

December 8, 2009

Pamela D. Taber, Director
Communications Division
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500E
Indianapolis, IN 46204

Re: Comments on Proposed Strawman Telecommunications Rule

Dear Pam:

In response to your letter dated November 10, 2009, the carrier members of the Midwest Association of Competitive Carriers (“MACC”)¹ submit these comments on the Commission staff’s proposed strawman revisions to the administrative rules affecting Communications Service Providers (“CSPs”) in Title 7 of the Indiana Administrative Code (the “Proposed Rules”).

As a general matter, MACC is concerned that the Commission is without jurisdiction to impose several of the Proposed Rules. As you know, I.C. 8-1-2.6-1.1 and 8-1-2.6-1.2 significantly limit the Commission’s jurisdiction. As a result of the Indiana General Assembly’s passage of House Bill 1279 in 2006, it is unclear on what basis the Commission retains jurisdiction to impose many of the Proposed Rules over the conduct of CSPs including, but not limited to:

- 170 I.A.C. 7-1.2-3(e) that imposes certain requirements on LECs during 911 service affecting disruptions.
- 170 I.A.C. 7-1.2-5 that imposes certain legal duties of care on CSPs.
- 170 I.A.C. 7-1.2-7 that requires CSPs to answer all IURC staff inquiries within 15 days.
- 170 I.A.C. 7-1.2-11 that imposes precise service specifications for LECs.
- 170 I.A.C. 7-1.3-5(b) that requires CSPs to furnish notice of rate increases to affected customers at least 30 days prior to the increase.

¹ The MACC carrier members participating in these comments are Birch Communications; Level 3 Communications, LLC; One Communications; PAETEC; and tw telecom.

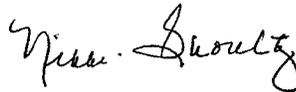
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- 170 I.A.C. 7-1.3-6 that establishes specific billing requirements for LECs.²
- 170 I.A.C. 7-1.3-7 that establishes requirements for adjustments to customer bills.
- 170 I.A.C. 7-1.3-9 that establishes requirements for handling customer complaints, including a prohibition on certain disconnections.

Moreover, to the extent that any of the Proposed Rules are intended to apply to IP-enabled service providers, the Commission is pre-empted by federal law from regulating those providers. The Federal Communications Commission ("FCC") and the 8th Circuit have held that interconnected Voice over Internet Protocol services are solely within the FCC's jurisdiction because "it would be impractical, if not impossible to separate the intrastate portions of VoIP service from the interstate portions, and state regulation would conflict with federal rules and policies." *Minn. Pub. Util. Comm'n v. FCC*, 483 F.3d 570, 574 (8th Cir. 2007); *Vonage Holding Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Pub. Util. Comm'n*, 19 FCC Rcd. 22404, 22424 ¶ 32 (2004). The FCC has explained that it, "and not state commissions, has the responsibility to decide" if traditional telephone regulations "will be applied." *Vonage v. Nebraska Public Service Commission*, 564 F.3d 900, 905 (8th Cir. 2009). Several of the Proposed Rules amount to rate regulation, which is outside the scope of the Commission's jurisdiction under Indiana law, and as applied to VoIP carriers, is preempted by federal law.

Because MACC's concerns are primarily legal in nature and relate to the Commission's jurisdiction, MACC would welcome an opportunity to participate in a workshop or meeting where the Commission's staff, legal counsel, and industry counsel can discuss and seek resolution of these concerns. Should you wish to schedule a meeting or further discuss MACC's concerns, please give me a call. Thank you in advance for your consideration.

Best regards,



Nikki G. Shoultz

cc: MACC Members (via e-mail)

² Aside from the lack of jurisdiction for this Proposed Rule, MACC members who use one single template for billing operations across the country would be forced to create an Indiana-specific bill in order to comply with the rule, which would be costly, burdensome, and inefficient.