Reprinted
March 15, 2013

ENGROSSED
SENATE BILL No. 235

DIGEST OF SB 235 (Updated March 14, 2013 11:00 am - DI 103)

Citations Affected: IC 8-1; noncode.

Synopsis: Video service providers. Amends the required contents of the annual report of the utility regulatory commission (commission) to the regulatory flexibility committee concerning video and telecommunications service. Authorizes the commission to grant direct marketing authority to a holder of a certificate of video service franchise that satisfies certain requirements.

Effective: July 1, 2013.

Holdman, Merritt, Randolph
(HOUSE SPONSORS — KOCH, BATTLES, MORRISON)

January 7, 2013, read first time and referred to Committee on Utilities.
January 24, 2013, reported favorably — Do Pass.
January 28, 2013, read second time, ordered engrossed. Engrossed.
January 31, 2013, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Utilities and Energy.
March 11, 2013, amended, reported — Do Pass.
March 14, 2013, read second time, amended, ordered engrossed.

C o p y

Reprinted
March 15, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

ENGROSSED
SENATE BILL No. 235

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 8-1-2.6-4, AS AMENDED BY P.L.62-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) A regulatory flexibility committee is established to monitor competition in the telecommunications industry.

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

(c) The commission shall, by July 1 of each year, ~~prepare for presentation~~ **report** to the regulatory flexibility committee ~~a report that~~

~~includes~~ **on** the following:

(1) ~~An analysis of~~ The effects of competition and technological change on universal service and on pricing of all telecommunications services offered in Indiana.

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

(A) The number of multichannel video programming distributors offering video service to Indiana customers.

(B) The technologies used to provide video service to Indiana customers. ~~and~~

~~(C) the effects of competition on the pricing and availability of video service in~~

(C) Programming and pricing options offered by video service providers to Indiana **customers.**

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

(A) an identification of all telecommunications rules and policies that are eliminated by the commission under section 4.1 of this chapter during the two (2) most recent state fiscal years; and

(B) an explanation why the telecommunications rules and policies identified under clause (A) are no longer in the public interest or necessary to protect consumers.

(4) Beginning with the report due July 1, 2010, best practices concerning vertical location of underground facilities for purposes of IC 8-1-26. A report under this subdivision must address the viability and economic feasibility of technologies used to vertically locate underground facilities.

(5) The transition of the Indiana telecommunications and information infrastructure from the legacy public switched network (PSTN) to predominantly Internet protocol (IP) based networks.

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

(1) The effects of competition and technological change in the telecommunications industry and impact of competition on

C o p y

available subsidies used to maintain universal service.

(2) The status of modernization of the publicly available telecommunications infrastructure in Indiana and the incentives required to further enhance this infrastructure.

(3) The effects on economic development and educational opportunities of the modernization described in subdivision (2).

(4) The current methods of regulating providers, at both the federal and state levels, and the effectiveness of the methods.

(5) The economic and social effectiveness of current telecommunications service pricing.

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

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

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

SECTION 2. IC 8-1-34-30 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 30. (a) For purposes of this section, "designated employee" means an employee of a holder to whom the holder designates or will designate direct marketing authority.**

(b) For purposes of this section, "direct marketing authority" means the authority granted by the commission to a holder to market any service or product offered by the holder directly to all households in a service area served by the holder.

(c) A holder may apply to the commission, in the manner and form prescribed by the commission, for direct marketing authority. An application must include the following information with respect to each designated employee of the holder:

(1) Name.

(2) Home address.

(3) Driver's license or identification card number.

(4) A certification described in subsection (d).

(d) In an application under subsection (c), a holder shall certify to the commission that each designated employee satisfies the following requirements:

(1) The employee is at least eighteen (18) years of age.

(2) The employee has a high school diploma or the equivalent

C o p y

of a high school diploma.

(3) The employee has not been convicted of a felony within the seven (7) years preceding the date of the application.

(4) The employee has not been convicted of:

(A) a misdemeanor involving fraud, deceit, or dishonesty;

(B) battery as a misdemeanor; or

(C) two (2) or more misdemeanors involving the illegal use of alcohol or the illegal sale, use, or possession of a controlled substance;

within the five (5) years preceding the date of the application.

(5) The employee is not:

(A) the subject of an arrest warrant; or

(B) a fugitive from justice.

(6) If the employee has a driver's license, the license is a valid driver's license with valid driving privileges.

(e) A holder may comply with subsection (d) by submitting to the commission a document signed by the holder in which the holder:

(1) identifies each designated employee by name, home address, and driver's license or identification card number;

(2) certifies that each designated employee has been the subject of a national criminal history background check; and

(3) affirms that each designated employee satisfies the requirements under subsection (d).

(f) Not more than fifteen (15) days after the commission receives an application under subsection (c), the commission shall determine whether the application is complete and properly verified. If the commission determines that the application is incomplete or not properly verified, the commission shall notify the applicant holder of the deficiency and allow the holder to resubmit the application after correcting the deficiency. If the commission determines that the application is complete and properly verified, the commission shall issue an order granting the holder direct marketing authority. The order must contain the following:

(1) The name of the holder.

(2) The names of designated employees of the holder.

(3) A grant of direct marketing authority to the holder and designated employees of the holder.

(4) The date on which the order takes effect.

(g) A holder that has direct marketing authority shall notify the commission in a timely manner of any changes to the holder's list of designated employees. A designated employee may exercise

C o p y

direct marketing authority immediately upon the holder's submission of the designated employee, including all information required under subsection (d), to the commission. A holder shall maintain commercial general liability insurance:

(1) in limits adequate to cover the risks associated with the holder's businesses, including the holder's direct sales activity; and

(2) that provides coverage for bodily injury and property damage:

(A) arising from the holder's businesses; and

(B) for which the holder or the holder's employee or agent is legally liable.

(h) A holder that has direct marketing authority is not required to comply with any local ordinances or regulations concerning direct marketing authority that exceed the requirements of this section.

Copy

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 235, 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 Senate Bill 235 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities and Energy, to which was referred Senate Bill 235, 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 2, line 17, delete "Advertised programming" and insert "**Programming**".

Page 3, after line 16, begin a new paragraph and insert:

"SECTION 2. IC 8-1-34-30 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 30. (a) For purposes of this section, "designated employee" means an employee of a holder to whom the holder designates or will designate direct marketing authority.**

(b) For purposes of this section, "direct marketing authority" means the authority granted by the commission to a holder to market any service or product offered by the holder directly to all households in a service area served by the holder.

(c) A holder may apply to the commission, in the manner and form prescribed by the commission, for direct marketing authority. An application must include the following information with respect to each designated employee of the holder:

(1) Name.

(2) Home address.

(3) Driver's license or identification card number.

(4) A certification described in subsection (d).

(d) In an application under subsection (c), a holder shall certify to the commission that each designated employee satisfies the following requirements:

(1) The employee is at least eighteen (18) years of age.

C o p y

(2) The employee has a high school diploma or the equivalent of a high school diploma.

(3) The employee has not been convicted of a felony within the seven (7) years preceding the date of the application.

(4) The employee has not been convicted of:

(A) a misdemeanor involving fraud, deceit, or dishonesty;

(B) battery as a misdemeanor; or

(C) two (2) or more misdemeanors involving the illegal use of alcohol or the illegal sale, use, or possession of a controlled substance;

within the five (5) years preceding the date of the application.

(5) The employee is not:

(A) the subject of an arrest warrant; or

(B) a fugitive from justice.

(6) The employee has a valid driver's license with valid driving privileges.

(e) A holder may comply with subsection (d) by submitting to the commission a document signed by the holder in which the holder:

(1) identifies each designated employee by name, home address, and driver's license or identification card number;

(2) certifies that each designated employee has been the subject of a national criminal history background check; and

(3) affirms that each designated employee satisfies the requirements under subsection (d).

(f) Not more than fifteen (15) days after the commission receives an application under subsection (c), the commission shall determine whether the application is complete and properly verified. If the commission determines that the application is incomplete or not properly verified, the commission shall notify the applicant holder of the deficiency and allow the holder to resubmit the application after correcting the deficiency. If the commission determines that the application is complete and properly verified, the commission shall issue an order granting the holder direct marketing authority. The order must contain the following:

(1) The name of the holder.

(2) The names of designated employees of the holder.

(3) A grant of direct marketing authority to the holder and designated employees of the holder.

(4) The date on which the order takes effect.

(g) A holder that has direct marketing authority shall notify the commission in a timely manner of any changes to the holder's list

C o p y

of designated employees. A designated employee may exercise direct marketing authority immediately upon the holder's submission of the designated employee, including all information required under subsection (d), to the commission. A holder shall maintain liability insurance and indemnification coverage as required by the commission.

(h) A holder that has direct marketing authority is not required to comply with any local ordinances or regulations concerning direct marketing authority that exceed the requirements of this section.".

and when so amended that said bill do pass.

(Reference is to SB 235 as printed January 25, 2013.)

KOCH, Chair

Committee Vote: yeas 11, nays 1.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 235 be amended to read as follows:

Page 2, line 2, strike "An analysis of".

Page 2, line 2, delete "the" and insert "The".

Page 2, between lines 32 and 33, begin a new line block indented and insert:

"**(5) The transition of the Indiana telecommunications and information infrastructure from the legacy public switched network (PSTN) to predominantly Internet protocol (IP) based networks.**".

Page 4, delete lines 10 through 11, begin a new line block indented and insert:

"**(6) If the employee has a driver's license, the license is a valid driver's license with valid driving privileges.**".

(Reference is to ESB 235 as printed March 12, 2013.)

KOCH

C o p y

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 235 be amended to read as follows:

Page 4, line 42, delete "liability insurance and indemnification coverage as" and insert "**commercial general liability insurance:**

(1) in limits adequate to cover the risks associated with the holder's businesses, including the holder's direct sales activity; and

(2) that provides coverage for bodily injury and property damage:

(A) arising from the holder's businesses; and

(B) for which the holder or the holder's employee or agent is legally liable.".

Page 5, delete line 1.

(Reference is to ESB 235 as printed March 12, 2013.)

KOCH

C o p y