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# HOUSE BILL No. 1112

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## DIGEST OF INTRODUCED BILL

**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. Provides that 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 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 voice service. Provides that after June 30, 2013, 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.

**Effective:** July 1, 2012.

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## Lehman

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January 9, 2012, read first time and referred to Committee on Utilities and Energy.

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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.

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# 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:*

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

- 6 (1) exclusively over facilities owned or leased by the carrier; or
- 7 (2) predominantly over facilities owned or leased by the carrier,  
8 in combination with the resale of the telecommunications service  
9 (as defined in ~~47 U.S.C. 153(46)~~ **47 U.S.C. 153**) of another  
10 carrier.

11 SECTION 2. IC 8-1-32.4-7, AS ADDED BY P.L.27-2006,  
12 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2012]: Sec. 7. As used in this chapter, "local exchange carrier"  
14 has the meaning set forth in ~~47 U.S.C. 153(26)~~ **47 U.S.C. 153**.

15 SECTION 3. IC 8-1-32.4-8, AS ADDED BY P.L.27-2006,  
16 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2012]: Sec. 8. As used in this chapter, "local exchange



1 service" means the provision of telephone exchange service (as defined  
2 in ~~47 U.S.C. 153(47)~~ **47 U.S.C. 153**) or exchange access (as defined  
3 in ~~47 U.S.C. 153(16)~~; **47 U.S.C. 153**).

4 SECTION 4. IC 8-1-32.4-10 IS REPEALED [EFFECTIVE JULY  
5 1, 2012]. ~~Sec. 10: As used in this chapter, "successor provider" means~~  
6 ~~a provider that:~~

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

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

11 SECTION 5. IC 8-1-32.4-11, AS ADDED BY P.L.27-2006,  
12 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2012]: Sec. 11. Except as provided in:

- 14 (1) IC 8-1-32.6-8;
- 15 (2) section 13 of this chapter; or
- 16 (3) section 16 of this chapter; or
- 17 **(4) section 17 of this chapter;**

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

21 SECTION 6. IC 8-1-32.4-14 IS REPEALED [EFFECTIVE JULY  
22 1, 2012]. ~~Sec. 14: (a) Except as provided in IC 8-1-32.6-8 or section 16~~  
23 ~~of this chapter, if:~~

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

27 (2) there is not another provider that:

- 28 (A) holds a certificate of territorial authority in the area; and
- 29 (B) has facilities sufficient to provide basic  
30 telecommunications service in the area;

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

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

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

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

40 necessary to serve the customers of the exiting provider.

41 (2) A temporary exemption from any lawful obligation to  
42 unbundle the successor provider's network elements. The

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1 exemption under this subdivision shall continue for a period  
 2 determined by the commission to be reasonably necessary to  
 3 allow the successor provider to:

4 (A) modify, construct, or obtain the facilities; or

5 (B) deploy an alternative technology;

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

8 (3) A temporary exemption from any lawful obligation to provide  
 9 telecommunications service for resale within the affected area.

10 The exemption under this subdivision shall continue for a period  
 11 determined by the commission to be reasonably necessary to  
 12 allow the successor provider to:

13 (A) modify, construct, or obtain the facilities; or

14 (B) deploy an alternative technology;

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

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

21 (1) serving customers in the affected area; or

22 (2) purchasing the facilities of the exiting provider.

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

34 SECTION 7. IC 8-1-32.4-15, AS ADDED BY P.L.27-2006,  
 35 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2012]: Sec. 15. (a) The commission may, on its own motion  
 37 or on the petition of an interested party, institute an expedited  
 38 proceeding under this section if the commission determines that:

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

42 (2) there is not another provider that:

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1 (A) holds a certificate of territorial authority in the area; and  
 2 (B) has facilities sufficient to provide local exchange service  
 3 in the area; and  
 4 (3) the facilities based local exchange carrier has:  
 5 (A) ceased providing local exchange service to the customers  
 6 in the area; or  
 7 (B) abandoned the operation of the carrier's facilities in the  
 8 area that are used to provide local exchange service.  
 9 (b) ~~In a proceeding under this section,~~ The commission may declare  
 10 in accordance with IC 8-1-2-113 that an emergency exists ~~and in an~~  
 11 **area in Indiana that is not served by any communications service**  
 12 **provider (as defined in 8-1-32.6-3) offering voice service through**  
 13 **any technology or medium. If the commission declares an**  
 14 **emergency under this section, the commission may** issue any order  
 15 necessary to protect the health, safety, and welfare of affected  
 16 customers ~~residents or businesses~~ and ~~to may expedite the restoration~~  
 17 ~~or continuation availability~~ of local exchange voice service to the  
 18 affected customers. ~~residents or businesses.~~ An order issued under  
 19 this ~~subsection~~ **section** may:  
 20 (1) provide for the temporary operation of ~~the facilities based~~  
 21 ~~local exchange carrier's~~ **any available telecommunications**  
 22 facilities by any provider, including a provider that has not been  
 23 issued a certificate of territorial authority ~~for the area~~ by the  
 24 commission;  
 25 (2) authorize one (1) or more third parties to enter the premises of  
 26 any abandoned facilities; or  
 27 (3) grant temporary waivers from **any** quality of service  
 28 requirements for any provider (A) providing service under  
 29 subdivision (1). ~~or (B) designated as a successor provider by the~~  
 30 ~~commission under subsection (c).~~  
 31 (c) ~~Except as provided in IC 8-1-32.6-8 or section 16 of this chapter,~~  
 32 ~~the commission may act under section 14 of this chapter to designate~~  
 33 ~~a successor provider in any proceeding under this section.~~  
 34 SECTION 8. IC 8-1-32.4-17 IS ADDED TO THE INDIANA CODE  
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 36 1, 2012]: **Sec. 17. (a) Subject to subsection (b), upon notice to the**  
 37 **commission by an incumbent local exchange carrier that is the**  
 38 **provider of last resort in one (1) or more parts of the incumbent**  
 39 **local exchange carrier's service area, the incumbent local exchange**  
 40 **carrier is relieved of its obligation as the provider of last resort in**  
 41 **any part of the incumbent local exchange carrier's service area in**  
 42 **which there are at least two (2) communications service providers**

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1 (as defined in IC 8-1-32.6-3), one (1) of which may be the  
 2 incumbent local exchange carrier, offering a voice service through  
 3 any technology or medium, including any of the following:

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

5 (2) Internet Protocol enabled services.

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

7 (b) After June 30, 2013, upon notice to the commission by an  
 8 incumbent local exchange carrier that is the provider of last resort  
 9 in one (1) or more parts of the incumbent local exchange carrier's  
 10 service area, the incumbent local exchange carrier is relieved of its  
 11 provider of last resort obligation with respect to any part of its  
 12 service area identified in the incumbent local exchange carrier's  
 13 notice to the commission under this subsection.

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

17 SECTION 9. IC 8-1-32.6-8, AS ADDED BY P.L.27-2006,  
 18 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 JULY 1, 2012]: Sec. 8. (a) ~~Notwithstanding IC 8-1-32.4-14,~~ The  
 20 commission may not require a communications service provider,  
 21 including a provider of last resort, to provide any communications  
 22 service to the occupants of multitenant real estate if the owner,  
 23 operator, or developer of the multitenant real estate does any of the  
 24 following to the benefit of another communications service provider:

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

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

29 (A) are offered by a communications service provider to the  
 30 owner, operator, developer, or occupants of the multitenant  
 31 real estate; and

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

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

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

41 (b) This subsection applies to a communications service provider  
 42 that is relieved under subsection (a) of an obligation to provide

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1 communications service to the occupants of multitenant real estate.  
2 This section does not prohibit the communications service provider  
3 from voluntarily offering service to the occupants of the multitenant  
4 real estate. However, the commission shall not exercise jurisdiction  
5 over the terms, conditions, rates, or availability of any communications  
6 service voluntarily offered by a communications service provider under  
7 this subsection.

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