

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.

SENATE ENROLLED ACT No. 235

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 SEA 492-2013, SECTION 6, 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) Subject to subsection (f), the commission shall, by July 1 of each year, ~~prepare for presentation report~~ **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.



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(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 may include a description of:** **including the following information:**

(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) The advertised 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.

This subdivision expires June 30, 2013.

(4) 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.

(d) In addition to reviewing the commission report prepared under subsection (c), the regulatory flexibility committee may 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 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.

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(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.

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

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) As used in this section, "designated employee" means a holder's:**

- (1) employee; or
- (2) authorized agent;

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

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

(d) 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 number.**
 - (4) A certification described in subsection (e)(1).**
 - (e) In an application under subsection (d), a holder shall include the following:**
 - (1) A certification by the holder that each designated employee satisfies the following requirements:**
 - (A) The employee is at least eighteen (18) years of age.**
 - (B) The employee has a high school diploma or the equivalent of a high school diploma.**
 - (C) The employee has not been convicted of a felony within the seven (7) years immediately preceding the date of the application.**
 - (D) Within the seven (7) years immediately preceding the date of the application, the employee has not been released from incarceration after serving time for a felony conviction.**
 - (E) The employee has not been convicted of:**
 - (i) a misdemeanor involving fraud, deceit, or dishonesty;**
 - (ii) battery as a misdemeanor; or**
 - (iii) 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 immediately preceding the date of the application.**
 - (F) The employee has a valid driver's license.**
 - (2) Proof of financial responsibility.**
- (f) A holder may comply with subsection (e)(1) 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 number;**
 - (2) certifies that each designated employee has been the subject of a criminal history background check for each jurisdiction in the United States in which the designated employee has lived or worked within the seven (7) years immediately preceding the date of the application; and**
 - (3) affirms that the background check described in subdivision (2) for each designated employee indicates that the designated employee satisfies the requirements set forth in subsection (e)(1), as applicable.**
- (g) Not more than fifteen (15) days after the commission**

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receives an application under subsection (d), 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.

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

(h) 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 direct marketing authority immediately upon the holder's submission to the commission of all information required under subsection (e)(1) with respect to the designated employee.

(i) Only the commission is authorized to grant direct marketing authority to a holder under this section. However, subject to subsection (j), with respect to direct marketing activities in a holder's service area within a political subdivision, this section does not prohibit a holder from electing to:

- (1) apply for marketing or solicitation authority directly from the political subdivision; and
- (2) exercise any marketing or solicitation authority under a license, permit, or other authority granted by the political subdivision before, on, or after June 30, 2013;

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

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

- (1) Require a holder that is granted direct marketing authority from the commission under this section to also obtain marketing or solicitation authority from the political subdivision in order to engage in direct marketing in the holder's service area within the political subdivision.
- (2) Impose any licensing requirement or fee on a holder in

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connection with any direct marketing authority granted to the holder by the commission under this section with respect to the holder's service area within the political subdivision.

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

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

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

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

(A) the product or service being marketed; or

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

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

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

(c) The general assembly 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.

(d) If the committee is assigned the topic described in subsection (c), the committee shall issue to the legislative council a final report containing the committee's findings and recommendations, if any, not later than November 1, 2013. A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(e) This SECTION expires June 30, 2014.

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

(b) This SECTION expires January 1, 2014.

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SECTION 5. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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