

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE ENROLLED ACT No. 396

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-2.6-1.5, AS AMENDED BY P.L.256-2013, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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

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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.

(d) If the commission requires a provider to file a tariff for intrastate switched access service, special access service, or any other service, the filing of the tariff with the commission serves as the public notice of the filing of the tariff. The commission shall provide the public with notice of tariff filings through the commission's Internet web site or other electronic means.

SECTION 2. IC 8-1-2.6-2, AS AMENDED BY P.L.27-2006, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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.

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SECTION 3. IC 8-1-2.6-13, AS AMENDED BY P.L.256-2013, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the commission may do the following, except as otherwise provided in this subsection:

(1) 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 deaf, hard of hearing, 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) 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) 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, and subject to section 4(f) of this chapter, any information needed by the commission to prepare the commission's report to the regulatory flexibility committee under section 4 of this chapter.

(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)~~ **(11)** Collect and maintain from a communications service provider the following information:

(A) The address of the provider's Internet 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 Internet web site. The commission may also make available on the commission's Internet web site contact information for the Federal Communications Commission and the Cellular Telephone Industry Association.

~~(13)~~ **(12)** Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.

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

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- (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.
 - (4) Long term financing arrangements or other obligations of the communications service provider.
 - (5) Except as provided in subsection (c), any other aspect regulated by the commission under this title before July 1, 2009.
- (e) 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.

SECTION 4. IC 8-1-2.6-16 IS REPEALED [EFFECTIVE JULY 1, 2014]. 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.

SECTION 5. IC 22-13-2-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE UPON PASSAGE]: **Sec. 11.5. (a)** As used in this section, "NFPA 72" refers to NFPA 72, National Fire Alarm and Signaling Code, 2010 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471.

(b) It is the intent of the general assembly that NFPA 72, as may be amended by the commission under subsection (c), be incorporated into the Indiana Administrative Code. Not later than July 1, 2014, the commission shall adopt rules under IC 4-22-2 to amend 675 IAC 28-1-28 to incorporate NFPA 72 into the Indiana Administrative Code, subject to subsection (c)(1) and (c)(2). The commission may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to comply with this subsection. An emergency rule adopted by the commission under IC 4-22-2-37.1 to comply with this subsection expires on the date a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

(c) In adopting rules to incorporate NFPA 72 into the Indiana Administrative Code, as required by subsection (b), the commission may amend NFPA 72 as the commission considers appropriate. However, the rules finally adopted by the commission to comply with this section must do the following:

(1) Incorporate the definition of, and associated requirements for:

- (A)** a managed facilities-based voice network (MFVN); and
- (B)** a public switched telephone network (PSTN);

as set forth in NFPA 72.

(2) Allow digital alarm communicator systems that make use of a managed facilities-based voice network (MFVN) to transmit signals from a fire alarm system to an offsite monitoring facility, subject to the requirements for those systems set forth in NFPA 72.

(d) If the commission does not comply with subsection (b), the following apply on July 1, 2014:

(1) The definition of, and associated requirements for:

- (A)** a managed facilities-based voice network (MFVN); and
- (B)** a public switched telephone network (PSTN);

as set forth in NFPA 72, are considered incorporated into the Indiana Administrative Code. Any provisions of 675 IAC 28-1-28 (or any rules adopted by a state agency, or any ordinances or other regulations adopted by a political subdivision) that conflict with the definitions and



requirements described in this subdivision are superseded by the definitions and requirements described in this subdivision. This subdivision continues to apply until the commission adopts rules that amend 675 IAC 28-1-28 to incorporate NFPA 72 into the Indiana Administrative Code and that comply with subsection (c)(1) and (c)(2).

(2) A person that after June 30, 2014, installs or uses a digital alarm communicator system that:

(A) makes use of a managed facilities-based voice network (MFVN) to transmit signals from a fire alarm system to an offsite monitoring facility; and

(B) meets the requirements for such a system set forth in NFPA 72;

is not required to obtain a variance from the commission under section 11 of this chapter for the installation or use.

SECTION 6. IC 36-8-16.6-11, AS AMENDED BY P.L.132-2012, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) The board shall impose an enhanced prepaid wireless charge on each retail transaction that occurs after June 30, 2010. The amount of the initial charge imposed under this section may not exceed one-half (1/2) of the monthly wireless emergency enhanced 911 fee assessed under IC 36-8-16.5-25.5 (before its repeal on July 1, 2012). The board shall increase the amount of the charge imposed under this section so that the amount of the charge imposed after June 30, 2012, under this section equals fifty cents (\$0.50).

(b) Subject to legislative approval, after the increase described in subsection (a) and after June 30, 2012, the board may increase the enhanced prepaid wireless charge to ensure adequate revenue for the board to fulfill its duties and obligations under this chapter and IC 36-8-16.7.

(c) A consumer that is the federal government or an agency of the federal government is exempt from the enhanced prepaid wireless charge imposed under this section.

(d) This subsection applies to a provider that is designated by the Indiana utility regulatory commission as an eligible telecommunications carrier for purposes of receiving reimbursement from the universal service fund through the administrator designated by the Federal Communications Commission. A provider:

(1) is not considered an agency of the federal government for purposes of the exemption set forth in subsection (c); and

(2) is liable for the enhanced prepaid wireless charge imposed



under this section with respect to prepaid wireless telecommunications service provided by the provider in its capacity as an eligible telecommunications carrier.

SECTION 7. IC 36-8-16.7-32, AS ADDED BY P.L.132-2012, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 32. (a) Except as provided in subsections (c) and (e), and subject to subsection (b) and section 48(e) of this chapter, the board shall assess a monthly statewide 911 fee on each standard user that is a customer having a place of primary use in Indiana at a rate that:

- (1) ensures full recovery of the amount needed for the board to make distributions to county treasurers consistent with this chapter; and
- (2) provides for the proper development, operation, and maintenance of a statewide 911 system.

The amount of the initial fee assessed under this subsection is ninety cents (\$0.90).

(b) The board may adjust the statewide 911 fee to ensure adequate revenue for the board to fulfill the board's duties and obligations under this chapter, subject to the following:

- (1) The fee may not be raised or lowered more than one (1) time in a calendar year.
- (2) The fee:
 - (A) may not be raised by an amount that is less than or equal to ten cents (\$0.10) without review by the budget committee; and
 - (B) may not be raised or lowered by an amount that is more than ten cents (\$0.10) without legislative approval.

(c) The fee assessed under this section does not apply to a prepaid user in a retail transaction under IC 36-8-16.6.

(d) An additional fee relating to the provision of 911 service may not be levied by a state agency or local unit of government. An enhanced prepaid wireless charge (as defined in IC 36-8-16.6-4) is not considered an additional fee relating to the provision of wireless 911 service for purposes of this section.

- (e) A user is exempt from the fee if the user is any of the following:
- (1) The federal government or an agency of the federal government.
 - (2) The state or an agency or instrumentality of the state.
 - (3) A political subdivision (as defined in IC 36-1-2-13) or an agency of a political subdivision.
 - (4) A user that accesses communications service solely through



a wireless data only service plan.

(f) This subsection applies to a provider that is designated by the Indiana utility regulatory commission as an eligible telecommunications carrier for purposes of receiving reimbursement from the universal service fund through the administrator designated by the Federal Communications Commission. A provider:

- (1) is not considered an agency of the federal government for purposes of the exemption set forth in subsection (e); and**
- (2) is liable for the monthly statewide 911 fee assessed under subsection (a) with respect to communications service provided by the provider in its capacity as an eligible telecommunications carrier.**

SECTION 8. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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