8 and any hearing
 34 allowed under IC 8-1-32.5-9, determines that the amended articles
 35 and the application or notice of change under IC 8-1-32.5 are
 36 accurate, complete, and properly verified, the commission shall:

37 (1) issue a new or amended certificate under IC 8-1-32.5 that
 38 reflects the increase or decrease in the territory served by the
 39 corporation; and

40 (2) enter an order approving the amended articles of the
 41 cooperative corporation.

42 (d) If the commission, after conducting the review required by

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1 IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9,
2 determines that the amended articles or an application or notice of
3 change under IC 8-1-32.5 are inaccurate, incomplete, or not
4 properly verified, the commission shall:

5 (1) request the corporation to provide additional information;
6 or

7 (2) notify the corporation of the corporation's right to:

8 (A) appeal the commission's determination under IC 8-1-3;
9 or

10 (B) file the amended articles or an application or notice of
11 change under IC 8-1-32.5 at a later date, without
12 prejudice;

13 under IC 8-1-32.5-8.

14 (e) An amendment increasing or decreasing the territory to be
15 served by ~~such~~ a cooperative corporation shall **not** be filed in the office
16 of the secretary of state or of any county recorder unless there ~~be~~ is
17 attached ~~thereto to the amendment~~ a certified copy of an order of the
18 commission ~~consenting to such increase or decrease. Such~~ **under**
19 **subsection (c)(2). The amended** articles shall be filed in the same
20 places as the original articles of incorporation and ~~thereupon upon~~
21 **filing** the amendment shall be ~~deemed considered~~ to have been
22 effected.

23 SECTION 51. IC 8-1-17-24 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. A cooperative
25 corporation formed ~~hereunder under this chapter~~ may change the
26 location of its principal office by filing in the office of the secretary of
27 state a certificate reciting ~~such~~ **the** change of principal office and
28 setting forth the resolution by its board of directors authorizing ~~such~~
29 **the** change and stating the time and place of its adoption. ~~which~~ **The**
30 certificate shall be executed and acknowledged by the appropriate
31 officers of the cooperative corporation with the corporate seal attached
32 and attested by the appropriate officer of the cooperative corporation.
33 **The cooperative corporation shall also notify the commission of the**
34 **change as required under IC 8-1-32.5-12(3).**

35 SECTION 52. IC 8-1-17-25 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 25. (a) Any cooperative
37 corporation may dissolve by filing in the office of the secretary of state
38 articles of dissolution ~~which shall be~~ entitled and endorsed "Articles of
39 Dissolution of _____" (the blank space being filled in with the
40 name of the cooperative corporation). ~~and~~ **The articles of dissolution**
41 **shall state the following:**

42 (1) The name of the cooperative corporation, and if ~~such~~ **the**

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1 cooperative corporation is a corporation resulting from ~~the~~ a
 2 consolidation as provided in this chapter, the names of the
 3 original cooperative corporations.
 4 (2) The date of filing of the articles of incorporation in the office
 5 of secretary of state and, if ~~such~~ the cooperative corporation is a
 6 corporation resulting from a consolidation as provided in this
 7 chapter, the dates on which the articles of incorporation of the
 8 original cooperative corporations were filed in the office of
 9 secretary of state.
 10 (3) That the cooperative corporation elects to dissolve.
 11 (4) The name and post office address of each of its directors, and
 12 the name, title, and post office address of each of its officers.
 13 ~~Such~~ **The** articles shall be subscribed and acknowledged by the
 14 appropriate officers of the cooperative corporation who shall make and
 15 annex an affidavit stating that they have been authorized to execute and
 16 file ~~such~~ the articles by a resolution duly adopted by the members of
 17 the cooperative corporation at a meeting ~~thereof~~ duly called and held
 18 as provided in section 9 of this chapter. Articles of dissolution or a
 19 certified copy or copies ~~thereof of the articles~~ shall be filed in the
 20 same places as original articles of incorporation. ~~and thereupon~~ **If the**
 21 **dissolving corporation is a local cooperative corporation, any**
 22 **certificate of territorial authority issued under IC 8-1-32.5 shall be**
 23 **relinquished, and the appropriate officers of the corporation shall**
 24 **notify the commission of the relinquishment under**
 25 **IC 8-1-32.5-12(5).**
 26 (b) **Upon the filings required by subsection (a),** the cooperative
 27 corporation ~~shall be deemed to be~~ is dissolved. ~~Such~~ **However, the**
 28 cooperative corporation shall continue for the purpose of paying,
 29 satisfying, and discharging any existing liabilities or obligations and
 30 collecting or liquidating its assets, and doing all other acts required to
 31 adjust and wind up its business affairs, and may sue and be sued in its
 32 corporate name. Any assets remaining after all liabilities and
 33 obligations of the cooperative corporation have been satisfied and
 34 discharged shall be refunded pro rata to the patrons, their assignees,
 35 personal representatives, heirs, or legatees, who ~~shall~~ have paid for
 36 telephone service rendered by the cooperative corporation within ~~a~~ **the**
 37 five (5) year period ~~next immediately~~ preceding ~~such~~ the dissolution.
 38 Any assets not ~~so~~ refunded within ~~a~~ **the** two (2) year period after ~~such~~
 39 **the** dissolution is completed shall pass to and become the property of
 40 the state. ~~of Indiana.~~
 41 SECTION 53. IC 8-1-17-26 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) Any foreign

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1 corporation organized as a nonprofit corporation for the purpose of
 2 making telephone service available to the inhabitants of rural areas may
 3 be admitted to do business ~~within this state in Indiana~~ and shall have
 4 the same powers, restrictions, and liabilities as a cooperative
 5 corporation organized under this chapter. Whenever ~~such a~~ foreign
 6 corporation desires to be admitted to operate in ~~this state; Indiana~~, it
 7 shall file with the commission a petition in as many original
 8 counterparts as there are counties in Indiana, in which it requests
 9 permission to make telephone service available; plus five (5). Said
 10 petition shall describe the territory in Indiana in which its operations
 11 are to be conducted and pray the commission to grant to it a certificate
 12 of public convenience and necessity for such operations. To each such
 13 original petition, there ~~an application for a certificate of territorial~~
 14 ~~authority under IC 8-1-32.5. The appropriate officers of the~~
 15 ~~corporation shall be attached attach to the application~~ a copy of the
 16 articles of incorporation of said ~~the~~ foreign corporation, with ~~and~~ all
 17 amendments ~~thereto; to the articles~~, duly authenticated by the proper
 18 officer of the state ~~wherein it in which the corporation~~ is
 19 incorporated. Upon the filing of such petition with the commission;
 20 ~~receipt of the application and the articles of incorporation~~, the
 21 commission shall ~~set the said petition for public hearing; and shall give~~
 22 ~~notice of the time and place of such hearing by publication one (1) time~~
 23 ~~in at least one (1) newspaper printed and published in each of the~~
 24 ~~counties in which the said foreign corporation proposes to carry on its~~
 25 ~~operations; which publication shall be had at least ten (10) days prior~~
 26 ~~to the date set for such hearing; the cost of such publications to be paid~~
 27 ~~by the petitioners at the time of filing said petition. Also conduct the~~
 28 ~~review required under IC 8-1-32.5-8. The commission shall give~~
 29 ~~written notice of the time and place of such hearing shall be mailed the~~
 30 ~~filing of the application to each telephone company facilities based~~
 31 ~~local exchange carrier~~ operating in contiguous territory in the manner
 32 provided in section 5 of this chapter. Any interested person may appear
 33 at such hearing; either in person or by attorney; and support or oppose
 34 the prayer of said petition. The commission shall enter a finding that
 35 the convenience and necessity of the public proposed to be served in
 36 the Indiana territory in which the operations of the foreign corporation
 37 are proposed to be conducted either will or will not be served by such
 38 operations. If said finding be in the negative; the commission shall
 39 enter an order denying the petition. If such finding be in the
 40 affirmative;

41 (b) If the commission, after conducting the review required by
 42 IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9,

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1 **determines that the foreign corporation meets the requirements for**
 2 **the issuance of a certificate of territorial authority under**
 3 **IC 8-1-32.5**, the commission shall enter an order granting a certificate
 4 of public convenience and necessity **territorial authority under**
 5 **IC 8-1-32.5** for the proposed operations of ~~said~~ **the** foreign corporation
 6 in Indiana and shall attach a copy of ~~said the~~ order, duly certified by
 7 the secretary of the commission, to each of the originals of said
 8 petition; filed as aforesaid; ~~except two (2);~~ **original application filed**
 9 **with the commission** and deliver the ~~same~~ **applications and orders**
 10 to the petitioner.

11 (c) **If the commission, after conducting the review required by**
 12 **IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9,**
 13 **determines that the foreign corporation does not meet the**
 14 **requirements for the issuance of a certificate of territorial**
 15 **authority under IC 8-1-32.5, the commission shall:**

- 16 (1) **request the foreign corporation to provide additional**
 17 **information; or**
 - 18 (2) **notify the foreign corporation of the foreign corporation's**
 19 **right to:**
 - 20 (A) **appeal the commission's determination under IC 8-1-3;**
 - 21 **or**
 - 22 (B) **file another application at a later date, without**
 23 **prejudice;**
- 24 **under IC 8-1-32.5-8.**

25 (d) **If the commission issues a certificate of territorial authority**
 26 **under subsection (b), the foreign corporation shall then present to the**
 27 **secretary of state of Indiana all such sets of authenticated copy copies**
 28 **of its articles of incorporation, the original petitions, applications**
 29 **under IC 8-1-32.5, and the order of the commission under subsection**
 30 **(b), together with such any application for admission to do business in**
 31 **this state; if any, as Indiana that the secretary of state may require, and**
 32 **shall tender to the said secretary of state six dollars and fifty cents**
 33 **(\$6.50) to cover his the secretary of state's fees for filing, certificate**
 34 **and seal. under this subsection. If the secretary of state shall approve**
 35 **approves the same; he documents submitted, the secretary of state**
 36 **shall endorse his the secretary of state's approval upon each of the**
 37 **aforesaid sets of documents, file one (1) thereof copy in his the**
 38 **secretary of state's office, return the remaining ones copies to the**
 39 **foreign corporation, and issue to it his the foreign corporation a**
 40 **certificate of admission to do business in this state. Thereupon, and**
 41 **Indiana. Before the foreign corporation shall may do any business in**
 42 **this state; Indiana, it shall file in the office of the recorder of each**

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1 county in Indiana in which it is ~~to~~ **will** make telephone service
2 available one (1) ~~of said sets set of the~~ documents bearing the approval
3 of the secretary of state ~~endorsed thereon.~~ **under this subsection.**

4 SECTION 54. IC 8-1-32.4 IS ADDED TO THE INDIANA CODE
5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
6 UPON PASSAGE]:

7 **Chapter 32.4. Telecommunications Providers of Last Resort**

8 **Sec. 1. Except as otherwise provided, the definitions in**
9 **IC 8-1-2.6 apply throughout this chapter.**

10 **Sec. 2. As used in this chapter, "approved alternative**
11 **technology" refers to any technology that:**

- 12 (1) offers service and functionality comparable to that
- 13 provided through an exiting provider's facilities, as
- 14 determined by the commission;
- 15 (2) may include a technology that does not require the use of
- 16 any public right-of-way; and
- 17 (3) is approved by the commission for deployment in a
- 18 particular service area.

19 **Sec. 3. As used in this chapter, "basic telecommunications**
20 **service" has the meaning set forth in IC 8-1-2.6-0.1.**

21 **Sec. 4. As used in this chapter, "exiting provider" means a**
22 **provider that:**

- 23 (1) holds a certificate of territorial authority issued by the
- 24 commission;
- 25 (2) is the predominant local exchange carrier in a defined
- 26 geographic area and provides telecommunications service
- 27 using the provider's own facilities; and
- 28 (3) ceases operation in all or part of the service area covered
- 29 by the certificate of territorial authority.

30 **Sec. 5. As used in this chapter, "facilities based local exchange**
31 **carrier" means a local exchange carrier that provides local**
32 **exchange service:**

- 33 (1) exclusively over facilities owned or leased by the carrier;
- 34 or
- 35 (2) predominantly over facilities owned or leased by the
- 36 carrier, in combination with the resale of the
- 37 telecommunications service (as defined in 47 U.S.C. 153(46))
- 38 of another carrier.

39 **Sec. 6. As used in this chapter, "incumbent local exchange**
40 **carrier" has the meaning set forth in 47 U.S.C. 251(h).**

41 **Sec. 7. As used in this chapter, "local exchange carrier" has the**
42 **meaning set forth in 47 U.S.C. 153(26).**

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1 **Sec. 8. As used in this chapter, "local exchange service" means**
2 **the provision of telephone exchange service (as defined in 47 U.S.C.**
3 **153(47)) or exchange access (as defined in 47 U.S.C. 153(16)).**

4 **Sec. 9. As used in this chapter, "provider of last resort" means**
5 **a provider that:**

6 **(1) holds a certificate of territorial authority issued by the**
7 **commission; and**

8 **(2) is required to offer local exchange service throughout a**
9 **defined geographic area.**

10 **Sec. 10. As used in this chapter, "successor provider" means a**
11 **provider that:**

12 **(1) holds a certificate of territorial authority issued by the**
13 **commission; and**

14 **(2) is, or is designated to become, the provider of last resort**
15 **for a defined geographic area previously served by an exiting**
16 **provider.**

17 **Sec. 11. Except as provided in:**

- 18 **(1) IC 8-1-32.6-9;**
- 19 **(2) section 13 of this chapter; or**
- 20 **(3) section 16 of this chapter;**

21 **an incumbent local exchange carrier has the obligations of the**
22 **provider of last resort. An incumbent local exchange carrier may**
23 **meet the carrier's obligations under this section using any available**
24 **technology.**

25 **Sec. 12. (a) This section applies to a provider that holds a**
26 **certificate of territorial authority to provide local exchange service**
27 **in Indiana. If a provider:**

- 28 **(1) decides to cease serving all or part of the provider's**
29 **defined service area; or**
- 30 **(2) plans to file for bankruptcy;**

31 **the provider shall provide at least sixty (60) days advance notice to**
32 **the commission and each affected customer and wholesale**
33 **provider.**

34 **(b) A notice described in subsection (a) must:**

- 35 **(1) be submitted in the form and manner prescribed by the**
36 **commission; and**
- 37 **(2) include at least one (1) toll free customer service telephone**
38 **number maintained by the provider to facilitate the**
39 **continuation of service and the transition of customers to**
40 **other providers.**

41 **(c) The exiting provider is liable for all charges owed to other**
42 **providers and is responsible for any provider change charges.**

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1 **Sec. 13. (a) If the holder of a certificate of territorial authority**
2 **to provide local exchange service installs facilities to provide**
3 **telecommunications service, including local exchange service, in a**
4 **defined geographic area and:**

5 **(1) the holder is not the designated provider of last resort for**
6 **the area; and**

7 **(2) the designated provider of last resort for the area has not**
8 **installed facilities to serve customers in the area;**

9 **the designated provider of last resort may petition the commission**
10 **for an order relieving the designated provider of its obligations as**
11 **the provider of last resort in the area.**

12 **(b) The commission shall relieve the petitioning provider from**
13 **its obligations as the provider of last resort for the area described**
14 **in subsection (a) and shall designate the holder making the**
15 **installation under subsection (a) as the provider of last resort for**
16 **the area if the commission determines that:**

17 **(1) the petitioning provider does not have facilities in place to**
18 **provide local exchange service to all customers in the area;**
19 **and**

20 **(2) the holder making the installation under subsection (a) has**
21 **installed facilities adequate to provide local exchange service**
22 **throughout the area.**

23 **The commission shall make the determinations required by this**
24 **subsection not later than sixty (60) days after the date the petition**
25 **is filed with the commission under subsection (a).**

26 **Sec. 14. (a) Except as provided in IC 8-1-32.6-9 or section 16 of**
27 **this chapter, if:**

28 **(1) the commission receives notice of an exiting provider's**
29 **decision to cease operation in all or part of the service area**
30 **covered by the provider's certificate of territorial authority;**
31 **and**

32 **(2) there is not another provider that:**

33 **(A) holds a certificate of territorial authority in the area;**
34 **and**

35 **(B) has facilities sufficient to provide basic**
36 **telecommunications service in the area;**

37 **the commission shall conduct a formal proceeding to determine the**
38 **successor provider for the area.**

39 **(b) After determining the successor provider for the affected**
40 **area under subsection (a), the commission shall, if applicable, allow**
41 **the following with respect to the successor provider:**

42 **(1) A reasonable time, determined by the commission and in**

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accordance with industry practices, in which to:

- (A) modify, construct, or obtain the facilities; or
- (B) deploy an approved alternative technology;

necessary to serve the customers of the exiting provider.

(2) A temporary exemption from any lawful obligation to unbundle the successor provider's network elements. The exemption under this subdivision shall continue for a period determined by the commission to be reasonably necessary to allow the successor provider to:

- (A) modify, construct, or obtain the facilities; or
- (B) deploy an alternative technology;

that will allow the successor provider to serve the customers of the exiting provider.

(3) A temporary exemption from any lawful obligation to provide telecommunications service for resale within the affected area. The exemption under this subdivision shall continue for a period determined by the commission to be reasonably necessary to allow the successor provider to:

- (A) modify, construct, or obtain the facilities; or
- (B) deploy an alternative technology;

that will allow the successor provider to serve the customers of the exiting provider.

(c) The successor provider is entitled to obtain funding from a state universal service fund to support the provider's assumption of obligations as the provider of last resort for the area. This section does not prohibit a provider from voluntarily:

- (1) serving customers in the affected area; or
- (2) purchasing the facilities of the exiting provider.

(d) A customer within the defined geographic area to be served by the successor provider is considered to have applied for basic telecommunications service from the successor provider on the effective date of the commission's designation of the successor provider. Each right, privilege, and obligation applicable to customers of the successor provider applies to a customer transferred to the successor provider under this section. A customer transferred to the successor provider under this section is subject to the successor provider's terms of service as specified in an applicable tariff or contract. This section does not prohibit a customer from seeking, at any time, service from a provider other than the successor provider.

Sec. 15. (a) The commission may, on its own motion or on the petition of an interested party, institute an expedited proceeding

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under this section if the commission determines that:

(1) a facilities based local exchange carrier has a certificate of territorial authority to provide local exchange service in a defined geographic area;

(2) there is not another provider that:

(A) holds a certificate of territorial authority in the area; and

(B) has facilities sufficient to provide local exchange service in the area; and

(3) the facilities based local exchange carrier has:

(A) ceased providing local exchange service to the customers in the area; or

(B) abandoned the operation of the carrier's facilities in the area that are used to provide local exchange service.

(b) In a proceeding under this section, the commission may declare that an emergency exists and issue any order necessary to protect the health, safety, and welfare of affected customers and to expedite the restoration or continuation of local exchange service to the affected customers. An order issued under this subsection may:

(1) provide for the temporary operation of the facilities based local exchange carrier's facilities by any provider, including a provider that has not been issued a certificate of territorial authority by the commission;

(2) authorize one (1) or more third parties to enter the premises of any abandoned facilities; or

(3) grant temporary waivers from quality of service requirements for any provider:

(A) providing service under subdivision (1); or

(B) designated as a successor provider by the commission under subsection (c).

(c) Except as provided in IC 8-1-32.6-9 or section 16 of this chapter, the commission may act under section 14 of this chapter to designate a successor provider in any proceeding under this section.

Sec. 16. (a) If a provider, other than the incumbent local exchange carrier, operates under an arrangement by which the provider is the exclusive provider of basic telecommunications service in a particular geographic area, building, or group of residences and businesses, the incumbent local exchange carrier is relieved of any provider of last resort obligations that the incumbent local exchange carrier would ordinarily have with

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1 respect to the particular geographic area, building, or group of
2 residences and buildings.

3 (b) If:

4 (1) a provider with an exclusive service arrangement
5 described in subsection (a) decides to cease operations in all
6 or part of the particular geographic area, building, or group
7 of residences and buildings that the provider serves under the
8 arrangement; and

9 (2) the incumbent local exchange carrier:

10 (A) has insufficient facilities to serve the affected
11 customers of the exiting provider; and

12 (B) elects to purchase the facilities of the exiting provider;
13 the incumbent local exchange carrier has twelve (12) months to
14 make any modifications necessary to the purchased facilities to
15 allow the incumbent local exchange carrier to serve the affected
16 customers of the exiting provider. The incumbent local exchange
17 carrier may apply to the commission for an extension of the period
18 allowed under this subsection, and the commission shall grant the
19 extension upon good cause shown by the incumbent local exchange
20 carrier.

21 (c) If:

22 (1) a provider with an exclusive service arrangement
23 described in subsection (a) decides to cease operations in all
24 or part of the particular geographic area, building, or group
25 of residences and buildings that the provider serves under the
26 arrangement; and

27 (2) the incumbent local exchange carrier:

28 (A) has insufficient facilities to serve the affected
29 customers of the exiting provider; and

30 (B) elects not to purchase the facilities of the exiting
31 provider;

32 the incumbent local exchange carrier has twelve (12) months to
33 deploy an approved alternative technology necessary to allow the
34 incumbent local exchange carrier to serve the affected customers
35 of the exiting provider. The incumbent local exchange carrier may
36 apply to the commission for an extension of the period allowed
37 under this subsection, and the commission shall grant the extension
38 upon good cause shown by the incumbent local exchange carrier.

39 SECTION 55. IC 8-1-32.5 IS ADDED TO THE INDIANA CODE
40 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
41 UPON PASSAGE]:

42 Chapter 32.5. Certificates of Territorial Authority for

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Communications Service Providers

Sec. 1. This chapter applies to a communications service provider that seeks to offer communications service to Indiana customers after June 30, 2009.

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 3. (a) As used in this chapter, "communications service" refers to any of the following:

(1) Telecommunications service (as defined in 47 U.S.C. 153(46)).

(2) Information service (as defined in 47 U.S.C. 153(20)).

(b) The term includes:

(1) video service (as defined in IC 8-1-34-14);

(2) broadband service;

(3) advanced services (as defined in 47 CFR 51.5); and

(4) Internet Protocol enabled services;

however classified by the Federal Communications Commission.

Sec. 4. As used in this chapter, "communications service provider" means a person or an entity that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service. The term includes a provider of commercial mobile service (as defined in 47 U.S.C. 332).

Sec. 5. As used in this chapter, "facilities based local exchange carrier" means a local exchange carrier (as defined in 47 U.S.C. 153(26)) that provides telephone exchange service (as defined in 47 U.S.C. 153(47)) or exchange access (as defined in 47 U.S.C. 153(16)):

(1) exclusively over facilities owned or leased by the carrier; or

(2) predominantly over facilities owned or leased by the carrier, in combination with the resale of the telecommunications service (as defined in 47 U.S.C. 153(46)) of another carrier.

Sec. 6. (a) Except as provided in subsection (c), before a communications service provider may offer communications service to customers in Indiana, the communications service provider must apply to the commission for a certificate of territorial authority. A communications service provider that seeks a certificate under this chapter shall submit an application on a form prescribed by the commission. The form prescribed by the commission must require the communications service provider to

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report the following information:

(1) The provider's legal name and any name under which the provider does or will do business in Indiana, as authorized by the secretary of state.

(2) The provider's address and telephone number, along with contact information for the person responsible for ongoing communications with the commission.

(3) The legal name, address, and telephone number of the provider's parent company, if any.

(4) A description of each service area in Indiana in which the provider proposes to offer communications service.

(5) For each service area identified under subdivision (4), a description of each type of communications service that the provider proposes to offer in the service area.

(6) For each communications service identified under subdivision (5), whether the communications service will be offered to residential customers or business customers, or both.

(7) The expected date of deployment for each communications service identified under subdivision (5) in each service area identified in subdivision (4).

(8) A list of other states in which the provider offers communications service, including the type of communications service offered.

(9) Any other information the commission considers necessary to:

(A) monitor the type and availability of communications service provided to Indiana customers; and

(B) prepare the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4.

The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 8 of this chapter.

(b) A communications service provider shall also submit, along with the application required by subsection (a), the following documents:

(1) A certification from the secretary of state authorizing the provider to do business in Indiana.

(2) Information demonstrating the provider's financial, managerial, and technical ability to provide each communications service identified in the provider's

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application under subsection (a)(5) in each service area identified under subsection (a)(4).

(3) A statement, signed under penalty of perjury by an officer or another person authorized to bind the provider, that affirms the following:

(A) That the provider has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering communications service in Indiana.

(B) That the provider agrees to comply with any customer notification requirements imposed by the commission under section 11(c) of this chapter.

(C) That the provider agrees to update the information provided in the application submitted under subsection (a) on a regular basis, as may be required by the commission under section 12 of this chapter.

(D) That the provider agrees to notify the commission when the provider commences offering communications service in each service area identified in the provider's application under subsection (a)(4).

(E) That the provider agrees to pay any lawful rate or charge for switched and special access services, as required under any:

- (i) applicable interconnection agreement; or
- (ii) lawful tariff or order approved or issued by a regulatory body having jurisdiction.

(F) That the provider agrees to report, at the times required by the commission, any information required by the commission under IC 8-1-2.6-13(d)(9).

(c) If:

(1) a communications service provider has been issued a:

- (A) certificate of territorial authority; or
- (B) certificate of public convenience and necessity;

by the commission before July 1, 2009; and

(2) the certificate described in subdivision (1) is in effect on July 1, 2009;

the communications service provider is not required to submit an application under this section for as long as the certificate described in subdivision (1) remains in effect. For purposes of this subsection, if a corporation organized under IC 8-1-13 (or a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a

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1 corporation organized under IC 8-1-13) holds a certificate of
 2 public convenience and necessity issued by the commission before,
 3 on, or after July 1, 2009, that certificate may serve as the
 4 certificate required under this chapter with respect to any
 5 communications service offered by the corporation, subject to the
 6 commission's right to require the corporation to provide any
 7 information that an applicant is otherwise required to submit
 8 under subsection (a) or that a holder is required to report under
 9 IC 8-1-2.6-13(d)(9).

10 (d) This section does not empower the commission to require an
 11 applicant for a certificate under this chapter to disclose
 12 confidential and proprietary business plans and other confidential
 13 information without adequate protection of the information. The
 14 commission shall exercise all necessary caution to avoid disclosure
 15 of confidential information supplied under this subsection.

16 Sec. 7. A communications service provider shall submit
 17 duplicate copies of the application and documents required by
 18 section 6 of this chapter to each of the following:

- 19 (1) The commission.
- 20 (2) The division of consumer protection of the office of the
 21 attorney general.

22 Sec. 8. Not later than thirty (30) days after receiving the
 23 application and documents required by section 6 of this chapter,
 24 the commission shall review the application and documents for
 25 accuracy and completeness. If the commission determines that the
 26 application and documents are accurate, complete, and properly
 27 verified, the commission shall issue a certificate of territorial
 28 authority recognizing the communications service provider's
 29 authority to provide each communications service identified in the
 30 application. If the commission determines that the application and
 31 documents are inaccurate or incomplete, or are not properly
 32 verified, the commission shall return the application and
 33 documents to the provider with a brief statement of any additional
 34 information required. Not later than thirty (30) days after receipt
 35 of the request for additional information, the provider may:

- 36 (1) provide the information requested;
- 37 (2) appeal the decision of the commission under IC 8-1-3; or
- 38 (3) decide to file another application at a later date, without
 39 prejudice.

40 Sec. 9. (a) A hearing is not required in connection with the
 41 issuance of a certificate under this chapter. However, the
 42 commission shall conduct a hearing, subject to the requirements

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1 for hearings under IC 8-1-2 for public utilities, upon the request of
2 any of the following:

- 3 (1) The communications service provider submitting the
4 application.
- 5 (2) Any facilities based local exchange carrier offering service
6 in a service area identified in the provider's application under
7 section 6(a)(4) of this chapter.
- 8 (3) The division of consumer protection of the office of the
9 attorney general.
- 10 (4) The commission, on its own motion.

11 (b) A hearing conducted under this section shall be limited to
12 consideration of one (1) or more of the following issues:

- 13 (1) Whether the application and documents submitted under
14 section 6 of this chapter are accurate, complete, and properly
15 verified.
- 16 (2) The communications service provider's financial,
17 managerial, and technical ability to provide the
18 communications service for which it seeks a certificate under
19 this chapter.

20 (c) The commission may not require a:

- 21 (1) communications service provider; or
- 22 (2) facilities based local exchange carrier offering service in a
23 service area identified in the provider's application under
24 section 6(a)(4) of this chapter;

25 to be represented by counsel at a hearing under this section.

26 Sec. 10. Subject to any notice requirements adopted by the
27 commission under section 12 of this chapter, a certificate issued
28 under this chapter may be:

- 29 (1) sold, assigned, leased, or transferred by the holder to any
30 communications service provider to which a certificate of
31 territorial authority may be lawfully issued under this
32 chapter; or
- 33 (2) included in the property and rights encumbered under any
34 indenture of mortgage or deed of trust of the holder.

35 Sec. 11. (a) The commission may not require a communications
36 service provider to file a tariff in connection with, or as a condition
37 of receiving, a certificate of territorial authority under this
38 chapter. However, a provider may elect to file and maintain with
39 the commission tariffs for the communications service offered by
40 the provider in Indiana. The commission shall permit a provider
41 to implement a tariff, or a modification to a tariff, on the first day
42 immediately following the date of filing with the commission.

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1 (b) The commission may investigate, on a formal or an informal
2 basis, a complaint concerning a communications service provider's
3 compliance with a tariff filed with the commission under
4 subsection (a). The commission's investigation shall be limited to
5 the sole issue of the provider's compliance with the filed tariff. The
6 commission shall conduct a formal investigation only upon the
7 request of any class satisfying the standing requirements of
8 IC 8-1-2-54.

9 (c) Regardless of whether a communications service provider
10 elects to file a tariff with the commission under subsection (a), the
11 commission may require, in connection with the issuance of a
12 certificate under this chapter, the communications service provider
13 to provide advance notice to the provider's Indiana customers if
14 the provider will do any of the following:

15 (1) Change the rates and charges for any communications
16 service that the provider offers in any of the provider's
17 service areas in Indiana.

18 (2) Offer new communications service in any of the provider's
19 service areas in Indiana.

20 (3) Cease to offer any communications service that the
21 provider currently offers in any of the provider's service
22 areas in Indiana.

23 The commission shall prescribe any customer notification
24 requirements under this subsection in a rule of general application
25 adopted under IC 4-22-2.

26 Sec. 12. In connection with, or as a condition of receiving, a
27 certificate of territorial authority under this chapter, the
28 commission may require a communications service provider to
29 notify the commission, after the issuance of a certificate, of any of
30 the following changes involving the provider or the certificate
31 issued:

32 (1) Any transaction involving a change in the ownership,
33 operation, control, or corporate organization of the provider,
34 including a merger, acquisition, or reorganization.

35 (2) A change in the provider's legal name or the adoption of,
36 or change to, an assumed business name. The provider shall
37 submit to the commission a certified copy of the:

38 (A) amended certificate of authority; or

39 (B) certificate of assumed business name;
40 issued by the secretary of state to reflect the change.

41 (3) A change in the provider's principal business address or in
42 the name of the person authorized to receive notice on behalf

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- of the provider.
- (4) Any sale, assignment, lease, or transfer of the certificate to another communications service provider, as allowed by section 10 of this chapter. The provider shall identify the other communications service provider to which the sale, assignment, lease, or transfer is made.
- (5) The relinquishment of any certificate issued under this chapter. The provider shall identify:
 - (A) any other certificate of territorial authority issued under this chapter that will be retained by the provider;
 - (B) the number of Indiana customers in the service area covered by the certificate being relinquished; and
 - (C) the method by which the provider's customers were or will be notified of the relinquishment, if required in a rule adopted by the commission under section 11(c) of this chapter.
- (6) A change in the communications service provided in one (1) or more of service areas identified in the provider's application under section 6(a)(4) of this chapter. However, if new services will be provided in one (1) or more of the service areas, the commission may require the provider to submit a new application under section 6 of this chapter with respect to those services.
- (7) A change in one (1) or more of the service areas identified in the provider's application under section 6(a)(4) of this chapter that would increase or decrease the territory within the service area.

The commission shall prescribe the time in which a provider must report changes under this section. The commission may prescribe a form for the reporting of changes under this section.

Sec. 13. The commission shall maintain a record of all certificates of territorial authority issued under this chapter. The record must include all application forms, notices of change under section 12 of this chapter, and other documents filed with the commission under this chapter. The record must be made available:

- (1) for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3; and
 - (2) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1;
- to the extent the information in the record is not exempt from

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1 public disclosure under IC 5-14-3-4(a).

2 Sec. 14. A communications service provider that holds a
3 certificate issued under this chapter is exempt from local
4 franchises and related fees to the same extent as a communications
5 service provider that holds a certificate of territorial authority or
6 an indeterminate permit issued under IC 8-1-2 before July 1, 2009.

7 Sec. 15. The commission may adopt rules under IC 4-22-2 to
8 implement this chapter.

9 SECTION 56. IC 8-1-32.6 IS ADDED TO THE INDIANA CODE
10 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
11 UPON PASSAGE]:

12 Chapter 32.6. Access to Real Property by Communications
13 Service Providers

14 Sec. 1. As used in this chapter, "commission" refers to the
15 Indiana utility regulatory commission created by IC 8-1-1-2.

16 Sec. 2. (a) As used in this chapter, "communications service"
17 refers to any of the following:

18 (1) Telecommunications service (as defined in 47 U.S.C.
19 153(46)).

20 (2) Information service (as defined in 47 U.S.C. 153(20)).

21 (b) The term includes:

22 (1) video service (as defined in IC 8-1-34-14);

23 (2) broadband service;

24 (3) advanced services (as defined in 47 CFR 51.5); and

25 (4) Internet Protocol enabled services;

26 however classified by the Federal Communications Commission.

27 Sec. 3. As used in this chapter, "communications service
28 provider" means a person or an entity, or an affiliate (as defined
29 in IC 8-1-34-1) of a person or an entity, that offers communications
30 service to customers in Indiana, without regard to the technology
31 or medium used by the person or entity to provide the
32 communications service. The term includes a provider of
33 commercial mobile service (as defined in 47 U.S.C. 332).

34 Sec. 4. As used in this chapter, "division" refers to the division
35 of consumer protection of the office of the attorney general created
36 by IC 4-6-9-1.

37 Sec. 5. As used in this section, "multitenant real estate" means
38 any:

39 (1) geographic area;

40 (2) building; or

41 (3) group of buildings;

42 containing more than one (1) unit for business or residential

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1 purposes. The term includes apartment buildings, condominiums,
2 subdivisions, office buildings, and office parks.

3 Sec. 6. As used in this chapter, "person" means an individual, a
4 corporation, a limited liability company, a partnership, an
5 unincorporated association, or a governmental entity.

6 Sec. 7. As used in this chapter, "provider of last resort" has the
7 meaning set forth in IC 8-1-32.4-9.

8 Sec. 8. (a) A communications service provider shall not enter
9 into any contract, agreement, or other arrangement that does any
10 of the following:

- 11 (1) Requires any person to restrict or limit:
 - 12 (A) the ability of another communications service provider
 - 13 to obtain easements or rights-of-way for the installation of
 - 14 facilities or equipment used to provide communications
 - 15 service to Indiana customers; or
 - 16 (B) access to real property by another communications
 - 17 service provider.

- 18 (2) Offers or grants incentives or rewards to an owner of real
19 property if the incentives or rewards are contingent upon the
20 property owner's agreement to restrict or limit:

- 21 (A) the ability of another communications service provider
- 22 to obtain easements or rights-of-way for the installation of
- 23 facilities or equipment used to provide communications
- 24 service on the property; or
- 25 (B) access to the owner's real property by another
- 26 communications service provider.

27 A contract, an agreement, or any other arrangement that violates
28 this section is void.

29 (b) This section does not prohibit a communications service
30 provider and a subscriber from entering into any lawful contract,
31 agreement, or other arrangement concerning the communications
32 service offered by the communications service provider to the
33 subscriber.

- 34 (c) Except as provided in subsection (e), upon:
 - 35 (1) a complaint filed by:
 - 36 (A) another communications service provider;
 - 37 (B) a subscriber or potential subscriber of communications
 - 38 service;
 - 39 (C) the utility consumer counselor, if the complaint is filed
 - 40 before July 1, 2009; or
 - 41 (D) any class satisfying the standing requirements of
 - 42 IC 8-1-2-54; or

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1 (2) the commission's own motion, if the commission acts
 2 before July 1, 2009;
 3 the commission may investigate whether a communications service
 4 provider has violated this section. If, after notice and an
 5 opportunity for hearing, the commission determines that the
 6 communications service provider has violated this section, the
 7 commission may issue an order imposing a civil penalty of not
 8 more than five hundred dollars (\$500) for each violation. For
 9 purposes of this subsection, each day that a contract, an agreement,
 10 or an arrangement prohibited by this section remains in effect
 11 constitutes a separate violation.

12 (d) The attorney general may bring an action in the name of the
 13 state to enforce an order of the commission under subsection (c),
 14 including the collection of an unpaid civil penalty imposed by the
 15 commission.

16 (e) In accordance with IC 8-1-2.6-13(e), after June 30, 2009:
 17 (1) a complaint described in subsection (c)(1) shall be filed
 18 with the division;
 19 (2) the division may act on its own motion to initiate an
 20 investigation of whether a communications service provider
 21 has violated this section; and
 22 (3) the responsibilities of the commission to investigate
 23 violations of this section are transferred to the division.

24 Notwithstanding subdivision (3), the commission shall retain
 25 jurisdiction over an investigation initiated under subsection (c)
 26 before July 1, 2009, until the investigation and any related appeals
 27 in the matter are concluded.

28 (f) Civil penalties collected under this section shall be deposited
 29 in the state general fund.

30 (g) A determination by the commission or the division under
 31 this section is subject to appeal under IC 8-1-3.

32 Sec. 9. (a) Notwithstanding IC 8-1-32.4-14, the commission may
 33 not require a communications service provider, including a
 34 provider of last resort, to provide any communications service to
 35 the occupants of multitenant real estate if the owner, operator, or
 36 developer of the multitenant real estate does any of the following
 37 to the benefit of another communications service provider:

- 38 (1) Permits only one (1) communications service provider to
 39 install the provider's facilities or equipment during the
 40 construction or development phase of the multitenant real
 41 estate.
 42 (2) Accepts or agrees to accept incentives or rewards that:

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1 (A) are offered by a communications service provider to
 2 the owner, operator, developer, or occupants of the
 3 multitenant real estate; and
 4 (B) are contingent upon the provision of communications
 5 service by that provider to the occupants of the
 6 multitenant real estate, to the exclusion of any services
 7 provided by other communications service providers.
 8 (3) Collects from the occupants of the multitenant real estate
 9 any charges for the provision of communications service to
 10 the occupants, including charges collected through rent, fees,
 11 or dues.
 12 (4) Enters into an agreement with a communications service
 13 provider that is prohibited by section 8 of this chapter.
 14 (b) This subsection applies to a communications service
 15 provider that is relieved under subsection (a) of an obligation to
 16 provide communications service to the occupants of multitenant
 17 real estate. This section does not prohibit the communications
 18 service provider from voluntarily offering service to the occupants
 19 of the multitenant real estate. However, the commission shall not
 20 exercise jurisdiction over the terms, conditions, rates, or
 21 availability of any communications service voluntarily offered by
 22 a communications service provider under this subsection.
 23 SECTION 57. IC 8-1-34 IS ADDED TO THE INDIANA CODE AS
 24 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
 25 PASSAGE]:
 26 Chapter 34. Video Service Franchises
 27 Sec. 1. As used in this chapter, "affiliate" has the meaning set
 28 forth in IC 23-1-43-1. The term includes a parent company or a
 29 subsidiary.
 30 Sec. 2. As used in this chapter, "certificate" refers to a
 31 certificate of franchise authority issued by the commission under
 32 section 17 of this chapter.
 33 Sec. 3. As used in this chapter, "commission" refers to the
 34 Indiana utility regulatory commission created by IC 8-1-1-2.
 35 Sec. 4. As used in this chapter, "franchise" means an initial
 36 authorization, or a renewal of an authorization, that:
 37 (1) is issued by the commission under this chapter after June
 38 30, 2006; and
 39 (2) authorizes the construction or operation of a video service
 40 system in a designated service area in Indiana.
 41 Sec. 5. As used in this chapter, "gross revenue" means all
 42 consideration of any kind or nature, including cash, credits,

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property, and in kind contributions:

- (1) received by a holder from the operation of a video service system in a particular unit in Indiana; and
- (2) calculated by the holder under section 23 of this chapter.

Sec. 6. As used in this chapter, "holder" refers to a person that holds a certificate issued by the commission under this chapter after June 30, 2006.

Sec. 7. As used in this chapter, "incumbent provider" means the provider serving the largest number of video service subscribers in a particular local franchise service area on July 1, 2006.

Sec. 8. As used in this chapter, "local franchise" means an initial authorization, or a renewal of an authorization, that:

- (1) is issued by a unit before July 1, 2006; and
- (2) authorizes the construction or operation of a video service system in a designated service area in the unit.

Sec. 9. As used in this chapter, "other programming service" refers to information that a provider makes available to all subscribers generally.

Sec. 10. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or another entity organized under the laws of any state.

Sec. 11. As used in this chapter, "provider" refers to a multichannel video programming distributor (as defined in 47 U.S.C. 522(13)).

Sec. 12. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

Sec. 13. As used in this chapter, "video programming" has the meaning set forth in 47 U.S.C. 522(20).

Sec. 14. As used in this chapter, "video service" means:

- (1) the transmission to subscribers of video programming and other programming service:
 - (A) through facilities located at least in part in a public right-of-way; and
 - (B) without regard to the technology used to deliver the video programming or other programming service; and
- (2) any subscriber interaction required for the selection or use of the video programming or other programming service.

Sec. 15. (a) As used in this chapter, "video service system" means a system, consisting of a set of transmission paths and associated signal generation, reception, and control equipment, that is designed to provide video service directly to subscribers

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within a community. The term includes the:

- (1) optical spectrum wavelengths;
- (2) bandwidth; or
- (3) other current or future technological capacity;

used to provide the video service.

(b) The term does not include a system that transmits video service to subscribers without using any public right-of-way.

Sec. 16. (a) Except as provided in section 21 of this chapter, after June 30, 2006:

(1) the commission is the sole franchising authority (as defined in 47 U.S.C. 522(10)) for the provision of video service in Indiana; and

(2) a unit may not:

- (A) require a provider to obtain a separate franchise; or
- (B) impose any fee, gross receipt tax, licensing requirement, rate regulation, or build-out requirement on a provider;

except as authorized by this chapter.

(b) Except as provided in section 21 of this chapter, a person that seeks to provide video service in Indiana after June 30, 2006, shall file with the commission an application for a franchise. The application shall be made on a form prescribed by the commission and must include the following:

(1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms the following:

(A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering video service in Indiana.

(B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations applicable to the operation of the applicant's video service system.

(C) That the applicant agrees to:

- (i) comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service; and
- (ii) recognize the police powers of a unit to enforce the ordinance or regulation.

(D) If the applicant will terminate an existing local franchise under section 21 of this chapter, that the applicant agrees to perform any obligations owed to any private person under the terminated franchise until such

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time as the local franchise would otherwise terminate or expire, as required by section 22 of this chapter.

(2) The applicant's legal name and any name under which the applicant does or will do business in Indiana, as authorized by the secretary of state.

(3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the commission.

(4) The names and titles of the applicant's principal officers.

(5) The legal name, address, and telephone number of the applicant's parent company, if any.

(6) A description of each service area in Indiana to be served by the applicant. A service area described under this subdivision may include an unincorporated area in Indiana.

(7) The expected date for the deployment of video service in each of the areas identified in subdivision (6).

(8) A list of other states in which the applicant provides video service.

(9) If the applicant will terminate an existing local franchise under section 21(b) of this chapter, a copy of the written notice sent to the municipality under section 21(c) of this chapter.

(10) Any other information the commission considers necessary to:

(A) monitor the provision of video service to Indiana customers; and

(B) prepare the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4.

This subsection does not empower the commission to require an applicant to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subsection.

(c) The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 17 of this chapter.

Sec. 17. (a) Not later than fifteen (15) business days after the commission receives an application under section 16 of this chapter, the commission shall determine whether the application

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1 is complete and properly verified. If the commission determines
2 that the application is incomplete or is not properly verified, the
3 commission shall notify the applicant of the deficiency and allow
4 the applicant to resubmit the application after correcting the
5 deficiency. If the commission determines that the application is
6 complete and properly verified, the commission shall issue the
7 applicant a certificate of franchise authority. A certificate issued
8 under this section must contain:

9 (1) a grant of authority to provide the video service requested
10 in the application;

11 (2) a grant of authority to use and occupy public rights-of-way
12 in the delivery of the video service, subject to:

13 (A) state and local laws and regulations governing the use
14 and occupancy of public rights-of-way; and

15 (B) the police powers of local units to enforce local
16 ordinances and regulations governing the use and
17 occupancy of public rights-of-way; and

18 (3) a statement that the authority granted under subdivisions
19 (1) and (2) is subject to the holder's lawful provision and
20 operation of the video service.

21 (b) Except as provided in subsection (c) and section 28 of this
22 chapter, the commission may not require a provider to:

23 (1) satisfy any build-out requirements; or

24 (2) deploy, or make investments in, any infrastructure,
25 facilities, or equipment;

26 as a condition of receiving or holding a certificate under this
27 chapter.

28 (c) This section does not limit the commission's right to enforce
29 any obligation described in subsection (b) that a provider is subject
30 to under the terms of a settlement agreement approved by the
31 commission before July 29, 2004.

32 (d) The general assembly, a state agency, or a unit may not
33 adopt a law, rule, ordinance, or regulation governing the use and
34 occupancy of public rights-of-way that:

35 (1) discriminates against any provider, or is unduly
36 burdensome with respect to any provider, based on the
37 particular facilities or technology used by the provider to
38 deliver video service; or

39 (2) allows a video service system owned or operated by a unit
40 to use or occupy public rights-of-way on terms or conditions
41 more favorable or less burdensome than those that apply to
42 other providers.

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1 A law, rule, ordinance, or regulation that violates this subsection
 2 is void.

3 Sec. 18. Subject to the notice requirements under section 20 of
 4 this chapter, a certificate issued under this chapter may be
 5 transferred to any successor in interest of the holder to which the
 6 certificate is originally granted.

7 Sec. 19. A certificate issued under this chapter may be
 8 terminated by the holder by submitting notice to the commission
 9 under section 20 of this chapter.

10 Sec. 20. (a) In connection with, or as a condition of receiving, a
 11 certificate under this chapter, the commission shall require a
 12 holder to notify the commission, after the issuance of a certificate,
 13 of any of the following changes involving the holder or the
 14 certificate issued:

15 (1) Any transaction involving a change in the ownership,
 16 operation, control, or corporate organization of the holder,
 17 including a merger, acquisition, or reorganization.

18 (2) A change in the holder's legal name or the adoption of, or
 19 change to, an assumed business name. The holder shall submit
 20 to the commission a certified copy of the:

21 (A) amended certificate of authority; or
 22 (B) certificate of assumed business name;
 23 issued by the secretary of state to reflect the change.

24 (3) A change in the holder's principal business address or in
 25 the name of the person authorized to receive notice on behalf
 26 of the holder.

27 (4) Any transfer of the certificate to a successor in interest of
 28 the holder allowed by section 18 of this chapter. The holder
 29 shall identify the successor in interest to which the transfer is
 30 made.

31 (5) The termination of any certificate issued under this
 32 chapter, as allowed by section 19 of this chapter. The holder
 33 shall identify:

34 (A) any other certificate issued under this chapter that will
 35 be retained by the holder;
 36 (B) the number of Indiana customers in the service area
 37 covered by the certificate being terminated; and
 38 (C) the method by which the holder's customers were
 39 notified of the termination, if required by the commission
 40 under subsection (c).

41 (6) A change in the video programming or other
 42 programming service provided in one (1) or more of the

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1 services areas identified under section 16(b)(6) of this chapter
2 in the holder's most recent application for a certificate under
3 this chapter.

4 (7) A change in one (1) or more of the service areas identified
5 under section 16(b)(6) of this chapter that would increase or
6 decrease the territory within the service area. The holder shall
7 describe the new boundaries of the affected service areas after
8 the proposed change is made.

9 The commission shall prescribe the time in which a holder must
10 report changes under this section. The commission may prescribe
11 a form for the reporting of changes under this section.

12 (b) In connection with, or as a condition of receiving, a
13 certificate under this chapter, the commission shall require a
14 holder to notify a unit:

15 (1) in which the holder does not already provide video service
16 under:

17 (A) a local franchise issued by the unit before July 1, 2006;
18 or

19 (B) another certificate issued under this chapter after June
20 30, 2006; and

21 (2) that is included in the holder's service area under the
22 certificate being issued;

23 that the holder intends to provide video service in the unit's
24 jurisdiction. The holder shall give the notice required under this
25 subdivision not later than ten (10) days before the holder begins
26 providing video service in the unit's jurisdiction.

27 (c) In connection with the issuance of a certificate under this
28 chapter, the commission may require a holder to provide advance
29 notice to the holder's Indiana customers if the holder will do any
30 of the following:

31 (1) Change the rates and charges for video service that the
32 holder offers in any of its service areas in Indiana.

33 (2) Cease to offer video service, or any specific video
34 programming or other programming service, that the holder
35 currently offers in any of the holder's service areas in
36 Indiana.

37 The commission shall prescribe any customer notification
38 requirements under this subsection in a rule of general application
39 adopted under IC 4-22-2.

40 Sec. 21. (a) For purposes of this section, a provider is considered
41 to be a holder of a local franchise on June 30, 2006, if:

42 (1) the provider; or

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1 (2) any affiliate or successor entity of the provider;
2 holds a local franchise to provide video service in a unit on June 30,
3 2006.

4 (b) After June 30, 2006, a provider that is the holder of a local
5 franchise on June 30, 2006, regardless of whether the provider is
6 the incumbent provider in the local franchise service area, may
7 elect to:

8 (1) continue providing video service under the local franchise
9 until the local franchise expires; or

10 (2) subject to section 22 of this chapter, terminate the local
11 franchise and apply to the commission for a certificate under
12 this chapter.

13 (c) A provider that elects to terminate a local franchise under
14 subsection (b) must provide written notice of the provider's
15 election to:

16 (1) the commission; and

17 (2) the affected unit;

18 not later than November 1, 2006. The local franchise is terminated
19 on the date the commission issues a certificate to the provider
20 under this chapter.

21 (d) Not later than ninety (90) days after a local franchise is
22 terminated under subsection (c), the provider that terminated the
23 local franchise shall remit to the affected unit any accrued but
24 unpaid franchise fees due under the local franchise. If the provider
25 has credit remaining from any prepaid franchise fees, the provider
26 may deduct the amount of the credit from any future fees or taxes
27 owed to the affected unit.

28 Sec. 22. (a) A provider that elects to terminate a local franchise
29 under section 21 of this chapter remains subject to the contractual
30 rights, duties, and obligations:

31 (1) incurred by the provider under the terms and conditions
32 of the terminated local franchise; and

33 (2) owed to any private person, including a subscriber.

34 (b) The obligations that a provider owes to a private person
35 under subsection (a) include any obligations based on the gross
36 income received by the provider:

37 (1) after the provider becomes a holder of a certificate under
38 this chapter; and

39 (2) for video service provided in the service area covered by
40 the terminated local franchise;

41 if, under the terms of the terminated local franchise, the
42 obligations would have been based on the gross income received by

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1 the provider for video service provided in the service area covered
 2 by the terminated local franchise.

3 (c) All liens, security interests, royalties, and other contracts,
 4 rights, and interests arising out of the terminated local franchise
 5 and owed to a private person, shall:

6 (1) continue in full force and effect without the need for
 7 renewal, extension, or continuance;

8 (2) be paid or performed by the provider after becoming a
 9 holder of a certificate under this chapter; and

10 (3) apply as though the gross revenue of the provider
 11 continued to be generated under the terminated local
 12 franchise with respect to any revenue generated in the service
 13 area covered by the terminated local franchise.

14 (d) The commission shall condition the issuance or renewal of a
 15 certificate under this chapter on a provider's payment and
 16 performance of the rights, duties, and obligations described in this
 17 section until such time as the terminated local franchise would
 18 ordinarily terminate or expire if the provider had not made the
 19 election under section 21 of this chapter. In applying for an initial
 20 certificate or a renewal certificate under this chapter, a provider
 21 shall agree to pay or perform the obligations described in this
 22 section, as required by section 16(b)(1)(D) of this chapter.

23 (e) A private person that claims to be:

24 (1) owed any rights, duties, or obligations by a holder under
 25 this section; and

26 (2) aggrieved by a holder's alleged violation of this section;
 27 may bring an action in a court with jurisdiction to enforce the
 28 rights, duties, or obligations claimed to be owed to the person.

29 Sec. 23. (a) At the end of each calendar quarter, the holder of a
 30 certificate under this chapter shall determine the gross revenue
 31 received during that quarter from the holder's provision of video
 32 service in each unit included in the holder's service area under the
 33 certificate. A provider that elects under section 21(b)(1) of this
 34 chapter to continue providing video service under a local franchise
 35 is not required to determine gross revenue under this section,
 36 except to the extent that any calculation of gross revenue is
 37 required under the terms of the local franchise.

38 (b) The holder shall include the following in determining the
 39 gross revenue received during the quarter with respect to a
 40 particular unit:

41 (1) Fees and charges charged to subscribers for video service
 42 provided by the holder. Fees and charges under this

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subdivision include the following:

- (A) Recurring monthly charges for video service.
- (B) Event based charges for video service, including pay per view and video on demand charges.
- (C) Charges for the rental of set top boxes and other equipment.
- (D) Service charges related to the provision of video service, including activation, installation, repair, and maintenance charges.
- (E) Administrative charges related to the provision of video service, including service order and service termination charges.

(2) Revenue received by an affiliate of the holder from the affiliate's provision of video service, to the extent that treating the revenue as revenue of the affiliate, instead of revenue of the holder, would have the effect of evading the payment of fees that would otherwise be paid to the unit. However, revenue of an affiliate may not be considered revenue of the holder if the revenue is otherwise subject to fees to be paid to the unit.

(c) The holder shall not include the following in determining the gross revenue received during the quarter with respect to a particular unit:

- (1) Revenue not actually received, regardless of whether it is billed. Revenue described in this subdivision includes bad debt.
- (2) Revenue received by an affiliate or any other person in exchange for supplying goods and services used by the holder to provide video service under the holder's certificate.
- (3) Refunds, rebates, or discounts made to subscribers, advertisers, the unit, or other providers leasing access to the holder's facilities.
- (4) Revenue from providing service other than video service, including revenue from providing:
 - (A) telecommunications service (as defined in 47 U.S.C. 153(46));
 - (B) information service (as defined in 47 U.S.C. 153(20)), other than video service; or
 - (C) any other service not classified as cable service or video programming by the Federal Communications Commission.
- (5) Any fee imposed on the holder under this chapter that is

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passed through to and paid by subscribers, including the franchise fee:

(A) imposed under section 24 of this chapter for the quarter immediately preceding the quarter for which gross revenue is being computed; and

(B) passed through to and paid by subscribers during the quarter for which gross revenue is being computed.

(6) Revenue from the sale of video service for resale in which the purchaser collects a franchise fee under:

(A) this chapter; or

(B) a local franchise agreement in effect on July 1, 2006; from the purchaser's customers. This subdivision does not limit the authority of a unit, or the commission on behalf of a unit, to impose a tax, fee, or other assessment upon the purchaser under 42 U.S.C. 542(h).

(7) Any tax of general applicability:

(A) imposed on the holder or on subscribers by a federal, state, or local governmental entity; and

(B) required to be collected by the holder and remitted to the taxing entity;

including the state gross retail and use taxes (IC 6-2.5) and the utility receipts tax (IC 6-2.3).

(8) Any forgone revenue from providing free or reduced cost cable video service to any person, including:

(A) employees of the holder;

(B) the unit; or

(C) public institutions, public schools, or other governmental entities, as required or permitted by this chapter or by federal law.

However, any revenue that the holder chooses to forgo in exchange for goods or services through a trade or barter arrangement shall be included in gross revenue.

(9) Revenue from the sale of:

(A) capital assets; or

(B) surplus equipment that is not used by the purchaser to receive video service from the holder.

(10) Reimbursements that:

(A) are made by programmers to the holder for marketing costs incurred by the holder for the introduction of new programming; and

(B) exceed the actual costs incurred by the holder.

(11) Late payment fees collected from customers.

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1 (12) Charges, other than those described in subsection (b)(1),
2 that are aggregated or bundled with charges described in
3 subsection (b)(1) on a customer's bill, if the holder can
4 reasonably identify the charges on the books and records by
5 the holder in the regular course of business.

6 (d) If, under the terms of the holder's certificate, the holder
7 provides video service to any unincorporated area in Indiana, the
8 holder shall calculate the holder's gross income received from each
9 unincorporated area served in accordance with subsections (b) and
10 (c).

11 (e) If a unit served by the holder under a certificate annexes any
12 territory after the certificate is issued or renewed under this
13 chapter, the holder shall:

14 (1) include in the calculation of gross revenue for the annexing
15 unit any revenue generated by the holder from providing
16 video service to the annexed territory; and

17 (2) subtract from the calculation of gross income for any unit
18 or unincorporated area:

19 (A) of which the annexed territory was formerly a part;
20 and

21 (B) served by the holder before the effective date of the
22 annexation;

23 the amount of gross revenue determined under subdivision
24 (1);

25 beginning with the calculation of gross revenue for the calendar
26 quarter in which the annexation becomes effective. The holder
27 shall notify the commission of the new boundaries of the affected
28 service areas as required under section 20(a)(7) of this chapter.

29 Sec. 24. (a) Subject to subsection (e), not later than forty-five
30 (45) days after the end of each calendar quarter, the holder shall
31 pay to each unit included in the holder's service area under a
32 certificate issued under this chapter a franchise fee equal to:

33 (1) the amount of gross revenue received from providing
34 video service in the unit during the most recent calendar
35 quarter, as determined under section 23 of this chapter;
36 multiplied by

37 (2) five percent (5%).

38 (b) If the holder provides video service to an unincorporated
39 area in Indiana, as described in section 23(d) of this chapter, the
40 holder shall:

41 (1) calculate the franchise fee with respect to the
42 unincorporated area in accordance with subsection (a); and

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1 (2) remit the franchise fee to the county in which the
2 unincorporated area is located.

3 If an unincorporated area served by the provider is located in one
4 (1) or more contiguous counties, the provider shall remit part of
5 the franchise fee calculated under subdivision (1) to each county
6 having territory in the unincorporated area served. The part of the
7 franchise fee remitted to a county must bear the same proportion
8 to the total franchise fee for the area, as calculated under
9 subdivision (1), that the number of subscribers in the county bears
10 to the total number of subscribers in the unincorporated area
11 served.

12 (c) With each payment of a franchise fee to a unit under this
13 section, the holder shall include a statement explaining the basis for
14 the calculation of the franchise fee. A unit may review the books
15 and records of:

16 (1) the holder; or
17 (2) an affiliate of the holder, if appropriate;

18 to the extent necessary to ensure the holder's compliance with
19 section 23 of this chapter in calculating the gross revenue upon
20 which the remitted franchise fee is based. Each party shall bear the
21 party's own costs of an examination under this subsection. If the
22 holder and the unit cannot agree on the amount of gross revenue
23 on which the franchise fee should be based, either party may
24 petition the commission to determine the amount of gross revenue
25 on which the franchise fee should be based. A determination of the
26 commission under this subsection is final, subject to the right of
27 direct appeal by either party.

28 (d) A franchise fee owed by a holder to a unit under this section
29 may be passed through to, and collected from, the holder's
30 subscribers in the unit. To the extent allowed under 43 U.S.C.
31 542(c), the holder may identify as a separate line item on each
32 regular bill issued to a subscriber:

33 (1) the amount of the total bill assessed as a franchise fee
34 under this section; and
35 (2) the identity of the unit to which the franchise fee is paid.

36 (e) A holder that elects under section 21(b)(1) of this chapter to
37 continue providing video service under a local franchise is not
38 required to pay the franchise fee prescribed under this section, but
39 shall pay any franchise fee imposed under the terms of the local
40 franchise.

41 Sec. 25. (a) This section applies in a unit that:
42 (1) is included in the service area of a holder of a certificate

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1 issued under this chapter; and
 2 (2) requires a provider described in section 21(a) of this
 3 chapter to provide PEG channel capacity, facilities, or
 4 financial support under a local franchise issued to the
 5 provider by the unit before July 1, 2006, regardless of
 6 whether the provider elects to:
 7 (A) continue the local franchise under section 21(b)(1) of
 8 this chapter; or
 9 (B) terminate the local franchise under section 21(b)(2) of
 10 this chapter and continue providing video service in the
 11 unit under a certificate issued under this chapter.
 12 (b) As used in this section, "PEG channel" refers to a channel
 13 made available by a provider on the provider's video service
 14 system for public, educational, and governmental programming.
 15 (c) The holder of a certificate under this chapter shall provide
 16 in the unit at least the number of PEG channels that the provider
 17 described in section 21(a) of this chapter is required to provide in
 18 the unit under the terms of the local franchise described in
 19 subsection (a)(2).
 20 (d) If the local franchise described in subsection (a)(2) requires
 21 the provider described in section 21(a) of this chapter to provide
 22 financial support for public, educational, or governmental
 23 programming in the unit, the holder of a certificate under this
 24 chapter shall pay the unit the same cash payments on a per
 25 subscriber basis that the provider described in section 21(a) of this
 26 chapter is required to pay the unit under the terms of the local
 27 franchise. The holder shall remit payments under this subsection
 28 to the unit on a quarterly basis, along with the franchise fee paid
 29 to the unit under section 24 of this chapter. For each calendar
 30 quarter, the holder shall remit to the unit an amount equal to:
 31 (1) the cash payment for the quarter due from the provider
 32 described in section 21(a) of this chapter; multiplied by
 33 (2) a fraction, the numerator of which equals the number of
 34 subscribers served by the holder in the unit, and the
 35 denominator of which equals the total number of subscribers
 36 served by all providers in the unit.
 37 (e) Any payments remitted to a unit under subsection (d):
 38 (1) are made:
 39 (A) for the purposes set forth in 47 U.S.C. 531; and
 40 (B) under the unit's authority under 47 U.S.C.
 41 541(a)(4)(B); and
 42 (2) may not be credited against the franchise fee payable to

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the unit under section 24 of this chapter.

Sec. 26. (a) This section applies in a unit or an unincorporated area of Indiana that:

- (1) is included in the service area of a holder of a certificate issued under this chapter; and**
- (2) does not require a provider described in section 21(a) of this chapter to provide PEG channel capacity, facilities, or financial support under a local franchise issued before July 1, 2006.**

(b) As used in this section, "PEG channel" has the meaning set forth in section 25(b) of this chapter.

(c) As a condition of issuing or renewing a certificate to a holder under this chapter, and upon:

- (1) the petition of a unit or an unincorporated area included in the holder's service area under the certificate; or**
- (2) the commission's own motion;**

the commission may require the holder to provide PEG channel capacity, facilities, or financial support to one (1) or more units or unincorporated areas in the holder's service area under the certificate.

(d) As allowed by 47 U.S.C. 531, the commission may do the following in exercising its authority under this section:

- (1) Adopt rules and procedures for the designation or use of PEG channel capacity in each unit or unincorporated area in which the requirements apply.**
- (2) Enforce any requirement concerning the provision or use of PEG channel capacity. The commission's enforcement authority under this subdivision includes the authority to enforce any provision that:**
 - (A) is proposed by the holder and incorporated in the holder's certificate; and**
 - (B) concerns services, facilities, or equipment related to PEG channel capacity;****regardless of whether the provision is required in rules or procedures adopted by the commission under subdivision (1).**
- (3) If PEG channel capacity is designated under the certificate, prescribe rules and procedures:**
 - (A) under which the holder is permitted to use the designated channel capacity to provide other services, if the channel capacity is not being used in the unit or unincorporated area for the designated purposes; and**
 - (B) that set forth the conditions under which the holder**

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must cease any use permitted under clause (A).

Sec. 27. (a) The operation of a PEG channel provided under section 25 or 26 of this chapter is the responsibility of the unit or unincorporated area that receives the benefit of the channel, and the holder or other provider is responsible only for the transmission of the channel.

(b) A unit or an unincorporated area that receives the benefit of a PEG channel provided under section 25 or 26 of this chapter shall ensure that all transmissions, content, and programming that are transmitted over a channel or other facility of the provider are submitted to the provider in a manner or form that:

- (1) is capable of being accepted and transmitted by the provider over the provider's video service system;**
- (2) does not require additional alteration or change in the content by the provider; and**
- (3) is compatible with the technology or protocol used by the provider to deliver video service.**

(c) If it is technically feasible to do so, the holder of a certificate under this section and a provider described in section 21(a) of this chapter may cooperate to interconnect their systems to provide PEG channel capacity required under section 25 or 26 of this chapter. Interconnection under this section may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The parties shall negotiate the terms of the interconnection in good faith, and a provider described in section 21(a) may not withhold interconnection of PEG channel capacity.

(d) A court with jurisdiction has exclusive authority to enforce any requirement under:

- (1) this section; or**
- (2) section 25 or 26 of this chapter.**

Sec. 28. (a) This section applies to the following:

- (1) A provider that holds a certificate issued by the commission under this chapter.**
- (2) A provider that provides video service under a local franchise, as permitted under section 21(b)(1) of this chapter.**

(b) Subject to section 17(b) of this chapter, a provider may not deny access to video service to any group of potential residential subscribers based on the income level of the residents in the local area in which the group resides. However, a provider:

- (1) shall have a reasonable time to become capable of providing video service to all households within a service area included in the provider's franchise; and**

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1 (2) may satisfy the requirements of this subsection through
2 the use of an alternative technology that:

3 (A) offers content, service, and functionality comparable to
4 that provided through the provider's video service system,
5 as determined by the commission; and

6 (B) may include a technology that does not require the use
7 of any public right-of-way.

8 (c) For purposes of this subsection, an "affected person"
9 includes the following:

10 (1) A potential subscriber of video service from a provider.

11 (2) A local unit in which a person described in subdivision (1)
12 resides, acting on behalf of the person or other similarly
13 situated persons.

14 An affected person that alleges a violation of subsection (b) by a
15 provider may petition the commission for equitable relief. Not later
16 than forty-five (45) days after receiving a petition under this
17 subsection, the commission shall, after notice and an opportunity
18 for hearing, make a determination as to whether a violation of
19 subsection (b) has occurred.

20 (d) If, after holding any hearing requested in the matter, the
21 commission determines that no violation of subsection (b) has
22 occurred, the commission's decision is final, subject to the
23 petitioner's right to appeal the decision in a court having
24 jurisdiction. If the commission determines that a violation of
25 subsection (b) has occurred, the commission may issue an order
26 requiring the provider to offer video service to those persons to
27 whom access to the provider's video service has been denied. An
28 order of the commission under this subsection must specify the
29 following:

30 (1) A date by which the provider must offer video service to
31 those persons to whom access has been denied as a result of
32 the provider's violation. In specifying a date under this
33 subdivision, the commission shall allow the provider a
34 reasonable time to become capable of providing the required
35 video service to the affected households.

36 (2) Any alternative technology described in subsection (b)(2)
37 that the commission approves for use by the provider in
38 making video service available to the affected households.

39 Except as provided in subsection (e), an order of the commission
40 under this subsection is final.

41 (e) A provider may appeal:

42 (1) a determination by the commission under subsection (d)

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1 that a violation of subsection (b) has occurred; or
2 (2) any findings or requirements of the order issued in
3 connection with the commission's finding of a violation;
4 in a court having jurisdiction.

5 SECTION 58. IC 8-1-35 IS ADDED TO THE INDIANA CODE AS
6 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2006]:

8 **Chapter 35. Provision of Broadband Internet Services by Local**
9 **Units**

10 **Sec. 1. (a) As used in this chapter, "broadband service" means**
11 **a connection to the Internet that provides capacity for transmission**
12 **of more than one (1) megabit per second both to and from the**
13 **subscriber, regardless of the technology or medium used to provide**
14 **the connection. The term includes a connection to the Internet**
15 **provided by wireless technology, copper wire, fiber optic cable,**
16 **coaxial cable, broadband over power lines, or other facilities or**
17 **future technologies.**

18 **(b) The term does not include any of the following:**

19 **(1) Value added services in which computer processing**
20 **applications are used to act on the form, content, code, or**
21 **protocol of any information transmitted.**

22 **(2) Value added services providing text, graphic, video, or**
23 **audio program content for a purpose other than transmission.**

24 **(3) The transmission of video programming or other**
25 **programming:**

26 **(A) provided by; or**

27 **(B) generally considered comparable to programming**
28 **provided by;**

29 **a television broadcast station or a radio broadcast station,**
30 **including cable TV, direct broadcast satellite, and digital**
31 **television.**

32 **(4) A connection to the Internet provided through satellite**
33 **technology.**

34 **Sec. 2. (a) As used in this chapter, "communications service"**
35 **refers to any of the following:**

36 **(1) Telecommunications service (as defined in 47 U.S.C.**
37 **153(46)).**

38 **(2) Information service (as defined in 47 U.S.C. 153(20)).**

39 **(b) The term includes:**

40 **(1) video service (as defined in IC 8-1-34-14);**

41 **(2) broadband service;**

42 **(3) advanced services (as defined in 47 CFR 51.5); and**

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(4) Internet Protocol enabled services;
 however classified by the Federal Communications Commission.

Sec. 3. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or another entity organized under the laws of any state.

Sec. 4. As used in this section, "political subdivision" has the meaning set forth in IC 36-1-2-13. The term includes any entity:

- (1) owned, operated, or controlled by a political subdivision; or
- (2) in which a political subdivision otherwise has an interest, whether direct or indirect.

Sec. 5. (a) This section does not apply to a political subdivision that provides communications service in an area in the political subdivision's jurisdiction on June 30, 2006. However, after June 30, 2006, a political subdivision described in this subsection may not:

- (1) provide communications service, other than broadband service, in an area in which the political subdivision does not provide communications service on June 30, 2006; or
- (2) provide broadband service in an area in which the political subdivision does not already provide broadband service on June 30, 2006, unless the political subdivision complies with this section.

(b) After June 30, 2006, a political subdivision may not, by adopting an ordinance or a resolution or taking any other action, authorize the political subdivision to construct, control, own, operate, or otherwise have an interest in, any facility for providing communications service, except that a political subdivision may provide broadband service as allowed under this chapter.

(c) After June 30, 2006, a political subdivision may not, by adopting an ordinance or a resolution or taking any other action, authorize the political subdivision to construct, control, own, operate, or otherwise have an interest in, any facility for providing broadband service in a designated area in the political subdivision's jurisdiction unless the political subdivision does the following:

- (1) Determines, after conducting an inquiry under section 7 of this chapter, that there are not at least two (2) persons that:
 - (A) provide broadband service at the time of the political subdivision's inquiry under section 7 of this chapter; or
 - (B) intend to provide broadband service not later than three (3) months after the date of the political subdivision's

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**inquiry under section 7 of this chapter;
in the designated area.**

(2) Holds a public hearing on the political subdivision's proposal, subject to the requirements of IC 5-14-1.5.

(3) At least thirty (30) days before a public hearing under subdivision (2), and subject to subsection (d), prepares and makes available for public inspection a report, including all underlying work papers and related documents, estimating the total costs and benefits of constructing, controlling, owning, operating, or otherwise having an interest in, the proposed facility. A report under this subdivision must include an analysis of the costs and benefits of the political subdivision's proposal for a three (3) year period beginning on the date the political subdivision first incurs costs or receives benefits related to the proposal. Benefits that must be reported under this subdivision include any revenues to be derived from the operation of the facility. Costs that must be reported under this subdivision include:

- (A) personnel costs;**
- (B) costs of acquiring, installing, maintaining, repairing, or operating any plant or equipment; and**
- (C) an appropriately allocated part of the costs of any jointly used personnel, plants, or equipment.**

Costs under this subdivision do not include the costs of providing any subsidy permitted under section 6 of this chapter.

(d) If a political subdivision complies with subsection (c) and authorizes the political subdivision to construct, control, own, operate, or otherwise have an interest in, any facility for providing broadband service, the political subdivision shall determine the cost of preparing the report required under subsection (c)(3). As soon as practicable after the political subdivision receives revenues from the authorized facility, the political subdivision shall use the revenues to reimburse the treasury of the political subdivision for the cost of the report.

Sec. 6. (a) A political subdivision that owns, operates, controls, or otherwise has an interest in facilities for the provision of communications service may not require a person that does not subscribe to the communications service to pay any of the costs incurred by the political subdivision in providing the service.

(b) A political subdivision may not provide a subsidy or an incentive to any person to provide broadband service in a

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1 designated area in the political subdivision's jurisdiction unless the
2 political subdivision first determines, after conducting an inquiry
3 under section 7 of this chapter, that there are not at least two (2)
4 persons that:

- 5 (1) provide broadband service at the time of the political
- 6 subdivision's inquiry under section 7 of this chapter; or
- 7 (2) intend to provide broadband service not later than three
- 8 (3) months after the date of the political subdivision's inquiry
- 9 under section 7 of this chapter;

10 in the designated area. However, this subsection does not prevent
11 a person from receiving any incentives or tax credits for which the
12 person otherwise qualifies under any other law.

13 Sec. 7. (a) As used in this section, "designated area" refers to an
14 area that is:

- 15 (1) within the jurisdiction of a political subdivision; and
- 16 (2) designated by a political subdivision under section 5(c) or
- 17 6(b) of this chapter to receive broadband service.

18 (b) A political subdivision shall conduct the inquiry required
19 under section 5(c)(1) or 6(b) of this chapter by sending by certified
20 mail a written request to each person that provides
21 communications service in any area in the jurisdiction of the
22 political subdivision. A written request under this subsection must
23 inquire as to whether the person:

- 24 (1) provides broadband service; or
- 25 (2) intends to provide broadband service not later than three
- 26 (3) months after the date of the political subdivision's written
- 27 request under this subsection;

28 in the designated area.

29 (c) The political subdivision may determine that there are not at
30 least two (2) persons that provide or intend to provide broadband
31 service in the designated area if the political subdivision's inquiry
32 under subsection (b) results in any of the following:

- 33 (1) The political subdivision receives one (1) or no written
- 34 responses to any of the requests sent under subsection (b)
- 35 within sixty (60) days of the date the requests were
- 36 postmarked.

- 37 (2) The political subdivision:
 - 38 (A) receives two (2) or more responses to a request under
 - 39 subsection (b) that indicate that the persons responding
 - 40 provide broadband service in the designated area at the
 - 41 time of the request; and
 - 42 (B) determines that one (1) or no person responding

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actually provides broadband service in the designated area.

(3) The political subdivision:

(A) receives two (2) or more responses to a request under subsection (b) that indicate that the persons responding intend to provide broadband service in the designated area not later than three (3) months after the date of the political subdivision's written request under subsection (b); and

(B) determines, after the appropriate amount of time, that one (1) or no person responding actually provided broadband service in the designated area not later than three (3) months after the date of the political subdivision's written request under subsection (b).

Sec. 8. A political subdivision that:

- (1) provides communications service; or**
- (2) owns, operates, controls, or otherwise has an interest in facilities for the provision of communications service;**

as permitted under this chapter, shall comply with any applicable state or federal antitrust laws.

Sec. 9. (a) The legislative body of a political subdivision may adopt a resolution for the issuance of bonds, at one (1) time or periodically, to finance the capital costs of facilities for the provision of broadband service as permitted by this chapter. The resolution authorizing the bonds must:

- (1) describe the purpose for which the indebtedness is to be created; and**
- (2) specify the total dollar amount of the bonds to be issued.**

(b) Bonds issued under this section shall be secured by and paid for solely out of the revenues generated by the political subdivision in providing broadband service as permitted under this chapter.

(c) A political subdivision shall not pay the origination, financing, or other carrying costs associated with the issuance of bonds under this section from the political subdivision's general fund or other enterprise funds.

(d) Bonds issued under this section must contain a statement, on the face of each bond, that the political subdivision issuing the bond is not obligated to pay the principal or interest on the bond except as provided in this section.

Sec. 10. (a) A person that:

- (1) is affected by a political subdivision's alleged violation of this chapter that occurs after June 30, 2006; and**

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1 (2) seeks:

2 (A) compensation from the political subdivision for the

3 alleged violation; or

4 (B) equitable relief, including a restraining order or an

5 injunction, from the alleged violation;

6 may not file a court action unless the person first files a written

7 complaint with the political subdivision in accordance with this

8 section.

9 (b) A political subdivision that:

10 (1) provides communications service; or

11 (2) owns, operates, controls, or otherwise has an interest in

12 facilities for the provision of communications service;

13 as permitted under this chapter, shall adopt an ordinance

14 establishing a procedure for the filing and resolution of complaints

15 concerning the political subdivision's provision of communications

16 service or facilities.

17 (c) The procedure established by a political subdivision under

18 subsection (b) must:

19 (1) permit any person to file a complaint concerning the

20 political subdivision's provision of communications service or

21 facilities, including a:

22 (A) subscriber of communications service provided by the

23 political subdivision; or

24 (B) person that provides, or has provided a notice of

25 intention to provide, any communications service in an

26 area in the political subdivision's jurisdiction;

27 (2) establish an expedited process that requires the political

28 subdivision to:

29 (A) hold a hearing on the complaint, unless the parties to

30 the proceeding waive the right to a hearing; and

31 (B) issue a final decision on the matter;

32 not later than forty-five (45) days after the complaint is filed;

33 (3) stay any proposal by the political subdivision to provide

34 broadband service under section 5 of this chapter pending:

35 (A) the political subdivision's resolution of a complaint

36 concerning the proposal; and

37 (B) the completion of any subsequent court proceeding

38 concerning the proposal; and

39 (4) provide that the political subdivision's failure to issue a

40 decision within the time allowed under subdivision (2) is

41 considered an adverse decision for purposes of appeal.

42 (d) A person aggrieved by a political subdivision's resolution of

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1 a complaint under this section may, regardless of the amount in
2 controversy, appeal the political subdivision's decision in a court
3 having jurisdiction. The court shall consider the matter de novo.

4 (e) The party prevailing in any action filed under this section is
5 entitled to recover the costs of the complaint and action, including
6 reasonable attorney's fees as determined by the court.

7 SECTION 59. IC 35-45-5-4.7, AS ADDED BY P.L.70-2005,
8 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2009]: Sec. 4.7. (a) An interactive computer service that
10 handles or retransmits a commercial electronic mail message has a
11 right of action against a person who initiates or assists the transmission
12 of the commercial electronic mail message that violates this chapter.

13 (b) This chapter does not provide a right of action against:

- 14 (1) an interactive computer service;
- 15 (2) a telephone company; ~~as defined in IC 8-1-2-88~~
- 16 (3) a CMRS provider (as defined in IC 36-8-16.5-6);
- 17 (4) a cable operator (as defined in 47 U.S.C. 522(5)); or
- 18 (5) any other entity that primarily provides connectivity to an
19 operator;

20 if the entity's equipment is used only to transport, handle, or retransmit
21 information that violates this chapter and is not capable of blocking the
22 retransmission of information that violates this chapter.

23 (c) It is a defense to an action under this section if the defendant
24 shows by a preponderance of the evidence that the violation of this
25 chapter resulted from a good faith error and occurred notwithstanding
26 the maintenance of procedures reasonably adopted to avoid violating
27 this chapter.

28 (d) If the plaintiff prevails in an action filed under this section, the
29 plaintiff is entitled to the following:

- 30 (1) An injunction to enjoin future violations of this chapter.
- 31 (2) Compensatory damages equal to any actual damage proven by
32 the plaintiff to have resulted from the initiation of the commercial
33 electronic mail message. If the plaintiff does not prove actual
34 damage, the plaintiff is entitled to presumptive damages of five
35 hundred dollars (\$500) for each commercial electronic mail
36 message that violates this chapter and that is sent by the
37 defendant:
38 (A) to the plaintiff; or
39 (B) through the plaintiff's interactive computer service.
- 40 (3) The plaintiff's reasonable attorney's fees and other litigation
41 costs reasonably incurred in connection with the action.

42 (e) A person outside Indiana who:

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1 (1) initiates or assists the transmission of a commercial electronic
 2 mail message that violates this chapter; and
 3 (2) knows or should know that the commercial electronic mail
 4 message will be received in Indiana;
 5 submits to the jurisdiction of Indiana courts for purposes of this
 6 chapter.

7 SECTION 60. IC 36-1-3-8, AS AMENDED BY P.L.200-2005,
 8 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2006]: Sec. 8. (a) Subject to subsection (b), a unit does not
 10 have the following:

11 (1) The power to condition or limit its civil liability, except as
 12 expressly granted by statute.

13 (2) The power to prescribe the law governing civil actions
 14 between private persons.

15 (3) The power to impose duties on another political subdivision,
 16 except as expressly granted by statute.

17 (4) The power to impose a tax, except as expressly granted by
 18 statute.

19 (5) The power to impose a license fee greater than that reasonably
 20 related to the administrative cost of exercising a regulatory power.

21 (6) The power to impose a service charge or user fee greater than
 22 that reasonably related to reasonable and just rates and charges
 23 for services.

24 (7) The power to regulate conduct that is regulated by a state
 25 agency, except as expressly granted by statute.

26 (8) The power to prescribe a penalty for conduct constituting a
 27 crime or infraction under statute.

28 (9) The power to prescribe a penalty of imprisonment for an
 29 ordinance violation.

30 (10) The power to prescribe a penalty of a fine as follows:

31 (A) More than ten thousand dollars (\$10,000) for the violation
 32 of an ordinance or a regulation concerning air emissions
 33 adopted by a county that has received approval to establish an
 34 air program under IC 13-17-12-6.

35 (B) For a violation of any other ordinance:

36 (i) more than two thousand five hundred dollars (\$2,500) for
 37 a first violation of the ordinance; and

38 (ii) except as provided in subsection (c), more than seven
 39 thousand five hundred dollars (\$7,500) for a second or
 40 subsequent violation of the ordinance.

41 (11) The power to invest money, except as expressly granted by
 42 statute.

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- 1 (12) The power to order or conduct an election, except as
- 2 expressly granted by statute.
- 3 **(13) The power to:**
- 4 **(A) provide any communications service (as defined in**
- 5 **IC 8-1-35-2), except as permitted under IC 8-1-35; or**
- 6 **(B) construct, control, own, operate, or otherwise have an**
- 7 **interest in any facility for providing communications**
- 8 **service (as defined in IC 8-1-35-2), except as permitted**
- 9 **under IC 8-1-35.**
- 10 (b) A township does not have the following, except as expressly
- 11 granted by statute:
- 12 (1) The power to require a license or impose a license fee.
- 13 (2) The power to impose a service charge or user fee.
- 14 (3) The power to prescribe a penalty.
- 15 (c) Subsection (a)(10)(B)(ii) does not apply to the violation of an
- 16 ordinance that regulates traffic or parking.
- 17 SECTION 61. THE FOLLOWING ARE REPEALED [EFFECTIVE
- 18 UPON PASSAGE]: IC 8-1-2.6-3; IC 8-1-2.6-5; IC 8-1-2.6-7.
- 19 SECTION 62. THE FOLLOWING ARE REPEALED [EFFECTIVE
- 20 JULY 1, 2009]: IC 8-1-2-88; IC 8-1-2-88.5; IC 8-1-2.6-6; IC 8-1-17-6;
- 21 IC 8-1-17-21; IC 8-1-17-22; IC 8-1-17-22.5.
- 22 SECTION 63. [EFFECTIVE UPON PASSAGE] **(a) As used in this**
- 23 **SECTION, "basic telecommunications service" has the meaning**
- 24 **set forth in IC 8-1-2.6-0.1, as added by this act.**
- 25 **(b) As used in this SECTION, "commission" refers to the**
- 26 **Indiana utility regulatory commission created by IC 8-1-1-2.**
- 27 **(c) As used in this SECTION, "division" refers to the division of**
- 28 **consumer protection of the office of the attorney general created**
- 29 **by IC 4-6-9-1.**
- 30 **(d) As used in this SECTION, "provider" has the meaning set**
- 31 **forth in IC 8-1-2.6-0.4, as added by this act.**
- 32 **(e) Notwithstanding IC 8-1-2.6-1.5 and IC 8-1-2.6-13(e), both as**
- 33 **added by this act, the commission may do any of the following**
- 34 **before July 1, 2009:**
- 35 **(1) Take any action necessary to divest itself, by July 1, 2009,**
- 36 **of:**
- 37 **(A) any jurisdiction that:**
- 38 **(i) is not described in IC 8-1-2.6-1.5(b), as added by this**
- 39 **act, or IC 8-1-2.6-13(d), as added by this act; and**
- 40 **(ii) the commission exercises over basic**
- 41 **telecommunications service before July 1, 2009; and**
- 42 **(B) any of the commission's consumer protection activities**

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1 described in IC 8-1-2.6-13(e), as added by this act.
2 (f) Notwithstanding IC 8-1-2.6-13(e), as added by this act, the
3 office of utility consumer counselor created by IC 8-1-1.1-2 may,
4 before July 1, 2009, take any action necessary to:
5 (1) ensure that the office's responsibilities under IC 8-1-1.1
6 with respect to providers are transferred to the division
7 beginning July 1, 2009; and
8 (2) otherwise divest itself, by July 1, 2009, of its consumer
9 protection responsibilities with respect to providers;
10 as required by IC 8-1-2.6-13(e), as added by this act.
11 (g) Notwithstanding IC 8-1-2.6-13(e), as added by this act, the
12 division may, before July 1, 2009:
13 (1) adopt rules under IC 4-22-2; and
14 (2) take any other action necessary;
15 to allow it to assume, beginning July 1, 2009, consumer protection
16 responsibilities with respect to providers, as required by
17 IC 8-1-2.6-13(e), as added by this act.
18 (h) This SECTION expires January 1, 2010.
19 SECTION 64. [EFFECTIVE UPON PASSAGE] (a) This
20 SECTION applies to a political subdivision that provides
21 communications service (as defined in IC 8-1-35-2, as added by this
22 act) in an area in the political subdivision's jurisdiction on June 30,
23 2006.
24 (b) Notwithstanding IC 8-1-35-10, as added by this act, a
25 political subdivision described in subsection (a) shall adopt the
26 ordinance required under IC 8-1-35-10, as added by this act, not
27 later than June 1, 2006.
28 (c) An ordinance adopted under this SECTION must:
29 (1) take effect on July 1, 2006; and
30 (2) apply to complaints filed under IC 8-1-35-10, as added by
31 this act, after June 30, 2006.
32 SECTION 65. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senators Landske and Kruse be added as coauthors of Senate Bill 245.

HERSHMAN

SENATE MOTION

Madam President: I move that Senators Paul, Nugent, Weatherwax and Lewis be added as coauthors of Senate Bill 245.

HERSHMAN

SENATE MOTION

Madam President: I move that Senator Heinold be added as coauthor of Senate Bill 245.

HERSHMAN

COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Utilities, and Public Policy, to which was referred Senate Bill No. 245, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation and to make an appropriation.

Page 3, delete lines 4 through 42.

Delete pages 4 through 18

Page 19, delete lines 1 through 26.

Page 21, line 32, after "(a)" insert "**This section does not apply to a corporation that has withdrawn from the jurisdiction of the commission under:**

(1) IC 8-1-13-18.5; or

(2) IC 8-1-17-22.5.

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(b)".

Page 22, line 14, delete "(b)" and insert "(c) **This subsection does not apply to a communications service provider that is a corporation organized under IC 8-1-13 (or a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13).**".

Page 22, line 25, delete "(c)" and insert "(d)".

Page 22, line 38, delete "(d)" and insert "(e)".

Page 22, line 40, delete "(a);" and insert "(b);".

Page 22, line 42, delete "(b);" and insert "(c);".

Page 23, line 2, delete "(c)," and insert "(d),".

Page 23, line 7, delete "(c)," and insert "(d),".

Page 23, line 12, delete "(e) Subject to subsection (g)," and insert "**(f) Subject to subsection (h),**".

Page 23, line 30, delete "(f)" and insert "(g)".

Page 23, line 31, delete "(e)" and insert "(f)".

Page 23, line 33, delete "(g)," and insert "(h),".

Page 24, line 5, delete "(e)" and insert "(f)".

Page 24, line 8, delete "(g)" and insert "(h)".

Page 24, line 9, after "not" insert "

(1)".

Page 24, line 11, delete "." and insert "; **or**".

Page 24, between lines 11 and 12, begin a new line block indented and insert:

"(2) require any person to comply with this section if the person is exempt from federal laws or regulations concerning rates and conditions for pole attachments or other connections to facilities."

Page 25, between lines 27 and 28, begin a new paragraph and insert:

"(c) The term does not include a functionally equivalent service provided by a person or an entity described in IC 8-1-2-1.1."

Page 28, line 31, delete "has the meaning set forth in IC 8-1-35-1." and insert "**means a connection to the Internet that provides capacity for transmission at an average speed of at least one and one-half (1.5) megabits per second downstream and at least three hundred eighty-four (384) kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber optic cable, coaxial cable, broadband over power lines, or other facilities or future technologies. The term does not include any of the following:**

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(1) Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.

(2) Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.

(3) The transmission of video programming or other programming:

(A) provided by; or

(B) generally considered comparable to programming provided by;

a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television.

(4) A connection to the Internet provided through satellite technology."

Page 30, line 21, after "area," insert "at the average speeds set forth in subsection (a),".

Page 32, line 12, delete "Notwithstanding:".

Page 32, delete lines 13 through 18.

Page 32, line 19, delete "(b)".

Page 32, run in lines 12 through 19.

Page 32, line 22, delete "or".

Page 32, line 24, after ";" insert "or".

Page 32, between lines 24 and 25, begin a new line block indented and insert:

"(3) the unbundled access of one (1) provider to the network elements of another provider for purposes of 47 U.S.C. 251(c)(3);".

Page 32, line 28, delete "(c) Except as provided in subsection (a) and subject" and insert "(b) Subject".

Page 33, line 2, delete "(d) Subject to subsection (a), if" and insert "(c) If".

Page 37, line 17, delete "2004, except that:" and insert "2004. However, a provider may do either of the following:".

Page 37, line 18, delete "the parties to a settlement agreement may renegotiate" and insert "Renegotiate".

Page 37, line 20, delete "; and" and insert ".".

Page 37, line 21, delete "the commission shall allow a provider subject to a".

Page 37, line 22, delete "settlement agreement to increase" and insert "Increase".

Page 38, line 36, delete "1.5(c)" and insert "1.5(b)".

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Page 39, line 37, delete "This" and insert **"The commission may revoke a certificate issued to a communications service provider under IC 8-1-32.5 if the communications service provider fails or refuses to report any information required by the commission under this subdivision. However, this"**.

Page 47, after line 42, begin a new paragraph and insert:

"SECTION 40. IC 8-1-6-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. (a) As used in this section, "communications service provider" refers to a communications service provider (as defined in IC 8-1-32.5-4) that has a certificate of territorial authority on file with the commission under IC 8-1-32.5.**

(b) As used in this section, "division" refers to the division of consumer protection of the office of the attorney general created by IC 4-6-9-1.

(c) The communications service provider account is established in the state general fund to pay the expenses of:

(1) the commission in:

(A) performing any duties described in IC 8-1-2.6-13(d); and

(B) performing any other duties lawfully assigned to the commission under state or federal law with respect to communications service providers; and

(2) the division in performing any of the division's duties under IC 8-1-2.6-13(e).

The commission shall administer the account.

(d) The account consists of the following:

(1) Amounts appropriated by the general assembly under subsection (f).

(2) Any funds received from the federal government for the commission's use in performing any duties lawfully assigned to the commission with respect to communications service providers.

(e) All appropriations paid out of the account are subject to the prior approval of the general assembly, the governor, and the budget agency.

(f) There is annually appropriated to the commission and the division from the state general fund an amount not in excess of the respective annual expenses of the commission and the division described in subsection (c). The expenses described in subsection (c) shall be determined by totaling:

(1) the commission's annual budget with respect to

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communications service providers, as approved by the governor and the budget agency; and
(2) the division's annual budget with respect to communications service providers, as approved by the governor and the budget agency;
plus any amount approved by the governor and the budget agency to be used for contingencies.

SECTION 41. IC 8-1-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. **(a)** The term "public utility", as used in this chapter, shall mean and embrace every corporation, company, cooperative organization of any kind, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever that on or after March 15, 1969, may own, operate, manage, or control any plant or equipment within the state ~~for the conveyance of telegraph or telephone messages;~~ or for the production, transmission, delivery, or furnishing of heat, light, water, or power or for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste, for service directly or indirectly to the public, but said term shall not include a municipality that may after March 14, 1969, acquire, own, or operate any of the foregoing facilities.

(b) The term "gross revenue", as used in this chapter, shall include all intrastate operating revenue received by a public utility ~~for the conveyance of telegraph or telephone messages or~~ for the production, transmission, delivery, or furnishing of heat, light, water, or power or for the collection, treatment, purification, or disposal in any sanitary manner of liquid or solid waste, sewage, night soil, and industrial waste for service directly or indirectly to the public. Provided, however, that such term shall not include revenue derived by a public utility in the sale of public utility services, products, or commodities to another public or municipal utility for resale by the latter."

Page 73, between lines 29 and 30, begin a new line double block indented and insert:

"(F) That the provider agrees to report, at the times required by the commission, any information required by the commission under IC 8-1-2.6-13(d)(9)."

Page 73, line 39, after "effect." insert **"For purposes of this subsection, if a corporation organized under IC 8-1-13 (or a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13) holds a certificate of public convenience and necessity issued by the commission before,**

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on, or after July 1, 2009, that certificate may serve as the certificate required under this chapter with respect to any communications service offered by the corporation, subject to the commission's right to require the corporation to provide any information that an applicant is otherwise required to submit under subsection (a) or that a holder is required to report under IC 8-1-2.6-13(d)(9)."

Page 80, line 17, delete "communications service provider account established by" and insert "**state general fund.**".

Page 80, delete line 18.

Page 84, between lines 24 and 25, begin a new paragraph and insert:

"(c) The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 17 of this chapter."

Page 96, line 32, after ";" insert "**and**".

Page 96, line 34, delete ";" and" and insert ".".

Page 96, delete lines 35 through 36.

Page 99, line 25, delete "is not a person" and insert "**are not at least two (2) persons**".

Page 99, line 26, delete "provides" and insert "**provide**".

Page 99, line 28, delete "intends" and insert "**intend**".

Page 100, line 32, delete "is not a person" and insert "**are not at least two (2) persons**".

Page 100, line 33, delete "provides" and insert "**provide**".

Page 100, line 35, delete "intends" and insert "**intend**".

Page 101, line 15, delete "is not a" and insert "**are not at least two (2) persons that**".

Page 101, line 16, delete "person that provides or intends" and insert "**provide or intend**".

Page 101, line 19, delete "does not receive a" and insert "**receives one (1) or no**".

Page 101, line 20, delete "response" and insert "**responses**".

Page 101, line 24, delete "one (1)" and insert "**two (2)**".

Page 101, line 25, delete "indicates" and insert "**indicate**".

Page 101, line 28, after "that" insert "**one (1) or**".

Page 101, line 31, delete "one (1)" and insert "**two (2)**".

Page 101, line 32, delete "indicates" and insert "**indicate**".

Page 101, line 37, after "that" insert "**one (1) or**".

Page 103, line 42, after "company" insert ";".

Page 103, line 42, strike "(as defined in IC 8-1-2-88".

Page 103, line 42, delete "(before its".

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Page 104, delete line 1.

Page 106, line 24, delete "IC 8-1-2.6-1.5(c)," and insert "IC 8-1-2.6-1.5(b),".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 245 as introduced.)

WYSS, Chairperson

Committee Vote: Yeas 8, Nays 2.

C
O
P
Y

