



January 27, 2012

SENATE BILL No. 308

DIGEST OF SB 308 (Updated January 26, 2012 11:29 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 (ILEC) that is the provider of last resort (POLR) in one or more parts of the ILEC's service area, the ILEC is relieved of its obligation as the POLR in any part of the ILEC's service area in which there are at least two communications service providers (one of which may be the ILEC) offering certain voice telephony services specified in federal regulations. Provides that after June 30, 2014, upon notice to the IURC by an ILEC that is the POLR in one or more parts of the ILEC's service area, the ILEC is relieved of its POLR obligation with respect to any part of its service area identified in its notice. Specifies that relief from a POLR obligation does not affect an ILEC's obligations under federal law.

Effective: July 1, 2012.

Hershman

January 5, 2012, read first time and referred to Committee on Utilities & Technology.
January 26, 2012, amended, reported favorably — Do Pass.

SB 308—LS 6829/DI 101+



C
o
p
y

January 27, 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

SENATE BILL No. 308

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

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

11 (1) exclusively over facilities owned or leased by the carrier; or
12 (2) predominantly over facilities owned or leased by the carrier,
13 in combination with the resale of the telecommunications service
14 (as defined in ~~47 U.S.C. 153(46))~~ **47 U.S.C. 153**) of another
15 carrier.

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

SB 308—LS 6829/DI 101+



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

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

9 SECTION 5. IC 8-1-32.4-10 IS REPEALED [EFFECTIVE JULY
10 1, 2012]. ~~Sec. 10. As used in this chapter, "successor provider" means~~
11 ~~a 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 for a
15 defined geographic area previously served by an exiting provider.

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

- 19 (1) IC 8-1-32.6-8;
- 20 (2) section 13 of this chapter; ~~or~~
- 21 (3) section 16 of this chapter; ~~or~~
- 22 **(4) section 17 of this chapter;**

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

26 SECTION 7. IC 8-1-32.4-14 IS REPEALED [EFFECTIVE JULY
27 1, 2012]. ~~Sec. 14. (a) Except as provided in IC 8-1-32.6-8 or section 16~~
28 ~~of this chapter, if:~~

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

- 32 (2) there is not another provider that:
 - 33 (A) holds a certificate of territorial authority in the area; and
 - 34 (B) has facilities sufficient to provide basic
 - 35 telecommunications service in the area;

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

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

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

C
o
p
y



1 (A) modify, construct, or obtain the facilities; or
 2 (B) deploy an approved alternative technology;
 3 necessary to serve the customers of the exiting provider.
 4 (2) A temporary exemption from any lawful obligation to
 5 unbundle the successor provider's network elements. The
 6 exemption under this subdivision shall continue for a period
 7 determined by the commission to be reasonably necessary to
 8 allow the successor provider to:
 9 (A) modify, construct, or obtain the facilities; or
 10 (B) deploy an alternative technology;
 11 that will allow the successor provider to serve the customers of
 12 the exiting provider.
 13 (3) A temporary exemption from any lawful obligation to provide
 14 telecommunications service for resale within the affected area.
 15 The exemption under this subdivision shall continue for a period
 16 determined by the commission to be reasonably necessary to
 17 allow the successor provider to:
 18 (A) modify, construct, or obtain the facilities; or
 19 (B) deploy an alternative technology;
 20 that will allow the successor provider to serve the customers of
 21 the exiting provider.
 22 (c) The successor provider is entitled to obtain funding from a state
 23 universal service fund to support the provider's assumption of
 24 obligations as the provider of last resort for the area. This section does
 25 not prohibit a provider from voluntarily:
 26 (1) serving customers in the affected area; or
 27 (2) purchasing the facilities of the exiting provider.
 28 (d) A customer within the defined geographic area to be served by
 29 the successor provider is considered to have applied for basic
 30 telecommunications service from the successor provider on the
 31 effective date of the commission's designation of the successor
 32 provider. Each right, privilege, and obligation applicable to customers
 33 of the successor provider applies to a customer transferred to the
 34 successor provider under this section. A customer transferred to the
 35 successor provider under this section is subject to the successor
 36 provider's terms of service as specified in an applicable tariff or
 37 contract. This section does not prohibit a customer from seeking, at any
 38 time, service from a provider other than the successor provider.
 39 SECTION 8. IC 8-1-32.4-15, AS ADDED BY P.L.27-2006,
 40 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2012]: Sec. 15. (a) The commission may, on its own motion
 42 or on the petition of an interested party, institute an expedited

COPY



1 proceeding under this section if the commission determines that:

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

5 (2) there is not another provider that:

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

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

9 (3) the facilities based local exchange carrier has:

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

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

14 (b) In a proceeding under this section; (a) The commission may
15 declare in accordance with IC 8-1-2-113 that an emergency exists and
16 in an area in Indiana that is not served by any communications
17 service provider offering voice service through any technology or
18 medium. If the commission declares an emergency under this
19 section, the commission may issue any order necessary to protect the
20 health, safety, and welfare of affected customers residents or
21 businesses and to may expedite the restoration or continuation
22 availability of local exchange voice service to the affected customers.
23 An order issued under this subsection may: (1) provide for the
24 temporary operation of the facilities based local exchange carrier's
25 facilities by any provider, including a provider that has not been issued
26 a certificate of territorial authority by the commission; (2) authorize
27 one (1) or more third parties to enter the premises of any abandoned
28 facilities; or (3) grant temporary waivers from quality of service
29 requirements for any provider: (A) providing service under subdivision
30 (1); or (B) designated as a successor provider by the commission under
31 subsection (c). (c) Except as provided in IC 8-1-32.6-8 or section 16 of
32 this chapter, the commission may act under section 14 of this chapter
33 to designate a successor provider in any proceeding under this section:
34 residents or businesses.

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

40 SECTION 9. IC 8-1-32.4-17 IS ADDED TO THE INDIANA CODE
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2012]: Sec. 17. (a) Subject to subsection (b), upon notice to the

C
O
P
Y



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

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

11 (2) Internet Protocol enabled services.

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

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

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

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

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

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

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

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

C
o
p
y



1 real estate; and
2 (B) are contingent upon the provision of communications
3 service by that provider to the occupants of the multitenant
4 real estate, to the exclusion of any services provided by other
5 communications service providers.
6 (3) Collects from the occupants of the multitenant real estate any
7 charges for the provision of communications service to the
8 occupants, including charges collected through rent, fees, or dues.
9 (4) Enters into an agreement with a communications service
10 provider that is prohibited by section 7 of this chapter.
11 (b) This subsection applies to a communications service provider
12 that is relieved under subsection (a) of an obligation to provide
13 communications service to the occupants of multitenant real estate.
14 This section does not prohibit the communications service provider
15 from voluntarily offering service to the occupants of the multitenant
16 real estate. However, the commission shall not exercise jurisdiction
17 over the terms, conditions, rates, or availability of any communications
18 service voluntarily offered by a communications service provider under
19 this subsection.

C
o
p
y



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Technology, to which was referred Senate Bill No. 308, 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:

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 2, between lines 3 and 4, begin a new paragraph and insert:

"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."

Page 2, delete lines 14 through 42, begin a new paragraph and insert:

"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

COPY



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."

Delete pages 3 through 4.

and when so amended that said bill do pass.

(Reference is to SB 308 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 7, Nays 2.

C
O
P
Y

