

### **IC 8-1-32.5**

Chapter 32.5. Certificates of Territorial Authority for Communications Service Providers

#### **IC 8-1-32.5-1**

##### **Application of chapter**

Sec. 1. This chapter applies to a communications service provider that seeks to offer communications service to Indiana customers after June 30, 2009.

*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-2**

##### **"Commission"**

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-3**

##### **"Communications service"**

Sec. 3. (a) As used in this chapter, "communications service" refers to any of the following:

(1) Telecommunications service (as defined in 47 U.S.C. 153(46)).

(2) Information service (as defined in 47 U.S.C. 153(20)).

(b) The term includes:

(1) video service (as defined in IC 8-1-34-14);

(2) broadband service;

(3) advanced services (as defined in 47 CFR 51.5); and

(4) Internet Protocol enabled services;

however classified by the Federal Communications Commission.

*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-4**

##### **"Communications service provider"**

Sec. 4. As used in this chapter, "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).

*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-5**

##### **"Facilities based local exchange carrier"**

Sec. 5. As used in this chapter, "facilities based local exchange carrier" means a local exchange carrier (as defined in 47 U.S.C. 153(26)) that provides telephone exchange service (as defined in 47 U.S.C. 153(47)) or exchange access (as defined in 47 U.S.C. 153(16)):

(1) exclusively over facilities owned or leased by the carrier; or

(2) predominantly over facilities owned or leased by the carrier, in combination with the resale of the telecommunications service (as defined in 47 U.S.C. 153(46)) of another carrier.  
*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-6**

##### **Certificate of territorial authority; application; required documents; certificates issued before July 1, 2009; confidential information**

Sec. 6. (a) Except as provided in subsection (c), before a communications service provider may offer communications service to customers in Indiana, the communications service provider must apply to the commission for a certificate of territorial authority. A communications service provider that seeks a certificate under this chapter shall submit an application on a form prescribed by the commission. Subject to subsection (e), the form prescribed by the commission must require the communications service provider to report the following information:

- (1) The provider's legal name and any name under which the provider does or will do business in Indiana, as authorized by the secretary of state.
- (2) The provider's address and telephone number, along with contact information for the person responsible for ongoing communications with the commission.
- (3) The legal name, address, and telephone number of the provider's parent company, if any.
- (4) A description of each service area in Indiana in which the provider proposes to offer communications service.
- (5) For each service area identified under subdivision (4), a description of each type of communications service that the provider proposes to offer in the service area.
- (6) For each communications service identified under subdivision (5), whether the communications service will be offered to residential customers or business customers, or both.
- (7) The expected date of deployment for each communications service identified under subdivision (5) in each service area identified in subdivision (4).
- (8) A list of other states in which the provider offers communications service, including the type of communications service offered.
- (9) Any other information the commission considers necessary to:
  - (A) monitor the type and availability of communications service provided to Indiana customers; and
  - (B) prepare the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4.

The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 8 of this chapter.

(b) A communications service provider shall also submit, along with the application required by subsection (a), the following documents:

(1) A certification from the secretary of state authorizing the provider to do business in Indiana.

(2) Information demonstrating the provider's financial, managerial, and technical ability to provide each communications service identified in the provider's application under subsection (a)(5) in each service area identified under subsection (a)(4).

(3) A statement, signed under penalty of perjury by an officer or another person authorized to bind the provider, that affirms the following:

(A) That the provider has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering communications service in Indiana.

(B) That the provider agrees to comply with any customer notification requirements imposed by the commission under section 11(b) of this chapter.

(C) That the provider agrees to update the information provided in the application submitted under subsection (a) on a regular basis, as may be required by the commission under section 12 of this chapter.

(D) That the provider agrees to notify the commission when the provider commences offering communications service in each service area identified in the provider's application under subsection (a)(4).

(E) That the provider agrees to pay any lawful rate or charge for switched and special access services, as required under any:

(i) applicable interconnection agreement; or

(ii) lawful tariff or order approved or issued by a regulatory body having jurisdiction.

(F) That the provider agrees to report, at the times required by the commission, any information required by the commission under IC 8-1-2.6-13(d)(9).

(c) If:

(1) a communications service provider has been issued a:

(A) certificate of territorial authority; or

(B) certificate of public convenience and necessity; by the commission before July 1, 2009; and

(2) the certificate described in subdivision (1) is in effect on July 1, 2009;

the communications service provider is not required to submit an application under this section for as long as the certificate described in subdivision (1) remains in effect. For purposes of this subsection, if a corporation organized under IC 8-1-13 (or a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a corporation organized under

IC 8-1-13) holds a certificate of public convenience and necessity issued by the commission before, on, or after July 1, 2009, that certificate may serve as the certificate required under this chapter with respect to any communications service offered by the corporation, subject to the commission's right to require the corporation to provide any information that an applicant is otherwise required to submit under subsection (a) or that a holder is required to report under IC 8-1-2.6-13(d)(9).

(d) This section does not empower the commission to require an applicant for a certificate under this chapter 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 section.

(e) The form prescribed for a communications service provider that offers only a service described in IC 8-1-2.6-1.1 must require the communications service provider to report and certify the accuracy of only the information required under subsection (a)(1) and (a)(2). *As added by P.L.27-2006, SEC.55. Amended by P.L.1-2007, SEC.75; P.L.219-2011, SEC.3.*

#### **IC 8-1-32.5-7**

##### **Duplicate copies of application and documents**

Sec. 7. A communications service provider shall submit duplicate copies of the application and documents required by section 6 of this chapter to the commission. The commission shall prescribe the number of copies to be submitted by a communications service provider under this section.

*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-8**

##### **Commission's review of application and documents; issuance of certificate; request for additional information**

Sec. 8. Not later than thirty (30) days after receiving the application and documents required by section 6 of this chapter, the commission shall review the application and documents for accuracy and completeness. If the commission determines that the application and documents are accurate, complete, and properly verified, the commission shall issue a certificate of territorial authority recognizing the communications service provider's authority to provide each communications service identified in the application. If the commission determines that the application and documents are inaccurate or incomplete, or are not properly verified, the commission shall return the application and documents to the provider with a brief statement of any additional information required. Not later than thirty (30) days after receipt of the request for additional information, the provider may:

- (1) provide the information requested;
- (2) appeal the decision of the commission under IC 8-1-3; or
- (3) decide to file another application at a later date, without

prejudice.  
*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-9**

##### **Request for hearing; limited issues; representation by counsel not required**

Sec. 9. (a) A hearing is not required in connection with the issuance of a certificate under this chapter. However, the commission shall conduct a hearing, subject to the requirements for hearings under IC 8-1-2 for public utilities, upon the request of any of the following:

(1) The communications service provider submitting the application.

(2) Any facilities based local exchange carrier offering service in a service area identified in the provider's application under section 6(a)(4) of this chapter.

(3) The office of utility consumer counselor created by IC 8-1-1.1-2.

(4) The commission, on its own motion.

(b) A hearing conducted under this section shall be limited to consideration of one (1) or more of the following issues:

(1) Whether the application and documents submitted under section 6 of this chapter are accurate, complete, and properly verified.

(2) The communications service provider's financial, managerial, and technical ability to provide the communications service for which it seeks a certificate under this chapter.

(c) The commission may not require a:

(1) communications service provider; or

(2) facilities based local exchange carrier offering service in a service area identified in the provider's application under section 6(a)(4) of this chapter;

to be represented by counsel at a hearing under this section.

*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-10**

##### **Sale, assignment, lease, or transfer of certificate; encumbrance of certificate**

Sec. 10. Subject to any notice requirements adopted by the commission under section 12 of this chapter, a certificate issued under this chapter may be:

(1) sold, assigned, leased, or transferred by the holder to any communications service provider to which a certificate of territorial authority may be lawfully issued under this chapter;  
or

(2) included in the property and rights encumbered under any indenture of mortgage or deed of trust of the holder.

*As added by P.L.27-2006, SEC.55.*

#### **IC 8-1-32.5-11**

**Tariff not required; customer notification requirements**

Sec. 11. (a) The commission may not require a communications service provider to file a tariff in connection with, or as a condition of receiving, a certificate of territorial authority under this chapter.

(b) This subsection does not apply to a provider of commercial mobile service (as defined in 47 U.S.C. 332). The commission may require, in connection with the issuance of a certificate under this chapter, the communications service provider to provide advance notice to the provider's Indiana customers if the provider will do any of the following:

- (1) Increase the rates and charges for any communications service that the provider offers in any of the provider's service areas in Indiana.
- (2) Offer new communications service in any of the provider's service areas in Indiana.
- (3) Cease to offer any communications service that the provider offers in any of the provider's service areas in Indiana.

The commission shall prescribe any customer notification requirements under this subsection in a rule of general application adopted under IC 4-22-2.

*As added by P.L.27-2006, SEC.55.*

**IC 8-1-32.5-12****Notice of change**

Sec. 12. In connection with, or as a condition of receiving, a certificate of territorial authority under this chapter, the commission may require a communications service provider to notify the commission, after the issuance of a certificate, of any of the following changes involving the provider or the certificate issued:

- (1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the provider, including a merger, acquisition, or reorganization.
- (2) A change in the provider's legal name or the adoption of, or change to, an assumed business name. The provider shall submit to the commission a certified copy of the:

- (A) amended certificate of authority; or
- (B) certificate of assumed business name;

issued by the secretary of state to reflect the change.

- (3) A change in the provider's principal business address or in the name of the person authorized to receive notice on behalf of the provider.

- (4) Any sale, assignment, lease, or transfer of the certificate to another communications service provider, as allowed by section 10 of this chapter. The provider shall identify the other communications service provider to which the sale, assignment, lease, or transfer is made.

- (5) The relinquishment of any certificate issued under this chapter. The provider shall identify:

- (A) any other certificate of territorial authority issued under this chapter that will be retained by the provider;

(B) the number of Indiana customers in the service area covered by the certificate being relinquished; and

(C) the method by which the provider's customers were or will be notified of the relinquishment, if required in a rule adopted by the commission under section 11(b) of this chapter.

(6) This subdivision does not apply to a provider of commercial mobile service (as defined in 47 U.S.C. 332). A change in the communications service provided in one (1) or more of the service areas identified in the provider's application under section 6(a)(4) of this chapter. However, if new services will be provided in one (1) or more of the service areas, the commission may require the provider to submit a new application under section 6 of this chapter with respect to those services.

(7) A change in one (1) or more of the service areas identified in the provider's application under section 6(a)(4) of this chapter that would increase or decrease the territory within the service area.

The commission shall prescribe the time in which a provider must report changes under this section. The commission may prescribe a form for the reporting of changes under this section.

*As added by P.L.27-2006, SEC.55. Amended by P.L.1-2007, SEC.76.*

### **IC 8-1-32.5-13**

#### **Record of certificates issued; public access**

Sec. 13. The commission shall maintain a record of all certificates of territorial authority issued under this chapter. The record must include all application forms, notices of change under section 12 of this chapter, and other documents filed with the commission under this chapter. The record must be made available:

- (1) for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3; and
- (2) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1;

to the extent the information in the record is not exempt from public disclosure under IC 5-14-3-4(a).

*As added by P.L.27-2006, SEC.55.*

### **IC 8-1-32.5-14**

#### **Exemption from local franchises and fees**

Sec. 14. A communications service provider that holds a certificate issued under this chapter is exempt from local franchises and related fees to the same extent as a communications service provider that holds a certificate of territorial authority or an indeterminate permit issued under IC 8-1-2 before July 1, 2009.

*As added by P.L.27-2006, SEC.55.*

### **IC 8-1-32.5-15**

#### **Commission's authority to adopt rules**

Sec. 15. The commission may adopt rules under IC 4-22-2 to implement this chapter.  
*As added by P.L.27-2006, SEC.55.*