

## **IC 8-1-2.6**

### Chapter 2.6. Competition in the Provision of Telephone Services

#### **IC 8-1-2.6-0.1**

##### **"Basic telecommunications service"**

Sec. 0.1. (a) As used in this chapter, "basic telecommunications service" means stand alone telephone exchange service (as defined in 47 U.S.C. 153(47)) that:

- (1) is provided to a residential customer through the customer's primary line; and
- (2) is:
  - (A) the sole service purchased by the customer;
  - (B) not part of a package of services, a promotion, or a contract; or
  - (C) not otherwise offered at a discounted price.

(b) The term includes, at a minimum, the following:

- (1) Voice grade access to the public switched telephone network with minimum bandwidth of three hundred (300) to three thousand (3,000) hertz.
- (2) Dual tone multifrequency signaling and single party service.
- (3) Access to:
  - (A) emergency services, including access to 911 and enhanced 911 if provided by the local government having jurisdiction in the service area;
  - (B) operator services;
  - (C) local directory assistance;
  - (D) telephone relay services; and
  - (E) interexchange service.

(4) Toll limitation services for qualifying low income customers.

(c) The term does not include a functionally equivalent service provided by a person or an entity described in IC 8-1-2-1.1.

*As added by P.L.27-2006, SEC.6.*

#### **IC 8-1-2.6-0.2**

##### **"Incumbent local exchange carrier"**

Sec. 0.2. As used in this chapter, "incumbent local exchange carrier" has the meaning set forth in 47 U.S.C. 251(h).

*As added by P.L.27-2006, SEC.7.*

#### **IC 8-1-2.6-0.3**

##### **"Nonbasic telecommunications service"**

Sec. 0.3. (a) As used in this chapter, "nonbasic telecommunications service" means retail telecommunications service other than:

- (1) basic telecommunications service, except when the service is purchased by the customer:
  - (A) in conjunction with another service;
  - (B) as part of a package of services, a promotion, or a contract; or

- (C) at an otherwise discounted price;
  - (2) commercial mobile radio service (as defined in 47 CFR 51.5);
  - (3) services outside the jurisdiction of the commission under section 1.1 of this chapter; and
  - (4) switched and special access services.
- (b) The term includes services included in:
- (1) customer specific contracts;
  - (2) volume, term, and discount pricing options; and
  - (3) packages, bundles, and promotions, including offers designed to obtain new customers, retain existing customers, or bring back former customers.

*As added by P.L.27-2006, SEC.8.*

#### **IC 8-1-2.6-0.4**

##### **"Provider"**

Sec. 0.4. As used in this chapter, "provider" means a person or an entity that offers basic or nonbasic telecommunications service.

*As added by P.L.27-2006, SEC.9.*

#### **IC 8-1-2.6-0.5**

##### **"Rates and charges"**

Sec. 0.5. As used in this chapter, "rates and charges", with respect to basic telecommunications service, means the monthly charge to a customer for basic telecommunications service, including:

- (1) recurring charges for flat rate and message rate service; and
- (2) any nonrecurring charge for installation or a line or service connection.

*As added by P.L.27-2006, SEC.10.*

#### **IC 8-1-2.6-0.6**

##### **"Telecommunications"**

Sec. 0.6. As used in this chapter, "telecommunications" has the meaning set forth in 47 U.S.C. 153(43).

*As added by P.L.27-2006, SEC.11.*

#### **IC 8-1-2.6-0.7**

##### **"Telecommunications service"**

Sec. 0.7. As used in this chapter, "telecommunications service" has the meaning set forth in 47 U.S.C. 153(46).

*As added by P.L.27-2006, SEC.12.*

#### **IC 8-1-2.6-1**

##### **Legislative declaration**

Sec. 1. The Indiana general assembly hereby declares that:

- (1) the maintenance of universal telephone service is a continuing goal of the commission in the exercise of its jurisdiction;
- (2) competition has become commonplace in the provision of telecommunications services in Indiana and the United States;

(3) advancements in and the convergence of technologies that provide voice, video, and data transmission, including:

(A) landline, wireless, cable, satellite, and Internet transmissions; and

(B) transmissions involving voice over Internet Protocol (VOIP), Internet Protocol enabled services, and voice over power lines;

are substantially increasing consumer choice, reinventing the marketplace with unprecedented speed, and making available highly competitive products and services and new methods of delivering local exchange service;

(4) traditional regulatory policies, practices, and statutes are not designed to deal with a competitive environment and technological advancements;

(5) an environment in which Indiana consumers will have available the widest array of state-of-the-art communications services at the most economic and reasonable cost possible will necessitate full and fair facilities based competition in the delivery of telecommunications services throughout Indiana; and

(6) streamlining of, and flexibility in, the regulation of providers of telecommunications services, regardless of the technology used, is essential to the well-being of Indiana, its economy, and its citizens, and that the public interest requires that the commission be authorized to formulate and adopt rules and policies as will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in an increasingly competitive and technologically changing environment, giving due regard to the interests of consumers and the public, the ability of market forces to encourage innovation and investment, and the continued universal availability of basic telecommunications service.

*As added by P.L.92-1985, SEC.1. Amended by P.L.23-1988, SEC.32; P.L.27-2006, SEC.13.*

#### **IC 8-1-2.6-1.1**

##### **Services not subject to commission jurisdiction**

Sec. 1.1. The commission shall not exercise jurisdiction over:

(1) advanced services (as defined in 47 CFR 51.5);

(2) broadband service, however defined or classified by the Federal Communications Commission;

(3) information service (as defined in 47 U.S.C. 153(20));

(4) Internet Protocol enabled retail services:

(A) regardless of how the service is classified by the Federal Communications Commission; and

(B) except as expressly permitted under IC 8-1-2.8;

(5) commercial mobile service (as defined in 47 U.S.C. 332); or

(6) any service not commercially available on March 28, 2006.

*As added by P.L.27-2006, SEC.14. Amended by P.L.1-2007, SEC.69.*

### **IC 8-1-2.6-1.2**

#### **Nonbasic telecommunications service; commission's limited jurisdiction**

Sec. 1.2. Except as provided in sections 1.5(b), 12, and 13 of this chapter, after March 27, 2006, the commission shall not exercise jurisdiction over any nonbasic telecommunications service.

*As added by P.L.27-2006, SEC.15. Amended by P.L.1-2007, SEC.70.*

### **IC 8-1-2.6-1.3**

#### **Rate transition period; allowed increases in basic telecommunications service rates; broadband service requirements; availability of flat monthly rate; emergency suspension of rate limits; measured local service prohibited**

Sec. 1.3. (a) As used in this section, "broadband service" means a connection to the Internet that provides capacity for transmission at an average speed of at least one and one-half (1.5) megabits per second downstream and at least three hundred eighty-four (384) kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber optic cable, coaxial cable, broadband over power lines, or other facilities or future technologies. The term does not include any of the following:

(1) Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.

(2) Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.

(3) The transmission of video programming or other programming:

(A) provided by; or

(B) generally considered comparable to programming provided by;

a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television.

(4) A connection to the Internet provided through satellite technology.

(b) As used in this section, "rate transition period" refers to the period beginning March 28, 2006, and ending June 30, 2009, during which a provider may act under this section to increase the provider's flat monthly rate for basic telecommunications service offered in one (1) or more local exchange areas in Indiana.

(c) This subsection applies to a provider that offers basic telecommunications service in one (1) or more local exchange areas in Indiana on March 27, 2006. Subject to subsection (e), during the rate transition period, a provider may act without the prior approval of the commission to increase the provider's flat monthly rate for basic telecommunications service in any local exchange area in which the provider offers basic telecommunications service on

March 27, 2006. Subject to subsection (h), a provider may increase the provider's flat monthly rate for basic telecommunications service in a local exchange area as follows:

(1) The provider may increase the flat monthly rate not more frequently than once during each successive twelve (12) month period during the period beginning March 28, 2006, and ending June 30, 2009. The amount of any increase in the flat monthly rate imposed during a twelve (12) month period described in this subdivision may not exceed one dollar (\$1). If a provider:

(A) does not impose an increase during any twelve (12) month period described in this subdivision; or

(B) imposes an increase less than the maximum one dollar (\$1) increase allowed under this subdivision during any twelve (12) month period described in this subdivision;

the provider may not impose the unused increase in any subsequent twelve (12) month period described in this subdivision.

(2) The provider may increase the flat monthly rate not more frequently than three (3) times during the entire rate transition period. The amount of the total increase in the flat monthly rate during the transition period may not exceed three dollars (\$3), as calculated based on the flat monthly rate in effect in the local exchange area on March 27, 2006.

The provider shall provide the commission and all affected customers thirty (30) days advance notice of each rate increase under this subsection.

(d) This subsection applies to a provider that, at any time during the rate transition period, begins offering basic telecommunications service in a local exchange area in Indiana in which the provider did not offer basic telecommunications service on March 27, 2006. In accordance with the procedures set forth in IC 8-1-2, the commission shall approve the initial rates and charges for basic telecommunications service first offered by the provider in a local exchange area at any time during the rate transition period. Subject to subsections (e) and (h), beginning twelve (12) months after the commission approves the initial rates and charges for the local exchange area, the provider may increase the initial flat monthly rate for basic telecommunications service in accordance with subsection (c). However, subsection (c)(2) does not apply to a rate increase under this subsection. The provider may not increase the flat monthly rate under this subsection during the rate transition period more frequently than the number of twelve (12) month periods remaining in the rate transition period at the time the provider is first eligible to increase the initial flat monthly rate under this subsection. The amount of the total increase in the flat monthly rate during the rate transition period may not exceed the product of:

(1) one dollar (\$1); multiplied by

(2) the number of twelve (12) month periods remaining in the rate transition period at the time the provider is first eligible to increase the initial flat monthly rate under this subsection.

The provider shall provide the commission and all affected customers thirty (30) days advance notice of each rate increase under this subsection.

(e) This subsection applies to a provider that acts under subsection (c) or (d) to increase the provider's flat monthly rate for basic telecommunications service in a local exchange area in Indiana. Not later than eighteen (18) calendar months after the provider's first rate increase in the local exchange area under subsection (c) or (d), the provider must offer broadband service to at least fifty percent (50%) of the households located in the local exchange area, at the average speeds set forth in subsection (a), as determined by the commission after notice and an opportunity for hearing. The commission may extend the eighteen (18) month period allowed under this subsection by not more than nine (9) additional calendar months for good cause shown by the provider. The commission shall hold a hearing and make a finding as to whether the provider offers broadband service to at least fifty percent (50%) of the households in the local exchange area not later than the earlier of the following:

(1) Ninety (90) days after a request by the provider for a hearing and determination by the commission. The provider may request a hearing and determination under this subdivision at any time before the expiration of:

(A) the eighteen (18) month period allowed by this subsection; or

(B) any extension of the eighteen (18) month period allowed by the commission under this subsection.

(2) Ninety (90) days after the expiration of:

(A) the eighteen (18) month period allowed by this subsection; or

(B) any extension of the eighteen (18) month period allowed by the commission under this subsection;

if the provider does not request a hearing and determination under subdivision (1).

(f) If, after a hearing under subsection (e), the commission determines that the provider does not offer broadband service to at least fifty percent (50%) of the households in the local exchange area not later than eighteen (18) months after the provider's first rate increase in the local exchange area under subsection (c) or (d), the commission may require the provider to:

(1) refund to customers; or

(2) pay to the commission as a civil penalty;

an amount equal to the incremental revenue accruing to the provider as a result of all rate increases imposed by the provider in the local exchange area under subsection (c) or (d), plus interest. The commission shall determine the amount of interest added to a refund or payment made under this subsection by applying the average interest rate paid during the eighteen (18) months after the provider's first rate increase to depositors by the fifteen (15) largest banks with their principal offices in Indiana. A determination by the commission under this subsection is subject to appeal under IC 8-1-3.

(g) This subsection applies to an incumbent local exchange carrier that offers basic telecommunications service in one (1) or more local exchange areas in Indiana on March 27, 2006. Throughout the rate transition period, the incumbent local exchange carrier shall continue to make available a flat monthly rate with unlimited local calling for basic telecommunications service in all local exchange areas in which the incumbent local exchange carrier offers basic telecommunications service on March 27, 2006, regardless of whether the incumbent local exchange carrier increases the flat monthly rate in any of those local exchange areas under subsection (c). Throughout the transition period, an extended area of service in which the incumbent local exchange carrier offers basic telecommunications service on March 27, 2006, may not be reduced in area or scope without the approval of the commission after notice and hearing.

(h) If, at any time during the rate transition period, the commission determines in accordance with IC 8-1-2-113 that an emergency exists, the commission may act under IC 8-1-2-113 to temporarily alter, amend, or suspend the limits on the flat monthly rate increases set forth in subsections (c) and (d) if necessary to maintain a provider's financial integrity and ability to provide adequate basic telecommunications service. The commission shall reimplement the limits on flat monthly rate increases, as set forth in subsections (c) and (d), when the commission is satisfied the emergency no longer exists.

(i) After June 30, 2009, a provider that offers basic telecommunications service in Indiana:

(1) must offer a flat monthly rate with unlimited local calling for basic telecommunications service in each local exchange area in Indiana in which the provider offers basic telecommunications service; and

(2) may not, in any local exchange area in Indiana in which the provider offers basic telecommunications service, offer any service plan for basic telecommunications service that includes measured local service.

*As added by P.L.27-2006, SEC.16.*

#### **IC 8-1-2.6-1.4**

##### **Basic telecommunications service; commission's limited jurisdiction**

Sec. 1.4. Except as provided in sections 1.5(b), 12, and 13 of this chapter, after June 30, 2009, the commission shall not exercise jurisdiction over basic telecommunications service.

*As added by P.L.27-2006, SEC.17. Amended by P.L.1-2007, SEC.71.*

#### **IC 8-1-2.6-1.5**

##### **Commission's authority over interconnection, resale of telecommunications service, and unbundled network elements; interconnection disputes; intrastate switched or special access service**

Sec. 1.5. (a) In acting to impose any requirements or set any prices concerning:

- (1) interconnection with the facilities and equipment of providers for purposes of 47 U.S.C. 251(c)(2);
- (2) the resale of telecommunications service for purposes of 47 U.S.C. 251(c)(4); or
- (3) the unbundled access of one (1) provider to the network elements of another provider for purposes of 47 U.S.C. 251(c)(3);

the commission shall not exceed the authority delegated to the commission under federal laws and regulations with respect to those actions. This subsection does not affect the commission's authority under IC 8-1-2-5.

(b) Subject to any regulations adopted by the Federal Communications Commission, this section does not affect:

- (1) the commission's authority to mediate a dispute between providers under 47 U.S.C. 252(a);
- (2) the commission's authority to arbitrate a dispute between providers under 47 U.S.C. 252(b);
- (3) the commission's authority to approve an interconnection agreement under 47 U.S.C. 252(e), including the authority to establish service quality metrics and liquidated damages;
- (4) the commission's authority to review and approve a provider's statement of terms and conditions under 47 U.S.C. 252(f);
- (5) a provider's ability to file a complaint with the commission to have a dispute decided by the commission:
  - (A) after notice and hearing; and
  - (B) in accordance with this article; or
- (6) the commission's authority to resolve an interconnection dispute between providers under the expedited procedures set forth in 170 IAC 7-7.

(c) If a provider's rates and charges for intrastate switched or special access service are:

- (1) at issue in a dispute that the commission is authorized to mediate, arbitrate, or otherwise determine under state or federal law; or
- (2) included in an interconnection agreement or a statement of terms and conditions that the commission is authorized to review or approve under state or federal law;

the commission shall consider the provider's rates and charges for intrastate switched or special access service to be just and reasonable if the intrastate rates and charges mirror the provider's interstate rates and charges for switched or special access service.

*As added by P.L.27-2006, SEC.18.*

#### **IC 8-1-2.6-2**

**Rules and orders of the commission; notice and hearing; underlying policies; determination of public interest**

Sec. 2. (a) This section applies to rules and orders that:

- (1) concern telecommunications service or providers of telecommunications service; and
  - (2) may be adopted or issued by the commission under the authority of state or federal law.
- (b) Rules and orders described in this section:
- (1) may be adopted or issued only after notice and hearing, unless:
    - (A) the commission determines in accordance with IC 8-1-2-113 that an emergency exists that requires the commission or a provider to take immediate action to:
      - (i) prevent injury to the business or interests of the citizens of Indiana; or
      - (ii) maintain a provider's financial integrity and ability to provide adequate basic telecommunications service;
    - (B) the commission is authorized under IC 8-1-2 to adopt a particular rule or issue a particular order without the necessity of a hearing; or
    - (C) after receiving notice of the commission's proposed action, all parties to a proceeding consent to the commission taking action without a hearing; and
  - (2) must be:
    - (A) consistent with this chapter; and
    - (B) in the public interest, as determined by the commission under subsection (d).
- (c) Rules and orders described in this section must promote one (1) or more of the following:
- (1) Cost minimization for providers to the extent that a provider's quality of service and facilities are not diminished.
  - (2) A more accurate evaluation by the commission of a provider's physical or financial conditions or needs as well as a less costly regulatory procedure for either the provider, the provider's customers, or the commission.
  - (3) Consumer access to affordable basic telecommunications service.
  - (4) Development of depreciation guidelines and procedures that recognize technological obsolescence.
  - (5) Increased provider management efficiency beneficial to customers.
  - (6) Regulation consistent with a competitive environment.
- (d) In determining whether the public interest will be served, as required under subsection (b), the commission shall consider:
- (1) whether technological change, competitive forces, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the commission unnecessary or wasteful;
  - (2) whether the exercise of commission jurisdiction produces tangible benefits to the customers of providers; and
  - (3) whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar telecommunications services or equipment.

(e) This section does not affect the commission's authority under IC 8-1-2-5.

*As added by P.L.92-1985, SEC.1. Amended by P.L.27-2006, SEC.19.*

### **IC 8-1-2.6-3**

#### **Repealed**

*(Repealed by P.L.27-2006, SEC.61.)*

### **IC 8-1-2.6-4**

#### **Regulatory flexibility committee; legislative standing committees; subject matter jurisdiction; reports**

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 to the regulatory flexibility committee a report that includes 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) 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:

(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 Indiana.

(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.

(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 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. *As added by P.L.92-1985, SEC.1. Amended by P.L.23-1988, SEC.33; P.L.55-1992, SEC.1; P.L.224-2003, SEC.277; P.L.28-2004, SEC.71; P.L.27-2006, SEC.20; P.L.62-2009, SEC.1.*

#### **IC 8-1-2.6-4.1**

##### **Commission's biennial elimination of obsolete telecommunications rules; notification to customer switching from basic to nonbasic telecommunications service**

Sec. 4.1. (a) Not later than:

(1) July 1, 2007; and

(2) July 1 of each odd-numbered year after July 1, 2007;

the commission shall, through a rulemaking proceeding under IC 4-22-2 or another commission proceeding, identify and eliminate rules and policies concerning telecommunications service and telecommunications service providers if the rules or policies are no longer necessary in the public interest or for the protection of consumers as the result of meaningful economic competition

between providers of telecommunications services.

(b) Not later than July 1, 2007, the commission shall adopt rules under IC 4-22-2 to require a telecommunications service provider, at any time the provider communicates with a residential customer about changing the customer's basic telecommunications service to nonbasic telecommunications service, to notify the residential customer of:

- (1) the option of basic telecommunications service; and
- (2) any regulatory protections, including pricing or quality of service protections, that the residential customer would forego by switching to nonbasic telecommunications service.

(c) In carrying out this section, the commission shall promote the policies and purposes set forth in this chapter. Beginning in 2007, and in each odd-numbered year after 2007, the commission's annual report to the regulatory flexibility committee under section 4 of this chapter must:

- (1) identify any regulation or policy eliminated by the commission under this section during the two (2) most recent state fiscal years; and
- (2) explain why the regulation or policy is no longer in the public interest or necessary to protect consumers.

*As added by P.L.27-2006, SEC.21.*

#### **IC 8-1-2.6-5**

##### **Repealed**

*(Repealed by P.L.27-2006, SEC.61.)*

#### **IC 8-1-2.6-6**

##### **Repealed**

*(Repealed by P.L.27-2006, SEC.62.)*

#### **IC 8-1-2.6-7**

##### **Repealed**

*(Repealed by P.L.27-2006, SEC.61.)*

#### **IC 8-1-2.6-8**

##### **Rate reduction programs**

Sec. 8. (a) As used in this section, "rate reduction" means a decrease in either recurring or nonrecurring rates or charges.

(b) Notwithstanding any other provision of this chapter or any other statute, a provider may participate in any rate reduction program for residential customers funded from revenues provided by any governmental entity or other revenues administered by an agency of that entity.

*As added by P.L.81-1988, SEC.2. Amended by P.L.27-2006, SEC.22.*

#### **IC 8-1-2.6-12**

##### **Settlement agreements approved before July 29, 2004**

Sec. 12. This chapter does not terminate or otherwise change the terms and conditions of a settlement agreement approved by the

commission under this chapter before July 29, 2004. However, a provider may renegotiate the terms and conditions of the settlement agreement at any time before the expiration of the settlement agreement.

*As added by P.L.27-2006, SEC.23.*

### **IC 8-1-2.6-13**

#### **Commission's jurisdiction before and after June 30, 2009; reporting requirements**

Sec. 13. (a) As used in this section, "communications service" has the meaning set forth in IC 8-1-32.5-3.

(b) As used in this section, "communications service provider" means a person or an entity that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service. The term includes a provider of commercial mobile service (as defined in 47 U.S.C. 332).

(c) As used in this section, "dark fiber" refers to unused capacity in a communications service provider's communications network, including fiber optic cable or other facilities:

- (1) in place within a public right-of-way; but
- (2) not placed in service by a communications service provider.

(d) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the commission may do the following both during and after the rate transition period described in section 1.3 of this chapter, except as otherwise provided in this subsection:

- (1) Subject to section 12 of this chapter, enforce the terms of a settlement agreement approved by the commission before July 29, 2004. The commission's authority under this subdivision continues for the duration of the settlement agreement.
- (2) Fulfill the commission's duties under IC 8-1-2.8 concerning the provision of dual party relay services to hearing impaired and speech impaired persons in Indiana.
- (3) Fulfill the commission's duties under IC 8-1-19.5 concerning the administration of the 211 dialing code for communications service used to provide access to human services information and referrals.
- (4) Fulfill the commission's responsibilities under IC 8-1-29 to adopt and enforce rules to ensure that a customer of a telecommunications provider is not:
  - (A) switched to another telecommunications provider unless the customer authorizes the switch; or
  - (B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.
- (5) Fulfill the commission's obligations under:
  - (A) the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq.); and
  - (B) IC 20-20-16;concerning universal service and access to telecommunications

service and equipment, including the designation of eligible telecommunications carriers under 47 U.S.C. 214.

(6) Perform any of the functions described in section 1.5(b) of this chapter.

(7) After June 30, 2009, perform the commission's responsibilities under IC 8-1-32.5 to:

(A) issue; and

(B) maintain records of;

certificates of territorial authority for communications service providers offering communications service to customers in Indiana.

(8) Perform the commission's responsibilities under IC 8-1-34 concerning the issuance of certificates of franchise authority to multichannel video programming distributors offering video service to Indiana customers.

(9) After June 30, 2009, require a communications service provider, other than a provider of commercial mobile service (as defined in 47 U.S.C. 332), to report to the commission on an annual basis, or more frequently at the option of the provider, any of the following information:

(A) Service quality goals and performance data. The commission shall make any information or data submitted under this subsection available:

(i) for public inspection and copying at the offices of the commission under IC 5-14-3; and

(ii) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1;

to the extent the information or data are not exempt from public disclosure under IC 5-14-3-4(a).

(B) Information concerning the:

(i) capacity;

(ii) location; and

(iii) planned or potential use;

of the communications service provider's dark fiber in Indiana.

(C) Information concerning the communications service offered by the communications service provider in Indiana, including:

(i) the types of service offered; and

(ii) the areas in Indiana in which the services are offered.

(D) Any information needed by the commission to prepare the commission's report to the regulatory flexibility committee under section 4 of this chapter.

(E) Any other information that the commission is authorized to collect from a communications service provider under state or federal law.

The commission may revoke a certificate issued to a communications service provider under IC 8-1-32.5 if the communications service provider fails or refuses to report any

information required by the commission under this subdivision. However, this subdivision does not empower the commission to require a communications service provider to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subdivision.

(10) Perform the commission's duties under IC 8-1-32.4 with respect to telecommunications providers of last resort, to the extent of the authority delegated to the commission under federal law to perform those duties.

(11) Perform the commission's duties under IC 8-1-2-5 with respect to interconnection.

(12) Establish and administer the Indiana Lifeline assistance program under IC 8-1-36.

(13) After June 30, 2009, collect and maintain from a provider of commercial mobile service (as defined in 47 U.S.C. 332) the following information:

(A) The address of the provider's web site.

(B) All toll free telephone numbers and other customer service telephone numbers maintained by the provider for receiving customer inquiries and complaints.

(C) An address and other contact information for the provider, including any telephone number not described in clause (B).

The commission shall make any information submitted by a provider under this subdivision available on the commission's web site. The commission may also make available on the commission's web site contact information for the Federal Communications Commission and the Cellular Telephone Industry Association.

(14) Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.

(e) After June 30, 2009, the commission does not have jurisdiction over any of the following with respect to a communications service provider:

(1) Rates and charges for communications service provided by the communications service provider, including the filing of schedules or tariffs setting forth the provider's rates and charges.

(2) Depreciation schedules for any of the classes of property owned by the communications service provider.

(3) Quality of service provided by the communications service provider, other than the imposition of a reporting requirement under subsection (d)(9)(A).

(4) Long term financing arrangements or other obligations of the communications service provider.

(5) Except as provided in subsection (d), any other aspect

regulated by the commission under this title before July 1, 2009.  
(f) After June 30, 2009, the commission has jurisdiction over a communications service provider only to the extent that jurisdiction is:

- (1) expressly granted by state or federal law, including:
  - (A) a state or federal statute;
  - (B) a lawful order or regulation of the Federal Communications Commission; or
  - (C) an order or a ruling of a state or federal court having jurisdiction; or
- (2) necessary to administer a federal law for which regulatory responsibility has been delegated to the commission by federal law.

*As added by P.L.27-2006, SEC.24. Amended by P.L.1-2007, SEC.72.*

#### **IC 8-1-2.6-14**

##### **Payment of switched network access rates and other carrier compensation not affected**

Sec. 14. This chapter does not affect the rights and obligations of any person or entity concerning the payment of switched network access rates or other carrier compensation concerning:

- (1) Internet Protocol enabled services;
- (2) advanced services (as defined in 47 CFR 51.5);
- (3) broadband service; or
- (4) other Internet access services.

*As added by P.L.27-2006, SEC.25.*

#### **IC 8-1-2.6-15**

##### **Statutory conflicts; right of small telephone companies and rural cooperatives to withdraw from commission jurisdiction not affected**

Sec. 15. (a) Except as provided in subsection (b), if there is a conflict between this chapter and another provision of this article, this chapter controls.

(b) This chapter does not affect the rights of:

- (1) a provider that has withdrawn from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5 before March 28, 2006, to remain outside the jurisdiction of the commission during the transition period described in section 1.3 of this chapter; or
- (2) a provider that:
  - (A) has not withdrawn from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5 before March 28, 2006; and
  - (B) is otherwise eligible to withdraw from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5;to withdraw from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5 at any time during the transition period described in section 1.3 of this chapter.

Except as provided in section 13(d)(5) of this chapter, after June 30,

2009, section 1.4 of this chapter applies to a provider described in this subsection.

*As added by P.L.27-2006, SEC.26.*

#### **IC 8-1-2.6-16**

##### **Rates charged by incumbent local exchange carriers to payphone service providers**

Sec. 16. (a) As used in this section, "payphone service provider" means an entity, other than an incumbent local exchange carrier, that owns and operates:

- (1) public or semipublic pay telephones; or
- (2) pay telephones used to provide telephone service in correctional institutions.

(b) Notwithstanding any other statute, the commission shall retain jurisdiction to establish just and reasonable rates that may be charged by an incumbent local exchange carrier to a payphone service provider. Rates established under this section must be:

- (1) based on the costs incurred by the incumbent local exchange carrier to provide the service;
- (2) consistent with the requirements of 47 U.S.C. 276;
- (3) nondiscriminatory; and
- (4) consistent with the pricing guidelines for payphone service providers established by the Federal Communications Commission.

*As added by P.L.27-2006, SEC.27.*

#### **IC 8-1-2.6-17**

##### **Delegation of authority to grant numbering requests**

Sec. 17. The commission may delegate to staff the authority to grant requests for numbering resources submitted through the safety valve process established by the Federal Communications Commission as provided In the Matter of Numbering Resource Optimization: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 17 FCC Rcd 252 (FCC 01-362, 2001). An action taken by commission staff under this section is appealable to the commission.

*As added by P.L.219-2011, SEC.1.*