

HOUSE BILL No. 1304

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1; IC 8-20-1-28; IC 8-23-6-6; IC 24-5-22-10.

Synopsis: Broadband development. Provides that the Indiana utility regulatory commission (IURC) may adopt rules necessary to administer the Indiana universal service fund (IUSF), including rules to: (1) adjust the amount of the surcharge percentage required to be collected by communications service providers and remitted to the IUSF; and (2) establish the types of communications service providers that are required to assess a surcharge for remittance to the IUSF. Provides that the IURC may, to the extent not prohibited by federal law, require a provider of interconnected voice over Internet Protocol (VOIP) service to collect and remit to the IUSF a surcharge on the provider's revenue from intrastate use of the provider's interconnected VOIP service. Provides that a communications service provider, including a provider of broadband service through fiber optic cable, has access to public rights-of-way as a public utility for purposes of federal law exempting public utilities from payment of fair market value for use of public rights-of-way acquired with federal mass transportation funds. Allows use of the I-Light network for provision of communications service to unserved areas, subject to rules adopted by the office of community and rural affairs to: (1) define unserved areas for purposes of the rules; and (2) establish an application process to receive and evaluate proposals by communications service providers for use of I-Light to provide communications service to unserved areas. Provides that a fee owner of a right-of-way or a possessor of an easement: (1) is not entitled to compensation; (2) may not charge a fee of any kind; and (3) may not unreasonably deny authorization; for construction, operation, or maintenance of infrastructure by public and municipally owned
(Continued next page)

Effective: July 1, 2020.

Prescott, Negele, Baird

January 14, 2020, read first time and referred to Committee on Utilities, Energy and Telecommunications.



Digest Continued

utilities, including communications service providers, to the extent that the construction, operation, or maintenance does not interfere with the ordinary and normal use of the right-of-way or easement. Provides that the department of transportation, when issuing a permit for excavation or obstruction of a street, highway, or right-of-way: (1) may not require provision of a bond or cash deposit in an amount greater than \$10,000 for each area designated in the permit; and (2) must accept a blanket bond in satisfaction of the bond requirement. Makes a technical correction.



Introduced

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1304

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-1, AS AMENDED BY P.L.145-2015,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 1. (a) Except as provided in section 1.1 of this
4 chapter, "public utility", as used in this chapter, means every
5 corporation, company, partnership, limited liability company,
6 individual, association of individuals, their lessees, trustees, or
7 receivers appointed by a court, that may own, operate, manage, or
8 control any plant or equipment within the state for the:
9 (1) conveyance of telegraph or telephone messages;
10 (2) production, transmission, delivery, or furnishing of heat, light,
11 water, or power; or
12 (3) collection, treatment, purification, and disposal in a sanitary
13 manner of liquid and solid waste, sewage, night soil, and
14 industrial waste.
15 The term does not include a municipality that may acquire, own, or

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- 1 operate any of the foregoing facilities.
- 2 (b) "Municipal council", as used in this chapter, means the
3 legislative body of any town or city in Indiana wherein the property of
4 the public utility or any part thereof is located.
- 5 (c) "Municipality", as used in this chapter, means any city or town
6 of Indiana.
- 7 (d) "Rate", as used in this chapter, means every individual or joint
8 rate, fare, toll, charge, rental, or other compensation of any utility or
9 any two (2) or more such individual or joint rates, fares, tolls, charges,
10 rentals, or other compensation of any utility or any schedule or tariff
11 thereof, but nothing in this subsection shall give the commission any
12 control, jurisdiction, or authority over the rate charged by a municipally
13 owned utility except as in this chapter expressly provided.
- 14 (e) "Service" is used in this chapter in its broadest and most
15 inclusive sense and includes not only the use or accommodation
16 afforded consumers or patrons but also any product or commodity
17 furnished by any public or other utility and the plant, equipment,
18 apparatus, appliances, property, and facility employed by any public or
19 other utility in performing any service or in furnishing any product or
20 commodity and devoted to the purposes in which such public or other
21 utility is engaged and to the use and accommodation of the public.
- 22 (f) "Commission", as used in this chapter, means the commission
23 created by IC 8-1-1-2.
- 24 (g) "Utility", as used in this chapter, means every plant or equipment
25 within the state used for:
- 26 (1) the conveyance of telegraph and telephone messages;
27 (2) the production, transmission, delivery, or furnishing of heat,
28 light, water, or power, either directly or indirectly to the public;
29 or
30 (3) collection, treatment, purification, and disposal in a sanitary
31 manner of liquid and solid waste, sewage, night soil, and
32 industrial waste.
- 33 The term does not include a municipality that may acquire, own, or
34 operate facilities for the collection, treatment, purification, and disposal
35 in a sanitary manner of liquid and solid waste, sewage, night soil, and
36 industrial waste. A warehouse owned or operated by any person, firm,
37 limited liability company, or corporation engaged in the business of
38 operating a warehouse business for the storage of used household
39 goods is not a public utility within the meaning of this chapter.
- 40 (h) "Municipally owned utility", as used in this chapter, includes
41 every utility owned or operated by a municipality.
- 42 (i) "Indeterminate permit", as used in this chapter, means every



1 grant, directly or indirectly from the state, to any corporation, company,
 2 partnership, limited liability company, individual, association of
 3 individuals, their lessees, trustees, or receivers appointed by a court, of
 4 power, right, or privilege to own, operate, manage, or control any plant
 5 or equipment, or any part of a plant or equipment, within this state, for
 6 the:

7 (1) production, transmission, delivery, or furnishing of heat, light,
 8 water, or power, either directly or indirectly to or for the public;

9 (2) collection, treatment, purification, and disposal in a sanitary
 10 manner of liquid and solid waste, sewage, night soil, and
 11 industrial waste; or

12 (3) furnishing of facilities for the transmission of intelligence by
 13 electricity between points within this state;

14 which shall continue in force until such time as the municipality shall
 15 exercise its right to purchase, condemn, or otherwise acquire the
 16 property of such public utility, as provided in this chapter, or until it
 17 shall be otherwise terminated according to law.

18 (j) "Communications service provider", as used in this chapter, has
 19 the meaning set forth in ~~IC 8-1-2.6-13~~. **IC 8-1-2.6-0.8(b)**.

20 SECTION 2. IC 8-1-2.6-0.8 IS ADDED TO THE INDIANA CODE
 21 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2020]: **Sec. 0.8. (a) As used in this chapter, "communications
 23 service" has the meaning set forth in IC 8-1-32.5-3.**

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

30 SECTION 3. IC 8-1-2.6-0.9 IS ADDED TO THE INDIANA CODE
 31 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2020]: **Sec. 0.9. As used in this chapter, "Indiana universal
 33 service fund" refers to the Indiana universal service fund
 34 established by the commission's order approved on March 17,
 35 2004.**

36 SECTION 4. IC 8-1-2.6-1, AS AMENDED BY P.L.27-2006,
 37 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2020]: **Sec. 1. The Indiana general assembly hereby declares
 39 that:**

40 (1) the maintenance of:

41 (A) universal telephone service; **and**

42 (B) access to communications service;



1 is a continuing goal of the commission in the exercise of its
 2 jurisdiction;
 3 (2) competition has become commonplace in the provision of
 4 telecommunications services in Indiana and the United States;
 5 (3) advancements in and the convergence of technologies that
 6 provide voice, video, and data transmission, including:
 7 (A) landline, wireless, cable, satellite, and Internet
 8 transmissions; and
 9 (B) transmissions involving voice over Internet Protocol
 10 (VOIP), Internet Protocol enabled services, and voice over
 11 power lines;
 12 are substantially increasing consumer choice, reinventing the
 13 marketplace with unprecedented speed, and making available
 14 highly competitive products and services and new methods of
 15 delivering local exchange service;
 16 (4) traditional regulatory policies, practices, and statutes are not
 17 designed to deal with a competitive environment and
 18 technological advancements;
 19 (5) an environment in which Indiana consumers will have
 20 available the widest array of state-of-the-art communications
 21 services at the most economic and reasonable cost possible will
 22 necessitate full and fair facilities based competition in the
 23 delivery of telecommunications services throughout Indiana; and
 24 (6) streamlining of, and flexibility in, the regulation of providers
 25 of telecommunications services, regardless of the technology
 26 used, is essential to the well-being of Indiana, its economy, and its
 27 citizens, and that the public interest requires that the commission
 28 be authorized to formulate and adopt rules and policies as will
 29 permit the commission, in the exercise of its expertise, to regulate
 30 and control the provision of telecommunications services to the
 31 public in an increasingly competitive and technologically
 32 changing environment, giving due regard to the interests of
 33 consumers and the public, the ability of market forces to
 34 encourage innovation and investment, and the continued universal
 35 availability of basic telecommunications service.

36 SECTION 5. IC 8-1-2.6-1.1, AS AMENDED BY P.L.7-2015,
 37 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2020]: Sec. 1.1. **Except as provided by section 2.5 of this**
 39 **chapter**, the commission shall not exercise jurisdiction over:
 40 (1) advanced services (as defined in 47 CFR 51.5);
 41 (2) broadband service, however defined or classified by the
 42 Federal Communications Commission;



1 (3) information service (as defined in ~~47 U.S.C. 153~~; **47 U.S.C.**
2 **153**);

3 (4) Internet Protocol enabled retail services:

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

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

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

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

9 SECTION 6. IC 8-1-2.6-2.5 IS ADDED TO THE INDIANA CODE
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2020]: **Sec. 2.5. The commission may, on its own motion, adopt**
12 **rules necessary to administer the Indiana universal service fund,**
13 **including rules to:**

14 (1) **adjust the amount of the surcharge percentage required to**
15 **be collected by communications service providers and**
16 **remitted to the Indiana universal service fund; and**

17 (2) **establish the types of communications service providers**
18 **that are required to assess a surcharge for remittance to the**
19 **Indiana universal service fund;**

20 **if the commission finds, after notice and a hearing, that adoption**
21 **of the rule is in the public interest.**

22 SECTION 7. IC 8-1-2.6-2.6 IS ADDED TO THE INDIANA CODE
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
24 1, 2020]: **Sec. 2.6. The commission may, to the extent not prohibited**
25 **by federal law, adopt a rule under section 2.5 of this chapter to:**

26 (1) **require a provider of interconnected VOIP service (as**
27 **defined in 47 CFR 9.3) to collect a surcharge on the provider's**
28 **revenue that is sourced, as determined under rules adopted by**
29 **the commission under section 2.5 of this chapter, to intrastate**
30 **use of the provider's interconnected VOIP service; and**

31 (2) **remit the amounts collected under subdivision (1) to the**
32 **Indiana universal service fund.**

33 SECTION 8. IC 8-1-2.6-4, AS AMENDED BY P.L.53-2014,
34 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2020]: Sec. 4. (a) As used in this section, "committee" means
36 the interim study committee on energy, utilities, and
37 telecommunications established by IC 2-5-1.3-4.

38 (b) Subject to subsection (e), the commission shall, by July 1 of
39 each year, report to the committee in an electronic format under
40 IC 5-14-6 on the following:

41 (1) The effects of competition and technological change on
42 universal service and on pricing of all telecommunications



1 services offered in Indiana.

2 (2) The status of competition and technological change in the
3 provision of video service (as defined in IC 8-1-34-14) available
4 to Indiana customers, as including the following information:

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

7 (B) The technologies used to provide video service to Indiana
8 customers.

9 (C) The advertised programming and pricing options offered
10 by video service providers to Indiana customers.

11 (3) Best practices concerning vertical location of underground
12 facilities for purposes of IC 8-1-26. A report under this
13 subdivision must address the viability and economic feasibility of
14 technologies used to vertically locate underground facilities.

15 (c) In addition to reviewing the commission report prepared under
16 subsection (b), the committee may also issue a report and
17 recommendations to the legislative council by November 1 of each year
18 that is based on a review of the following issues:

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

22 (2) The status of modernization of the publicly available
23 telecommunications infrastructure in Indiana and the incentives
24 required to further enhance this infrastructure.

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

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

29 (5) The economic and social effectiveness of current
30 telecommunications service pricing.

31 (6) All other telecommunications issues the committee deems
32 appropriate.

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

35 (d) The committee shall, with the approval of the commission, retain
36 the independent consultants the committee considers appropriate to
37 assist the committee in the review and study. The expenses for the
38 consultants shall be paid by the commission.

39 (e) If the commission requests a communications service provider
40 (as defined in section 13(b) of this chapter) to provide information for
41 the commission to use in preparing a report under this section, the
42 request must be limited to public information provided to the Federal



1 Communications Commission and may be required to be provided only
 2 in the form in which it is provided to the Federal Communications
 3 Commission. However, the commission may request any public
 4 information from a communications service provider (~~as defined in~~
 5 ~~section 13(b) of this chapter~~) upon a request from the committee's
 6 chairperson that specifically enumerates the public information sought.

7 SECTION 9. IC 8-1-2.6-13, AS AMENDED BY P.L.156-2017,
 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2020]: Sec. 13. ~~(a) As used in this section, "communications~~
 10 ~~service" has the meaning set forth in IC 8-1-32.5-3.~~

11 ~~(b) As used in this section, "communications service provider"~~
 12 ~~means a person or an entity that offers communications service to~~
 13 ~~customers in Indiana, without regard to the technology or medium used~~
 14 ~~by the person or entity to provide the communications service. The~~
 15 ~~term includes a provider of commercial mobile service (as defined in~~
 16 ~~47 U.S.C. 332).~~

17 ~~(c) (a) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the~~
 18 ~~commission may do the following, except as otherwise provided in this~~
 19 ~~subsection:~~

20 (1) Enforce the terms of a settlement agreement approved by the
 21 commission before July 29, 2004. The commission's authority
 22 under this subdivision continues for the duration of the settlement
 23 agreement.

24 (2) Fulfill the commission's duties under IC 8-1-2.8 concerning
 25 the provision of dual party relay services to deaf, hard of hearing,
 26 and speech impaired persons in Indiana.

27 (3) Before July 1, 2017, fulfill the commission's duties under
 28 IC 8-1-19.5 concerning the administration of the 211 dialing code
 29 for communications service used to provide access to human
 30 services information and referrals.

31 (4) Fulfill the commission's responsibilities under IC 8-1-29 to
 32 adopt and enforce rules to ensure that a customer of a
 33 telecommunications provider is not:

34 (A) switched to another telecommunications provider unless
 35 the customer authorizes the switch; or

36 (B) billed for services by a telecommunications provider that
 37 without the customer's authorization added the services to the
 38 customer's service order.

39 (5) Fulfill the commission's obligations under:

40 (A) the federal Telecommunications Act of 1996 (47 U.S.C.
 41 151 et seq.); and

42 (B) IC 20-20-16;



- 1 concerning universal service and access to telecommunications
 2 service and equipment, including the designation of eligible
 3 telecommunications carriers under 47 U.S.C. 214.
- 4 (6) Perform any of the functions described in section 1.5(b) of this
 5 chapter.
- 6 (7) Perform the commission's responsibilities under IC 8-1-32.5
 7 to:
- 8 (A) issue; and
 9 (B) maintain records of;
- 10 certificates of territorial authority for communications service
 11 providers offering communications service to customers in
 12 Indiana.
- 13 (8) Perform the commission's responsibilities under IC 8-1-34
 14 concerning the issuance of certificates of franchise authority to
 15 multichannel video programming distributors offering video
 16 service to Indiana customers.
- 17 (9) Require a communications service provider, other than a
 18 provider of commercial mobile service (as defined in 47 U.S.C.
 19 332), to report to the commission on an annual basis, or more
 20 frequently at the option of the provider, and subject to section 4(e)
 21 of this chapter, any information needed by the commission to
 22 prepare the commission's report to the interim study committee on
 23 energy, utilities, and telecommunications under section 4 of this
 24 chapter.
- 25 (10) Perform the commission's duties under IC 8-1-32.4 with
 26 respect to telecommunications providers of last resort, to the
 27 extent of the authority delegated to the commission under federal
 28 law to perform those duties.
- 29 (11) Collect and maintain from a communications service
 30 provider the following information:
- 31 (A) The address of the provider's Internet web site.
 32 (B) All toll free telephone numbers and other customer service
 33 telephone numbers maintained by the provider for receiving
 34 customer inquiries and complaints.
 35 (C) An address and other contact information for the provider,
 36 including any telephone number not described in clause (B).
- 37 The commission shall make any information submitted by a
 38 provider under this subdivision available on the commission's
 39 Internet web site. The commission may also make available on the
 40 commission's Internet web site contact information for the Federal
 41 Communications Commission and the Cellular Telephone
 42 Industry Association.



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

4 **(13) Administer the Indiana universal service fund as**
 5 **provided in section 2.5 of this chapter.**

6 ~~(d)~~ (b) The commission does not have jurisdiction over any of the
 7 following with respect to a communications service provider:

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

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

13 (3) Quality of service provided by the communications service
 14 provider.

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

17 (5) Except as provided in subsection ~~(e)~~; (a), any other aspect
 18 regulated by the commission under this title before July 1, 2009.

19 ~~(e)~~ (c) The commission has jurisdiction over a communications
 20 service provider only to the extent that jurisdiction is:

21 (1) expressly granted by state or federal law, including:

22 (A) a state or federal statute;

23 (B) a lawful order or regulation of the Federal
 24 Communications Commission; or

25 (C) an order or a ruling of a state or federal court having
 26 jurisdiction; or

27 (2) necessary to administer a federal law for which regulatory
 28 responsibility has been delegated to the commission by federal
 29 law.

30 SECTION 10. IC 8-1-2.8-8, AS AMENDED BY P.L.109-2012,
 31 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2020]: Sec. 8. As used in this chapter, "local exchange
 33 company" or "LEC" refers to any communications service provider (as
 34 defined in ~~IC 8-1-2.6-13(b)~~ **IC 8-1-2.6-0.8(b)**) that:

35 (1) has a certificate of territorial authority on file with the
 36 commission; and

37 (2) is required to provide dual party relay services to deaf, hard of
 38 hearing, and speech impaired persons under federal law.

39 SECTION 11. IC 8-1-17-13, AS AMENDED BY P.L.27-2006,
 40 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2020]: Sec. 13. A cooperative corporation may do any and all
 42 acts or things necessary or convenient for carrying out the purpose for



1 which it was formed, including the following:

2 (1) To sue and be sued.

3 (2) To have a seal and alter the same at pleasure.

4 (3) To acquire, hold, and dispose of property, real and personal,
5 tangible and intangible, or any interest in the property and to pay
6 in cash or credit, and to secure and procure payment of all or any
7 part of the purchase price on the terms and conditions as the
8 board shall determine.

9 (4) If it is a local cooperative corporation, to furnish, improve, and
10 expand telephone service to its members, to governmental
11 agencies and political subdivisions, and to other persons.

12 (5) If it is a local cooperative corporation, to construct, purchase,
13 lease as lessee, or otherwise acquire, and to improve, expand,
14 install, equip, maintain, and operate, and to sell, assign, convey,
15 lease as lessor, mortgage, pledge, or otherwise dispose of or
16 encumber telephone facilities or systems, lands, buildings,
17 structures, plants and equipment, exchanges, and any other real
18 or personal property, tangible or intangible which is necessary or
19 appropriate to accomplish the purpose for which the local
20 cooperative corporation is organized.

21 (6) To cease doing business and to dissolve and surrender its
22 corporate franchise.

23 (7) If it is a local cooperative corporation, to construct, operate,
24 and maintain its telephone facilities across or along any street or
25 public highway, or over lands that are the property of this state or
26 a political subdivision of the state. Before telephone facilities are
27 constructed across or along a highway in the state highway
28 system, the local cooperative corporation shall first obtain the
29 permit of the Indiana department of transportation to do so, and
30 the location and setting of the telephone facilities shall be
31 approved by and subject to the supervision of the Indiana
32 department of transportation. Before telephone facilities are
33 constructed on or across land belonging to the state, the local
34 cooperative corporation shall first obtain the permit of the
35 department of state having charge of the lands to do so, and the
36 location and setting of the telephone facilities shall be approved
37 by and subject to the supervision of the department. The
38 telephone facilities shall be erected and maintained so as not to
39 interfere with the use and maintenance of the streets, highways,
40 and lands, and no pole or appliance shall be located so as to
41 interfere with the ingress or egress from any premises on the
42 street or highway. Nothing in this section contained shall deprive



1 the body having charge of the street or highway of the right to
 2 require the relocation of any pole or appliance which may affect
 3 the proper use of the street or highway for public travel, for
 4 drainage, or for the repair, construction, or reconstruction of the
 5 street or highway. The local cooperative corporation shall restore
 6 the street, highway, or lands to their former condition or state as
 7 near as may be and shall not use the same in a manner to impair
 8 unnecessarily their usefulness or to injure the property of others.
 9 (8) To accept gifts or grants of property, real or personal, from
 10 any person, municipality, or federal agency and to accept
 11 voluntary and uncompensated services.
 12 (9) If it is a local cooperative corporation, to connect and
 13 interconnect its telephone facilities or systems with other
 14 telephone facilities or systems. A connection or interconnection
 15 shall be in a manner and according to specifications as will avoid
 16 interference with or hazards to existing telephone facilities or
 17 systems.
 18 (10) To issue membership certificates.
 19 (11) To borrow money and otherwise contract indebtedness, and
 20 to issue or guarantee notes, bonds, and other evidences of
 21 indebtedness and to secure the payment thereof by mortgage,
 22 pledge, or deed of trust of, or any other encumbrance upon, any
 23 or all of its then owned or after-acquired real or personal property,
 24 assets, franchises, or revenues.
 25 (12) To make any and all contracts necessary or convenient for
 26 the full exercise of the powers in this chapter granted, including,
 27 without limiting the generality of the foregoing, contracts with
 28 any person, federal agency, municipality, or other corporation for
 29 the interconnection of telephone service; for the management and
 30 conduct of the business of the cooperative corporation; and for the
 31 fixing of the rates, fees, or charges for service rendered or to be
 32 rendered by the local cooperative corporation.
 33 (13) To levy and collect reasonable fees, rents, tolls, and other
 34 charges for telephone service rendered.
 35 (14) If it is a local cooperative corporation, to exercise the right
 36 of eminent domain in the manner provided by law for the exercise
 37 thereof by communications service providers (as defined in
 38 ~~IC 8-1-2.6-13(b)~~: **IC 8-1-2.6-0.8(b)**).
 39 (15) To adopt, amend, and repeal bylaws.
 40 (16) If it is a local cooperative corporation, to become a member
 41 of a general cooperative corporation and if it is a general
 42 cooperative corporation, to have local cooperative corporations as



1 its members.

2 (17) To recover, after a period of two (2) years, any unclaimed
3 stocks, dividends, capital credits, patronage refunds, utility
4 deposits, membership fees, account balances, or book equities for
5 which the owner cannot be found and are the result of
6 distributable savings of the corporation returned to the members
7 on a pro rata basis pursuant to section 20 of this chapter.

8 SECTION 12. IC 8-1-17.5-25, AS AMENDED BY P.L.156-2017,
9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2020]: Sec. 25. Notwithstanding any other law, the
11 commission may exercise jurisdiction over a surviving corporation or
12 successor corporation formed under this chapter only to do the
13 following:

14 (1) Ensure compliance with IC 8-1-2.8 concerning the provision
15 of dual party relay services to deaf, hard of hearing, and speech
16 impaired persons in Indiana.

17 (2) Before July 1, 2017, perform the commission's duties under
18 IC 8-1-19.5 concerning the administration of the 211 dialing code
19 for communications service used to provide access to human
20 services information and referrals.

21 (3) Enforce rules adopted under IC 8-1-29 to ensure that a
22 customer of a telecommunications provider is not:

23 (A) switched to another telecommunications provider unless
24 the customer authorizes the switch; or

25 (B) billed for services by a telecommunications provider that
26 without the customer's authorization added the services to the
27 customer's service order.

28 (4) Conduct proceedings under:

29 (A) the federal Telecommunications Act of 1996 (47 U.S.C.
30 151 et seq.); and

31 (B) IC 20-20-16;

32 concerning universal service and access to telecommunications
33 service and equipment, including the designation of eligible
34 telecommunications carriers under 47 U.S.C. 214.

35 (5) Perform the commission's duties under IC 8-1-2.6-1.5 or
36 IC 8-1-2-5.

37 (6) Issue or maintain certificates of territorial authority for
38 communications service providers under IC 8-1-32.5.

39 (7) Perform the commission's duties under IC 8-1-34 to issue and
40 maintain certificates of franchise authority to multichannel video
41 programming distributors offering video service to Indiana
42 customers.



- 1 (8) Perform the commission's duties under ~~IC 8-1-2.6-13(c)~~(9)
 2 **IC 8-1-2.6-13(a)(9)** concerning the reporting of information by
 3 communications service providers.
 4 (9) Fulfill the commission's duties under any state or federal law
 5 concerning the administration of any universally applicable
 6 dialing code for any communications service.
 7 (10) Perform the commission's duties under IC 8-1-2.3 with
 8 respect to assigned service areas for electricity suppliers.
 9 (11) Issue:
 10 (A) certificates of public convenience and necessity,
 11 certificates of territorial authority, and indeterminate permits
 12 under IC 8-1-2;
 13 (B) certificates of public convenience and necessity under
 14 IC 8-1-8.5; or
 15 (C) certificates of public convenience and necessity under
 16 IC 8-1-8.7.
 17 (12) Determine territorial disputes between water utilities under
 18 IC 8-1.5-6.

19 SECTION 13. IC 8-1-32.3-4.2, AS ADDED BY P.L.261-2017,
 20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2020]: Sec. 4.2. As used in this chapter, "communications
 22 service provider" has the meaning set forth in ~~IC 8-1-2.6-13.~~
 23 **IC 8-1-2.6-0.8(b).**

24 SECTION 14. IC 8-1-32.5-4, AS ADDED BY P.L.27-2006,
 25 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2020]: Sec. 4. As used in this chapter, "communications
 27 service provider" means a person or an entity that offers
 28 communications service to customers in Indiana, without regard to the
 29 technology or medium used by the person or entity to provide the
 30 communications service. The term includes:

31 (1) a provider of commercial mobile service (as defined in 47
 32 U.S.C. 332); and

33 (2) a provider of broadband service through fiber optic cable.

34 SECTION 15. IC 8-1-32.5-6, AS AMENDED BY P.L.53-2014,
 35 SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2020]: Sec. 6. (a) Except as provided in subsection (c), before
 37 a communications service provider may offer communications service
 38 to customers in Indiana, the communications service provider must
 39 apply to the commission for a certificate of territorial authority. A
 40 communications service provider that seeks a certificate under this
 41 chapter shall submit an application on a form prescribed by the
 42 commission. Subject to subsection (e), the form prescribed by the



1 commission must require the communications service provider to
2 report the following information:

3 (1) The provider's legal name and any name under which the
4 provider does or will do business in Indiana, as authorized by the
5 secretary of state.

6 (2) The provider's address and telephone number, along with
7 contact information for the person responsible for ongoing
8 communications with the commission.

9 (3) The legal name, address, and telephone number of the
10 provider's parent company, if any.

11 (4) A description of each service area in Indiana in which the
12 provider proposes to offer communications service.

13 (5) For each service area identified under subdivision (4), a
14 description of each type of communications service that the
15 provider proposes to offer in the service area.

16 (6) For each communications service identified under subdivision
17 (5), whether the communications service will be offered to
18 residential customers or business customers, or both.

19 (7) The expected date of deployment for each communications
20 service identified under subdivision (5) in each service area
21 identified in subdivision (4).

22 (8) A list of other states in which the provider offers
23 communications service, including the type of communications
24 service offered.

25 (9) Any other information the commission considers necessary to:

26 (A) monitor the type and availability of communications
27 service provided to Indiana customers; and

28 (B) prepare, under IC 8-1-2.6-4, the commission's annual
29 report to the interim study committee on energy, utilities, and
30 telecommunications established by IC 2-5-1.3-4 in an
31 electronic format under IC 5-14-6.

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

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

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

40 (2) Information demonstrating the provider's financial,
41 managerial, and technical ability to provide each communications
42 service identified in the provider's application under subsection



1 (a)(5) in each service area identified under subsection (a)(4).

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

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

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

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

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

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

23 (i) applicable interconnection agreement; or

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

26 (F) That the provider agrees to report, at the times required by
27 the commission, any information required by the commission
28 under ~~IC 8-1-2.6-13(e)(9)~~. **IC 8-1-2.6-13(a)(9)**.

29 (c) If:

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

31 (A) certificate of territorial authority; or

32 (B) certificate of public convenience and necessity;

33 by the commission before July 1, 2009; and

34 (2) the certificate described in subdivision (1) is in effect on July
35 1, 2009;

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



1 commission before, on, or after July 1, 2009, that certificate may serve
 2 as the certificate required under this chapter with respect to any
 3 communications service offered by the corporation, subject to the
 4 commission's right to require the corporation to provide any
 5 information that an applicant is otherwise required to submit under
 6 subsection (a) or that a holder is required to report under
 7 ~~IC 8-1-2.6-13(e)(9)~~: **IC 8-1-2.6-13(a)(9)**.

8 (d) This section does not empower the commission to require an
 9 applicant for a certificate under this chapter to disclose confidential and
 10 proprietary business plans and other confidential information without
 11 adequate protection of the information. The commission shall exercise
 12 all necessary caution to avoid disclosure of confidential information
 13 supplied under this section.

14 (e) The form prescribed for a communications service provider that
 15 offers only a service described in IC 8-1-2.6-1.1 must require the
 16 communications service provider to report and certify the accuracy of
 17 only the information required under subsection (a)(1) and (a)(2).

18 SECTION 16. IC 8-1-32.5-14, AS AMENDED BY P.L.189-2019,
 19 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2020]: Sec. 14. A communications service provider that holds
 21 a certificate issued under this chapter:

22 (1) is exempt from local franchises and related fees to the same
 23 extent as a communications service provider that holds a
 24 certificate of territorial authority or an indeterminate permit
 25 issued under IC 8-1-2 before July 1, 2009;

26 (2) may access public rights-of-way to the same extent as a public
 27 utility ~~(as defined in IC 8-1-2-1(a))~~, **for purposes of 23 CFR**
 28 **710.403(e)(2)**, other than rights-of-way, property, or projects that
 29 are the subject of a public-private agreement under IC 8-15.5 or
 30 IC 8-15.7 or communications systems infrastructure, including all
 31 infrastructure used for wireless communications, owned by or
 32 under the jurisdiction of the Indiana finance authority or the state
 33 or any of its agencies, departments, boards, commissions,
 34 authorities, or instrumentalities; and

35 (3) shall be designated as a public utility solely as that term is
 36 used in 23 CFR 710.403(e)(2).

37 SECTION 17. IC 8-1-32.7-5, AS ADDED BY P.L.79-2012,
 38 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2020]: Sec. 5. (a) Except as provided in subsections (b) and
 40 (c) and in IC 21-28-5, after March 31, 2012, I-Light may not be used
 41 to offer or provide, directly or indirectly, communications service to the
 42 public or to any private or governmental entity.



1 (b) This section does not prohibit the use of I-Light for any of the
2 following:

3 (1) The provision of communications service to the extent used
4 solely for 911 service, enhanced 911 service, or any other
5 emergency or law enforcement purpose.

6 (2) The provision of communications service to a state
7 educational institution or a private postsecondary educational
8 institution in furtherance of education or research for the direct
9 benefit of students, faculty, or staff. The provision of
10 communications service under this subdivision may include the
11 provision of communications service to a person that is not a state
12 educational institution or a private postsecondary educational
13 institution if:

14 (A) the person has a research and development relationship
15 with a state educational institution or a private postsecondary
16 educational institution; and

17 (B) the communications service required by and provided to
18 the person:

19 (i) is a one (1) gigabit per second or greater network
20 connection;

21 (ii) is used in furtherance of the research and development
22 relationship only;

23 (iii) is provided only for a specific research and
24 development project;

25 (iv) is provided only for the limited duration of the specific
26 research and development project; and

27 (v) is not provided in competition with private sector
28 communications service providers' provision of
29 communications service.

30 (3) The provision of communications service to member licensees
31 of Indiana Public Broadcasting Stations, Inc., for the direct benefit
32 of public broadcasting.

33 **(4) The provision of communications service to public or**
34 **private entities in unserved areas, subject to subsection (d).**

35 (c) Notwithstanding subsection (a), the state remains subject to any
36 contractual rights, duties, and obligations incurred by the state and
37 owed to any private person under a contract for the provision of
38 communications service that was entered into by the state before April
39 1, 2012, and that remains in effect after March 31, 2012. All liens,
40 security interests, royalties, and other contracts, rights, and interests
41 owed to a private person under the contract continue in full force and
42 effect and must be paid or performed by the state in the manner



1 specified in the contract, subject to the right of the state and all other
2 contracting parties to renegotiate the terms of the contract at any time
3 before the expiration of the contract.

4 **(d) The office of community and rural affairs established by**
5 **IC 4-4-9.7-4 shall adopt rules under IC 4-22-2 to:**

6 **(1) define unserved areas for purposes of subsection (b)(4);**
7 **and**

8 **(2) establish an application process by which the office of**
9 **community and rural affairs shall receive and evaluate**
10 **proposals by communications service providers for use of**
11 **I-Light as described in subsection (b)(4).**

12 SECTION 18. IC 8-20-1-28 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 28. **(a)** Public and
14 municipally owned utilities, **including communications service**
15 **providers**, are authorized to construct, operate, and maintain their
16 poles, facilities, appliances, and fixtures upon, along, under, and across
17 any of the public roads, highways, and waters outside of municipalities,
18 as long as they do not interfere with the ordinary and normal public use
19 of the roadway, as defined in IC 9-13-2-157. However, the utility shall
20 review its plans with the county executive before locating the pole,
21 facility, appliance, or fixture. The utility may trim any tree along the
22 road or highway, but may not cut down and remove the tree without the
23 consent of the abutting property owners, unless the cutting or removal
24 is required by rule or order of the Indiana utility regulatory
25 commission. The utility may not locate a pole where it interferes with
26 the ingress or egress from adjoining land.

27 **(b) A fee owner of a right-of-way or a possessor of an easement:**

- 28 **(1) is not entitled to compensation;**
- 29 **(2) may not charge a fee of any kind; and**
- 30 **(3) may not unreasonably deny authorization;**

31 **for construction, operation, or maintenance described in subsection**
32 **(a) to the extent that the construction, operation, or maintenance**
33 **does not interfere with the ordinary and normal use of the**
34 **right-of-way or easement.**

35 SECTION 19. IC 8-23-6-6 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. (a) An opening may
37 not be made in:

- 38 (1) a highway in the state highway system;
- 39 (2) the right-of-way of a state highway; or
- 40 (3) the roadway of a street of a city or town over which a state
41 highway is routed and which the department is required to
42 maintain;



1 and a structure or obstruction may not be placed in a highway or
 2 roadway of a state highway without the consent of the department. A
 3 highway or roadway may not be dug up for laying or placing a pipe,
 4 sewer, pole, wire, conduit, track, or railway or for any other purpose,
 5 and trees may not be removed from the right-of-way of a state highway
 6 without the written permit of the department, and then only in
 7 accordance with the rules of the department. The work shall be done
 8 under the supervision and to the satisfaction of the department, and the
 9 entire expense of restoring the highway or street in as good condition
 10 as before shall be paid by the person to whom the permit is given.

11 (b) **Subject to subsection (c)**, the department may require, before
 12 the granting of a permit, that a sufficient bond be given, or cash deposit
 13 made, to insure the restoration of the highway or street. In granting a
 14 permit, the department may designate the place in the street, highway,
 15 or right-of-way thereof where the pipe, sewer, pole, wire, conduit,
 16 track, railway, or other device or thing may be constructed.

17 **(c) The department:**

18 **(1) may not require provision of a bond or cash deposit in an**
 19 **amount greater than ten thousand dollars (\$10,000) for each**
 20 **place designated in a permit under subsection (b); and**

21 **(2) shall accept a blanket bond in satisfaction of a bond**
 22 **requirement under subsection (b).**

23 **(e) (d)** A person who violates this section commits a Class C
 24 infraction.

25 SECTION 20. IC 24-5-22-10, AS AMENDED BY P.L.132-2012,
 26 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2020]: Sec. 10. (a) The following have a right of action
 28 against a person who initiates or assists the transmission of a
 29 commercial electronic mail message that violates this chapter:

30 (1) A person who receives the commercial electronic mail
 31 message.

32 (2) An interactive computer service that handles or retransmits
 33 the commercial electronic mail message.

34 (b) This chapter does not provide a right of action against:

35 (1) an interactive computer service; or

36 (2) a communications service provider (as defined in
 37 ~~IC 8-1-2.6-13~~; **IC 8-1-2.6-0.8(b)**);

38 whose equipment is used to transport, handle, or retransmit a
 39 commercial electronic mail message that violates this chapter.

40 (c) It is a defense to an action under this section if the defendant
 41 shows by a preponderance of the evidence that the violation of this
 42 chapter resulted from a good faith error and occurred notwithstanding



1 the maintenance of procedures reasonably adopted to avoid violations
2 of this chapter.

3 (d) If the plaintiff prevails in an action filed under this section, the
4 plaintiff is entitled to the following:

5 (1) An injunction to enjoin future violations of this chapter.

6 (2) Compensatory damages equal to any actual damage proven by
7 the plaintiff to have resulted from the initiation of the commercial
8 electronic mail message. If the plaintiff does not prove actual
9 damage, the plaintiff is entitled to presumptive damages of five
10 hundred dollars (\$500) for each commercial electronic mail
11 message that violates this chapter and that is sent by the
12 defendant:

13 (A) to the plaintiff; or

14 (B) through the plaintiff's interactive computer service.

15 (3) The plaintiff's reasonable attorney's fees and other litigation
16 costs reasonably incurred in connection with the action.

17 (e) A person outside Indiana who:

18 (1) initiates or assists the transmission of a commercial electronic
19 mail message that violates this chapter; and

20 (2) knows or should know that the commercial electronic mail
21 message will be received in Indiana;

22 submits to the jurisdiction of Indiana courts for purposes of this
23 chapter.

