

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 235**

Citations Affected: IC 8-1.

Synopsis: Video service providers. Proposed conference committee report for ESB 235. Amends the required contents of the annual report of the utility regulatory commission (IURC) to the regulatory flexibility committee (committee) concerning video and telecommunications service. Authorizes the IURC to grant direct marketing authority to a holder of a video service franchise issued by the IURC if the holder: (1) certifies certain information concerning each employee or agent designated by the holder to exercise the direct marketing authority; and (2) provides proof of financial responsibility. Provides that direct marketing authority allows a holder, through its designated employees, to market any service or product offered by the holder directly to all households in a service area of the holder. Requires the IURC to provide public notice of an order granting direct marketing authority to a holder by posting the order on the IURC's Internet web site. Authorizes only the IURC to grant direct marketing authority to a holder under the new procedure but allows a holder, with respect to direct marketing activities within a political subdivision, to instead elect to: (1) apply for marketing or solicitation authority directly from the political subdivision; and (2) exercise any marketing or solicitation authority granted by the political subdivision. Prohibits a political subdivision from doing any of the following with respect to a holder that is granted direct marketing authority from the IURC: (1) Requiring the holder to also obtain marketing or solicitation authority from the political subdivision. (2) Imposing any licensing requirement or fee on the holder. (3) Except for enforcing certain uniform restrictions as to the hours or manner in which direct marketing activities may be performed, otherwise regulating the holder with respect to the holder's direct marketing activities. Urges the legislative council to assign to the committee for study during the 2013 legislative interim the topic of the transition of Indiana's telecommunications and information infrastructure from the legacy public switched network (PSTN) to predominantly Internet protocol (IP) based networks. Recognizes that the Indiana Code chapter concerning caller identification service was repealed by one enrolled act and amended by another enrolled act during the 2013 legislative session. Expresses the general assembly's intent to repeal those provisions. **(This conference committee report makes the following changes to ESB 235 (as reprinted March 15, 2013): (1) Makes the following changes with respect to the provisions concerning the required contents of the IURC's annual report to the committee concerning**

video and telecommunications service: (A) Recognizes changes made by SEA 492 to those provisions. (B) Removes language requiring the report to include information concerning the transition of Indiana's telecommunications and information infrastructure from the legacy PSTN to predominantly IP based networks and instead urges the legislative council to assign the topic to the committee for study during the 2013 interim. (C) Restores language removed by the house utilities and energy committee that requires the IURC to report on only the advertised programming and pricing options offered by video service providers to Indiana customers. (2) Makes the following changes with respect to the provisions concerning direct marketing authority granted by the IURC: (A) Amends the definition of "designated employee" to include a holder's authorized agent. (B) Requires a designated employee to have a valid driver's license and removes references to identification cards as a permissible form of identification. (C) Provides that within the seven years preceding a holder's application for direct marketing authority, a designated employee must not have not been released from incarceration after serving time for a felony conviction. (D) Replaces the requirement of a national criminal history background check for a designated employee with a requirement that the employee must have been the subject of a criminal history background check for each United States jurisdiction in which the employee lived or worked within the seven years preceding the holder's application. (E) Adds the provision requiring the IURC to provide public notice of an order granting direct marketing authority to a holder by posting the order on the IURC's Internet web site. (F) Removes a provision requiring a holder to maintain commercial general liability insurance that meets certain requirements and adds the provision requiring the holder to provide proof of financial responsibility. (G) Adds the provisions specifying that only the IURC is authorized to grant direct marketing authority to a holder under the new procedure, but that a holder may elect to apply for and exercise marketing or solicitation authority granted directly by a political subdivision. (H) Adds the provisions prohibiting a political subdivision from taking certain actions with respect to a holder granted direct marketing authority from the IURC, but allowing a political subdivision to enforce uniform restrictions as to the hours or manner in which direct marketing activities may be performed. (3) Adds the provisions that: (A) recognize that the Indiana Code chapter concerning caller identification service was repealed by one enrolled act and amended by another enrolled act during the 2013 legislative session; and (B) express the general assembly's intent to repeal those provisions.)

Effective: Upon passage; July 1, 2013.

Adopted Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 235 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 8-1-2.6-4, AS AMENDED BY SEA 492-2013,
3 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2013]: Sec. 4. (a) A regulatory flexibility committee is
5 established to monitor competition in the telecommunications industry.
6 (b) The committee is composed of the members of a house standing
7 committee selected by the speaker of the house of representatives and
8 a senate standing committee selected by the president pro tempore of
9 the senate. In selecting standing committees under this subsection, the
10 speaker and president pro tempore shall determine which standing
11 committee of the house of representatives and the senate, respectively,
12 has subject matter jurisdiction that most closely relates to the
13 electricity, gas, energy policy, and telecommunications jurisdiction of
14 the regulatory flexibility committee. The chairpersons of the standing
15 committees selected under this subsection shall co-chair the regulatory
16 flexibility committee.
17 (c) Subject to subsection (f), the commission shall, by July 1 of each
18 year, ~~prepare for presentation report~~ **report** to the regulatory flexibility
19 committee ~~a report that includes on~~ the following:
20 (1) ~~An analysis of~~ The effects of competition and technological
21 change on universal service and on pricing of all

1 telecommunications services offered in Indiana.

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

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

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

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

14 **(C) The advertised programming and pricing options**
 15 **offered by video service providers to Indiana customers.**

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

18 (A) an identification of all telecommunications rules and
 19 policies that are eliminated by the commission under section
 20 4.1 of this chapter during the two (2) most recent state fiscal
 21 years; and

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

25 This subdivision expires June 30, 2013.

26 (4) Best practices concerning vertical location of underground
 27 facilities for purposes of IC 8-1-26. A report under this
 28 subdivision must address the viability and economic feasibility of
 29 technologies used to vertically locate underground facilities.

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

34 (1) The effects of competition and technological change in the
 35 telecommunications industry and impact of competition on
 36 available subsidies used to maintain universal service.

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

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

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

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

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

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

50 (e) The regulatory flexibility committee shall meet on the call of the

1 co-chairpersons to study telecommunications issues described in
 2 subsection (d). The committee shall, with the approval of the
 3 commission, retain the independent consultants the committee
 4 considers appropriate to assist the committee in the review and study.
 5 The expenses for the consultants shall be paid by the commission.

6 (f) If the commission requests a communications service provider
 7 (as defined in section 13(b) of this chapter) to provide information for
 8 the commission to use in preparing a report under this section, the
 9 request must be limited to public information provided to the Federal
 10 Communications Commission and may be required to be provided only
 11 in the form in which it is provided to the Federal Communications
 12 Commission. However, the commission may request any public
 13 information from a communications service provider (as defined in
 14 section 13(b) of this chapter) upon a request from the committee's
 15 co-chairpersons that specifically enumerates the public information
 16 sought.

17 SECTION 2. IC 8-1-34-30 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2013]: **Sec. 30. (a) As used in this section, "designated employee"**
 20 **means a holder's:**

21 (1) **employee; or**

22 (2) **authorized agent;**

23 **whom the holder designates or will designate to receive direct**
 24 **marketing authority.**

25 (b) **As used in this section, "direct marketing authority" means**
 26 **the authority granted by the commission to a holder to market any**
 27 **service or product offered by the holder directly to all households**
 28 **in a service area served by the holder.**

29 (c) **As used in this section, "political subdivision" has the**
 30 **meaning set forth in IC 36-1-2-13.**

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

35 (1) **Name.**

36 (2) **Home address.**

37 (3) **Driver's license number.**

38 (4) **A certification described in subsection (e)(1).**

39 (e) **In an application under subsection (d), a holder shall include**
 40 **the following:**

41 (1) **A certification by the holder that each designated**
 42 **employee satisfies the following requirements:**

43 (A) **The employee is at least eighteen (18) years of age.**

44 (B) **The employee has a high school diploma or the**
 45 **equivalent of a high school diploma.**

46 (C) **The employee has not been convicted of a felony within**
 47 **the seven (7) years immediately preceding the date of the**
 48 **application.**

49 (D) **Within the seven (7) years immediately preceding the**
 50 **date of the application, the employee has not been released**
 51 **from incarceration after serving time for a felony**

1 conviction.

2 (E) The employee has not been convicted of:

- 3 (i) a misdemeanor involving fraud, deceit, or dishonesty;
 4 (ii) battery as a misdemeanor; or
 5 (iii) two (2) or more misdemeanors involving the illegal
 6 use of alcohol or the illegal sale, use, or possession of a
 7 controlled substance;

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

10 (F) The employee has a valid driver's license.

11 (2) Proof of financial responsibility.

12 (f) A holder may comply with subsection (e)(1) by submitting to
 13 the commission a document signed by the holder in which the
 14 holder:

15 (1) identifies each designated employee by name, home
 16 address, and driver's license number;

17 (2) certifies that each designated employee has been the
 18 subject of a criminal history background check for each
 19 jurisdiction in the United States in which the designated
 20 employee has lived or worked within the seven (7) years
 21 immediately preceding the date of the application; and

22 (3) affirms that the background check described in
 23 subdivision (2) for each designated employee indicates that
 24 the designated employee satisfies the requirements set forth
 25 in subsection (e)(1), as applicable.

26 (g) Not more than fifteen (15) days after the commission
 27 receives an application under subsection (d), the commission shall
 28 determine whether the application is complete and properly
 29 verified. If the commission determines that the application is
 30 incomplete or not properly verified, the commission shall notify the
 31 applicant holder of the deficiency and allow the holder to resubmit
 32 the application after correcting the deficiency. If the commission
 33 determines that the application is complete and properly verified,
 34 the commission shall issue an order granting the holder direct
 35 marketing authority. The order must contain the following:

36 (1) The name of the holder.

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

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

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

41 The commission shall provide public notice of an order granting
 42 direct marketing authority under this subsection by posting the
 43 order on the commission's Internet web site.

44 (h) A holder that has direct marketing authority shall notify the
 45 commission in a timely manner of any changes to the holder's list
 46 of designated employees. A designated employee may exercise
 47 direct marketing authority immediately upon the holder's
 48 submission to the commission of all information required under
 49 subsection (e)(1) with respect to the designated employee.

50 (i) Only the commission is authorized to grant direct marketing
 51 authority to a holder under this section. However, subject to

1 subsection (j), with respect to direct marketing activities in a
 2 holder's service area within a political subdivision, this section does
 3 not prohibit a holder from electing to:

4 (1) apply for marketing or solicitation authority directly from
 5 the political subdivision; and

6 (2) exercise any marketing or solicitation authority under a
 7 license, permit, or other authority granted by the political
 8 subdivision before, on, or after June 30, 2013;

9 instead of applying for and exercising direct marketing authority
 10 granted by the commission under this section.

11 (j) A political subdivision may not do any of the following:

12 (1) Require a holder that is granted direct marketing
 13 authority from the commission under this section to also
 14 obtain marketing or solicitation authority from the political
 15 subdivision in order to engage in direct marketing in the
 16 holder's service area within the political subdivision.

17 (2) Impose any licensing requirement or fee on a holder in
 18 connection with any direct marketing authority granted to the
 19 holder by the commission under this section with respect to
 20 the holder's service area within the political subdivision.

21 (3) Except as provided in subsection (k), otherwise regulate a
 22 holder that is granted direct marketing authority from the
 23 commission under this section and that engages in direct
 24 marketing in the holder's service area within the political
 25 subdivision.

26 (k) A political subdivision may enforce any ordinance or
 27 regulation that:

28 (1) imposes restrictions as to the hours or manner in which
 29 direct marketing activities may be performed in the political
 30 subdivision; and

31 (2) applies uniformly to all persons engaging in direct
 32 marketing or other soliciting in the political subdivision,
 33 regardless of:

34 (A) the product or service being marketed; or

35 (B) the type of business engaged in by the person engaging
 36 in the direct marketing or other soliciting.

37 SECTION 3. [EFFECTIVE UPON PASSAGE] (a) As used in this
 38 SECTION, "committee" refers to the regulatory flexibility
 39 committee established under IC 8-1-2.6-4.

40 (b) As used in this SECTION, "legislative council" refers to the
 41 legislative council established by IC 2-5-1.1-1.

42 (c) The general assembly urges the legislative council to assign
 43 to the committee for study during the 2013 legislative interim the
 44 topic of the transition of Indiana's telecommunications and
 45 information infrastructure from the legacy public switched
 46 network (PSTN) to predominantly Internet protocol (IP) based
 47 networks.

48 (d) If the committee is assigned the topic described in subsection
 49 (c), the committee shall issue to the legislative council a final report
 50 containing the committee's findings and recommendations, if any,
 51 not later than November 1, 2013. A report to the legislative council

1 under this subsection must be in an electronic format under
2 IC5-14-6.

3 (e) This SECTION expires June 30, 2014.

4 SECTION 4. [EFFECTIVE JULY 1, 2013] (a) The general
5 assembly recognizes that SEA 492-2013 repealed IC 8-1-2.9 and
6 that HEA 1376-2013 amended and added sections in IC 8-1-2.9.
7 The general assembly intends to repeal those provisions.

8 (b) This SECTION expires January 1, 2014.

9 SECTION 5. An emergency is declared for this act.

(Reference is to ESB 235 as reprinted March 15, 2013.)

Conference Committee Report
on
Engrossed Senate Bill 235

Signed by:

Senator Holdman
Chairperson

Representative Koch

Senator Randolph

Representative Battles

Senate Conferees

House Conferees