

From: Hartley, Robert L. [rhartley@fbtlaw.com]
Sent: Friday, January 08, 2010 6:50 PM
To: ptaber@iurc.in.gov

Pam,

On behalf of TracFone, we appreciate the staff's efforts to acquire input from stakeholders and industry groups before embarking on a formal rule making procedure, and appreciate the staff's willingness to convene a workshop to hear concerns, especially on the sensitive subjects of legality and jurisdiction.

TracFone would express two major concerns about the proposed revisions to 170 IAC 1-1.2. First, they fail to recognize the limitations on jurisdiction over CMRS and CMRS providers under section 332(c)(3) of the federal communications act. It appears that the Indiana legislature has at least attempted to recognize those limitations when drafting telecommunications recent legislation, and any regulations adopted by the commission should do likewise.

Second, the proposed revisions to 170 IAC 1-1.2 appear to be based on a theory that the commission has greater regulatory jurisdiction over a CSP with ETC status than over a CSP without ETC status. TracFone respectfully submits that that premise is legally flawed, as no authority exists in Indiana law to support it.

The only mention of ETCs in Indiana legislation merely authorizes the commission to *certify* them. Nothing in current Indiana law authorizes the commission to impose on CSPs the service quality, record keeping, accounting, rate and much of the reporting requirements that the proposed revisions to 170 IAC 1-1.2 would impose on ETCs. Indeed current Indiana law appears to forbid imposing those requirements on CSPs, which is presumably why references to CSPs or LECs were omitted or eliminated in most of the proposed revisions to 170 IAC 1-1.2. To paraphrase a famous logic example, while not all CSPs are ETCs, all ETCs are CSPs. Accordingly, absent specific statutory language that carves ETCs out of the express statutory limitations on the commission's jurisdiction over CSPs, those limitations apply to all CSPs regardless of whether they hold ETC status or not. Therefore, TracFone respectfully submits that to the extent the commission lacks jurisdiction to impose on a CSP without ETC status any of the requirements the proposed revisions to 170 IAC 1-1.2 would impose, the commission lacks jurisdiction to impose those requirement on ETCs.

–Robert L. Hartley
Attorney at Law | **FROST BROWN TODD LLC**

201 North Illinois Street, Suite 1900 | Indianapolis, Indiana 46204
(For mailing please use P.O. Box 44961 | Indianapolis, Indiana 46244-0961)
317.237.3949 Direct | 317.237.3800 Main | 317.237.3900 Fax | 317.691.6321 Mobile
Assistant: Joyce Whitaker | 317.237.3925 | jwhitaker@fbtlaw.com
rhartley@fbtlaw.com | www.frostbrowntodd.com