

IC 8-1-32.6

Chapter 32.6. Access to Real Property by Communications Service Providers

IC 8-1-32.6-1

"Commission"

Sec. 1. 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.56.

IC 8-1-32.6-2

"Communications service"

Sec. 2. (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.56.

IC 8-1-32.6-3

"Communications service provider"

Sec. 3. As used in this chapter, "communications service provider" means a person or an entity, or an affiliate (as defined in IC 8-1-34-1) of 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.56.

IC 8-1-32.6-4

"Multitenant real estate"

Sec. 4. As used in this chapter, "multitenant real estate" means any:

(1) geographic area;

(2) building; or

(3) group of buildings;

containing more than one (1) unit for business purposes. The term includes office buildings and office parks. The term does not include apartment buildings, condominiums, or subdivisions.

As added by P.L.27-2006, SEC.56.

IC 8-1-32.6-5

"Person"

Sec. 5. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.
As added by P.L.27-2006, SEC.56.

IC 8-1-32.6-6

"Provider of last resort"

Sec. 6. As used in this chapter, "provider of last resort" has the meaning set forth in IC 8-1-32.4-9.
As added by P.L.27-2006, SEC.56.

IC 8-1-32.6-7

Prohibited contracts, agreements, and arrangements; complaint; commission investigation; civil penalty; enforcement by attorney general; right to appeal

Sec. 7. (a) After March 27, 2006, a communications service provider shall not enter into any contract, agreement, or other arrangement that does any of the following:

- (1) Requires any person to restrict or limit:
 - (A) the ability of another communications service provider to obtain easements or rights-of-way for the installation of facilities or equipment used to provide communications service to Indiana customers; or
 - (B) access to real property by another communications service provider.
- (2) Offers or grants incentives or rewards to an owner of real property if the incentives or rewards are contingent upon the property owner's agreement to restrict or limit:
 - (A) the ability of another communications service provider to obtain easements or rights-of-way for the installation of facilities or equipment used to provide communications service on the property; or
 - (B) access to the owner's real property by another communications service provider.

A contract, an agreement, or any other arrangement that violates this section is void if the contract, agreement, or arrangement is entered into after March 27, 2006. However, a contract, an agreement, or any other arrangement that otherwise violates this section remains in effect until such time as it would normally terminate or expire if the contract, agreement, or arrangement is entered into before March 28, 2006.

(b) This section does not prohibit a communications service provider and a subscriber from entering into any lawful contract, agreement, or other arrangement concerning the communications service offered by the communications service provider to the subscriber.

(c) Upon:

- (1) a complaint filed by:
 - (A) another communications service provider;
 - (B) a subscriber or potential subscriber of communications

service;

(C) the utility consumer counselor; or

(D) any class satisfying the standing requirements of IC 8-1-2-54; or

(2) the commission's own motion;

the commission may investigate whether a communications service provider has violated this section. If, after notice and an opportunity for hearing, the commission determines that the communications service provider has violated this section, the commission may issue an order imposing a civil penalty of not more than five hundred dollars (\$500) for each violation. For purposes of this subsection, each day that a contract, an agreement, or an arrangement prohibited by this section remains in effect constitutes a separate violation.

(d) The attorney general may bring an action in the name of the state to enforce an order of the commission under subsection (c), including the collection of an unpaid civil penalty imposed by the commission.

(e) Civil penalties collected under this section shall be deposited in the state general fund.

(f) A determination by the commission under this section is subject to appeal under IC 8-1-3.

As added by P.L.27-2006, SEC.56.

IC 8-1-32.6-8

Exclusive service arrangements; relief from provider of last resort obligations; voluntary provision of services

Sec. 8. (a) Notwithstanding IC 8-1-32.4-14, the commission may not require a communications service provider, including a provider of last resort, to provide any communications service to the occupants of multitenant real estate if the owner, operator, or developer of the multitenant real estate does any of the following to the benefit of another communications service provider:

(1) Permits only one (1) communications service provider to install the provider's facilities or equipment during the construction or development phase of the multitenant real estate.

(2) Accepts or agrees to accept incentives or rewards that:

(A) are offered by a communications service provider to the owner, operator, developer, or occupants of the multitenant real estate; and

(B) are contingent upon the provision of communications service by that provider to the occupants of the multitenant real estate, to the exclusion of any services provided by other communications service providers.

(3) Collects from the occupants of the multitenant real estate any charges for the provision of communications service to the occupants, including charges collected through rent, fees, or dues.

(4) Enters into an agreement with a communications service provider that is prohibited by section 7 of this chapter.

(b) This subsection applies to a communications service provider that is relieved under subsection (a) of an obligation to provide communications service to the occupants of multitenant real estate. This section does not prohibit the communications service provider from voluntarily offering service to the occupants of the multitenant real estate. However, the commission shall not exercise jurisdiction over the terms, conditions, rates, or availability of any communications service voluntarily offered by a communications service provider under this subsection.

As added by P.L.27-2006, SEC.56.

IC 8-1-32.6-9

Owners, operators, and developers of multitenant real estate; prohibited acts; reasonable conditions on access; right of action

Sec. 9. (a) Except as provided in subsection (b), the owner, operator, or developer of multitenant real estate located in a service area in which one (1) or more communications service providers are authorized to provide communications service may not do any of the following:

- (1) Prevent a communications service provider from installing on the premises communications service equipment that an occupant requests.
- (2) Interfere with a communications service provider's installation on the premises of communications service equipment that an occupant requests.
- (3) Discriminate against a communications service provider or impose unduly burdensome conditions on the terms, conditions, and compensation for a communications service provider's installation of communications service equipment on the premises.
- (4) Demand or accept an unreasonable payment from:
 - (A) an occupant; or
 - (B) a communications service provider;in exchange for allowing the communications service provider access to the premises.
- (5) Discriminate against or in favor of an occupant in any manner, including charging higher or lower rental charges to the occupant, because of the communications service provider from which the occupant receives communications service.

(b) This section does not prohibit the owner, operator, or developer of multitenant real estate from doing any of the following:

- (1) Imposing a condition on a communications service provider that is reasonably necessary to protect:
 - (A) the safety, security, appearance, or condition of the property; or
 - (B) the safety and convenience of other persons.
- (2) Imposing a reasonable limitation on the hours during which a communications service provider may have access to the premises to install communications service equipment.
- (3) Imposing a reasonable limitation on the number of

communications service providers that have access to the premises, if the owner, operator, or developer can demonstrate a space constraint that requires the limitation.

(4) Requiring a communications service provider to agree to indemnify the owner, operator, or developer for damage caused by installing, operating, or removing communications service equipment on or from the premises.

(5) Requiring an occupant or a communications service provider to bear the entire cost of installing, operating, or removing communications service equipment.

(6) Requiring a communications service provider to pay compensation for access to or use of the premises, as long as the compensation is:

(A) reasonable; and

(B) nondiscriminatory;

among communications service providers.

(c) For purposes of this subsection, an "affected person" includes the following:

(1) An occupant that is a current or potential subscriber of communications service on the premises of multitenant real estate.

(2) A unit in which multitenant real estate is located, acting on behalf of:

(A) a person described in subdivision (1); or

(B) other similarly situated persons.

(3) A communications service provider.

An affected person that alleges a violation of this section by the owner, operator, or developer of multitenant real estate may seek equitable or compensatory relief in a court having jurisdiction. The party prevailing in any action filed under this section is entitled to recover the costs of the action, including reasonable attorney's fees as determined by the court.

As added by P.L.27-2006, SEC.56.

IC 8-1-32.6-10

Commission's authority to adopt rules

Sec. 10. The commission may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.27-2006, SEC.56.