February 10, 2012

ENGROSSED
HOUSE BILL No. 1112

DIGEST OF HB 1112 (Updated February 9, 2012 11:58 am - DI 103)

Citations Affected: IC 8-1.

Synopsis: Telecommunications providers of last resort. Amends references to federal telecommunications law made obsolete by amendments to the federal law. Repeals the statute that requires the utility regulatory commission (IURC) to determine, under certain circumstances, a successor local telephone exchange carrier for an area in which an exiting local exchange carrier ceases operations. Makes conforming amendments. For purposes of the statute that allows the IURC to declare an emergency in an area in Indiana in which voice service is not offered by a communications service provider, specifies that if the IURC authorizes a provider to offer voice service in the area, the IURC must permit the provider to offer the service through any available technology or medium determined by the provider. Provides that upon notice to the IURC by an incumbent local exchange carrier

(Continued next page)

Effective: July 1, 2012.

Lehman, DeLaney, VanNatter, Stevenson

(SENATE SPONSOR — HERSHMAN)

January 9, 2012, read first time and referred to Committee on Utilities and Energy.
January 23, 2012, amended, reported — Do Pass.
January 26, 2012, read second time, ordered engrossed. Engrossed.
January 27, 2012, read third time, passed. Yeas 80, nays 12.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Utilities and Technology.
February 9, 2012, reported favorably — Do Pass.

C o p y

Digest Continued

that is the provider of last resort in one or more parts of the incumbent local exchange carrier's service area, the incumbent local exchange carrier is relieved of its obligation as the provider of last resort in any part of the incumbent local exchange carrier's service area in which there are at least two communications service providers (one of which may be the incumbent local exchange carrier) offering certain voice telephony services specified in federal regulations. Provides that after June 30, 2014, upon notice to the IURC by an incumbent local exchange carrier that is the provider of last resort in one or more parts of the incumbent local exchange carrier's service area, the incumbent local exchange carrier is relieved of its provider of last resort obligation with respect to any part of its service area identified in its notice. Specifies that relief from a provider of last resort obligation does not affect an incumbent local exchange carrier's obligations under federal law.

C o p y

February 10, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

C o p y

ENGROSSED
HOUSE BILL No. 1112

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-32.4-3.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 3.2. As used in this chapter, "communications service provider" has the meaning set forth in IC 8-1-32.6-3.**

SECTION 2. IC 8-1-32.4-5, AS ADDED BY P.L.27-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. As used in this chapter, "facilities based local exchange carrier" means a local exchange carrier that provides local exchange service:

(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))~~ **47 U.S.C. 153)** of another carrier.

SECTION 3. IC 8-1-32.4-7, AS ADDED BY P.L.27-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2012]: Sec. 7. As used in this chapter, "local exchange carrier" has the meaning set forth in ~~47 U.S.C. 153(26).~~ **47 U.S.C. 153.**

SECTION 4. IC 8-1-32.4-8, AS ADDED BY P.L.27-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. As used in this chapter, "local exchange service" means the provision of telephone exchange service (as defined in ~~47 U.S.C. 153(47))~~ **47 U.S.C. 153)** or exchange access (as defined in ~~47 U.S.C. 153(16)).~~ **47 U.S.C. 153).**

SECTION 5. IC 8-1-32.4-10 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 10. As used in this chapter, "successor provider" means a provider that:~~

~~(1) holds a certificate of territorial authority issued by the commission; and~~

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

SECTION 6. IC 8-1-32.4-11, AS ADDED BY P.L.27-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. Except as provided in:

(1) IC 8-1-32.6-8;

(2) section 13 of this chapter; ~~or~~

(3) section 16 of this chapter; **or**

(4) section 17 of this chapter;

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

SECTION 7. IC 8-1-32.4-14 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 14. (a) Except as provided in IC 8-1-32.6-8 or section 16 of this chapter, if:~~

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

~~(2) there is not another provider that:~~

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

~~(B) has facilities sufficient to provide basic telecommunications service in the area;~~

~~the commission shall conduct a formal proceeding to determine the successor provider for the area.~~

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

~~(1) A reasonable time, determined by the commission and in accordance with industry practices, in which to:~~

C o p y

~~(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.~~

SECTION 8. IC 8-1-32.4-15, AS ADDED BY P.L.27-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 15. ~~(a) The commission may, on its own motion or on the petition of an interested party, institute an expedited~~

C o p y

~~proceeding 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,~~ **(a)** The commission may declare in accordance with IC 8-1-2-113 that an emergency exists ~~and~~ **in an area in Indiana that is not served by any communications service provider offering voice service through any technology or medium. If the commission declares an emergency under this section, the commission may** issue any order necessary to protect the health, safety, and welfare of affected ~~customers~~ **residents or businesses** and ~~to~~ **may** expedite the ~~restoration or continuation~~ **availability** of ~~local exchange~~ **voice** 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 8-1-32.6-8 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.~~ **residents or businesses.**

(b) If the commission authorizes a communications service provider to offer voice service under this section, the commission shall permit the communications service provider to offer the voice service through any available technology or medium determined by the communications service provider.

SECTION 9. IC 8-1-32.4-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 17. (a) Subject to subsection (b), upon notice to the**

C o p y

commission by an incumbent local exchange carrier that is the provider of last resort in one (1) or more parts of the incumbent local exchange carrier's service area, the incumbent local exchange carrier is relieved of its obligation as the provider of last resort in any part of the incumbent local exchange carrier's service area in which there are at least two (2) ETC eligible communications service providers, one (1) of which may be the incumbent local exchange carrier, offering a voice service through any technology or medium, including any of the following:

(1) Wire communication (as defined in 47 U.S.C. 153).

(2) Internet Protocol enabled services.

(3) Commercial mobile service (as defined in 47 U.S.C. 332).

(b) After June 30, 2014, upon notice to the commission by an incumbent local exchange carrier that is the provider of last resort in one (1) or more parts of the incumbent local exchange carrier's service area, the incumbent local exchange carrier is relieved of its provider of last resort obligation with respect to any part of its service area identified in the incumbent local exchange carrier's notice to the commission under this subsection.

(c) Relief from a provider of last resort obligation under this chapter does not affect an incumbent local exchange carrier's obligations under federal law.

(d) As used in this section, "ETC eligible communications service provider" means a communications service provider that provides, using any available technology or medium, the voice telephony services described in 47 CFR 54.101, regardless of whether the communications service provider has been designated as an eligible telecommunications carrier.

SECTION 10. IC 8-1-32.6-8, AS ADDED BY P.L.27-2006, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) ~~Notwithstanding IC 8-1-32.4-14,~~ The commission may not require a communications service provider, including a provider of last resort, to provide any communications service to the occupants of multitenant real estate if the owner, operator, or developer of the multitenant real estate does any of the following to the benefit of another communications service provider:

(1) Permits only one (1) communications service provider to install the provider's facilities or equipment during the construction or development phase of the multitenant real estate.

(2) Accepts or agrees to accept incentives or rewards that:

(A) are offered by a communications service provider to the owner, operator, developer, or occupants of the multitenant

C o p y

real estate; and

(B) are contingent upon the provision of communications service by that provider to the occupants of the multitenant real estate, to the exclusion of any services provided by other communications service providers.

(3) Collects from the occupants of the multitenant real estate any charges for the provision of communications service to the occupants, including charges collected through rent, fees, or dues.

(4) Enters into an agreement with a communications service provider that is prohibited by section 7 of this chapter.

(b) This subsection applies to a communications service provider that is relieved under subsection (a) of an obligation to provide communications service to the occupants of multitenant real estate. This section does not prohibit the communications service provider from voluntarily offering service to the occupants of the multitenant real estate. However, the commission shall not exercise jurisdiction over the terms, conditions, rates, or availability of any communications service voluntarily offered by a communications service provider under this subsection.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities and Energy, to which was referred House Bill 1112, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-32.4-3.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 3.2. As used in this chapter, "communications service provider" has the meaning set forth in IC 8-1-32.6-3.**".

Page 4, delete lines 9 through 33, begin a new paragraph and insert:

"~~(b) In a proceeding under this section,~~ **(a)** The commission may declare in accordance with IC 8-1-2-113 that an emergency exists ~~and~~ **in an area in Indiana that is not served by any communications service provider offering voice service through any technology or medium. If the commission declares an emergency under this section, the commission may** issue any order necessary to protect the health, safety, and welfare of affected ~~customers~~ **residents or businesses** and ~~to~~ **may** expedite the ~~restoration or continuation~~ **availability** of ~~local exchange~~ **voice** 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 8-1-32.6-8 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.~~ **residents or businesses.**

(b) If the commission authorizes a communications service provider to offer voice service under this section, the commission shall permit the communications service provider to offer the voice service through any available technology or medium determined by the communications service provider.".

Page 4, line 42, delete "communications service providers" and insert "**ETC eligible communications service providers,**".

C o p y

Page 5, line 1, delete "(as defined in IC 8-1-32.6-3),".

Page 5, line 7, delete "2013," and insert "**2014,**".

Page 5, between lines 16 and 17, begin a new paragraph and insert:

"**(d) As used in this section, "ETC eligible communications service provider" means a communications service provider that provides, using any available technology or medium, the voice telephony services described in 47 CFR 54.101, regardless of whether the communications service provider has been designated as an eligible telecommunications carrier.** ".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1112 as introduced.)

LUTZ, Chair

Committee Vote: yeas 8, nays 2.

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Technology, to which was referred House Bill No. 1112, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1112 as printed January 23, 2012.)

MERRITT, Chairperson

Committee Vote: Yeas 7, Nays 2.

C o p y