
TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Notice of First Public Comment Period

LSA Document #24-392

TELECOMMUNICATION PROVIDERS; FEES AND PENALTIES

PURPOSE OF NOTICE

The Indiana Utility Regulatory Commission (IURC) is soliciting public comment on adding rules in [170 IAC 7](#) concerning fees imposed on, and factors used in assessing penalties that apply to, certain telecommunications providers. The IURC seeks comment on the affected citations listed and any other provisions of Title 170 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

Regulatory Analysis: [20241023-IR-170240392RAA](#)

Notice of Public Hearing: [20241023-IR-170240392PHA](#)

CITATIONS AFFECTED: [170 IAC 7-1.3-8.2](#); [170 IAC 7-8](#)

AUTHORITY: [IC 8-1-2.6-13](#); [IC 8-1-2.8-11](#); [IC 8-1-29-5.5](#); [IC 8-1-29-6](#); [IC 8-1-29-7.5](#); [IC 8-1-29.5](#); [IC 8-1-32.6-10](#); [IC 8-1-34-16](#)

OVERVIEW

Basic Purpose and Background

This rulemaking is required under [IC 4-22-2-19.6](#), effective January 1, 2023, requiring that for each fee, fine, or civil penalty imposed by an agency that is not set as a specific amount in a state law, a rule must describe the circumstances for which the agency will assess a fee, fine, or civil penalty, and set forth the amount of the fee, fine, or civil penalty. This rulemaking is intended to comply with that requirement.

This rulemaking sets forth various fees and factors for assessing penalties that may be imposed by the IURC on various telecommunications providers. The proposed rule adds: [170 IAC 7-1.3-8.2](#) to set forth the penalty considerations for assessing penalties under [IC 8-1-29-7.5](#) regarding "slamming" and "cramming"; [170 IAC 7-8-1](#) to set forth the penalty considerations for assessing penalties under [IC 8-1-29.5](#) regarding unsafe and unjust practices by telecommunications providers and video service providers; [170 IAC 7-8-2](#) to set forth the penalty considerations for assessing penalties under [IC 8-1-32.6-7](#) regarding limiting competing communication service providers from providing services; [170 IAC 7-8-3](#) to set forth the application fees for certificates of video franchise authority under [IC 8-1-34-16\(d\)](#); [170 IAC 7-8-4](#) to set forth the process for the commission to set the universal service fund surcharge; and adds [170 IAC 7-8-5](#) to set forth the process for the commission to set the hearing impaired services surcharge.

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jeremy Comeau
Assistant General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204
(317) 232-2102 (Office)
jcomeau@urc.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

IURC is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #24-392 Telecommunication Providers; Fees and Penalties
Jeremy Comeau
Assistant General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204
- (2) By email to urccomments@urc.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.
- (3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than November 27, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Utility Regulatory Commission, 101 West Washington Street, Suite 1500 East, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Indiana Utility Regulatory Commission office and at <https://www.in.gov/iurc/rulemakings/rulemakings-pending-and-effective/rm-24-03-regarding-170-iac-7-1.3-170-iac-7-8/>.

If IURC does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

SECTION 1. [170 IAC 7-1.3-8.2](#) IS ADDED TO READ AS FOLLOWS:

[170 IAC 7-1.3-8.2](#) Penalty factors; unauthorized switching of telecommunications providers or charges billed

Authority: [IC 8-1-29-5.5](#); [IC 8-1-29-6](#); [IC 8-1-29-7.5](#)
Affected: [IC 8-1-29-7.5](#)

Sec. 8.2. (a) When imposing a civil penalty under [IC 8-1-29-7.5](#), the commission shall impose a civil penalty of two thousand five hundred dollars (\$2,500) for each violation unless it finds at least one (1) of the factors in subsection (b) applies.

(b) The commission may impose a penalty in a lesser amount than specified in subsection (a) if it makes findings of at least one (1) of the following:

- (1) The conduct was limited to a single customer or a small group of customers.**
- (2) The telecommunications provider voluntarily made restitution to the customers.**
- (3) The telecommunications provider did not have a history of previous violations.**
- (4) The commission determines other facts are present that warrant a lesser penalty.**

(Indiana Utility Regulatory Commission; [170 IAC 7-1.3-8.2](#))

SECTION 2. [170 IAC 7-8](#) IS ADDED TO READ AS FOLLOWS:

Rule 8. Fees and Penalties; Surcharges for Services

[170 IAC 7-8-1](#) Penalties for unjust and unsafe practices

Authority: [IC 8-1-29.5](#)
Affected: [IC 8-1-29.5](#)

Sec. 1. In considering whether to impose a penalty under [IC 8-1-29.5](#) and the amount of the penalty, the commission shall consider the following factors:

- (1) Whether the pattern of conduct shows a willful disregard, as evidenced by a continuing pattern of conduct, by the provider or certificate holder, of its obligation to remedy the offense after the provider or the certificate holder becomes aware of the offense.
- (2) Whether the conduct involves repeated errors in bills issued to at least one (1) customer class, and if the errors:
 - (A) represent intentional misconduct or an act of fraud by the provider or certificate holder, or by any officer, accountant, or agent of the provider or certificate holder; or
 - (B) demonstrate, by a continuing pattern of conduct, a willful disregard by the provider or certificate holder of its obligation to remedy the errors after the provider or certificate holder becomes aware of the errors.

(Indiana Utility Regulatory Commission; [170 IAC 7-8-1](#))

[170 IAC 7-8-2](#) Penalty factors for limitations on competition

Authority: [IC 8-1-32.6-10](#)

Affected: [IC 8-1-32.6](#)

Sec. 3. In determining the amount of penalty to be imposed under [IC 8-1-32.6](#), the commission shall consider the following factors:

- (1) Whether the violation has a major or minor impact on the health, safety, or welfare of a person that owns or occupies the multitenant real property in question.
- (2) Whether the conduct was limited in scope.
- (3) Whether the communications service provider has a history of previous violations.
- (4) Whether the communications service provider voluntarily stopped engaging in the violation and made appropriate restitution.
- (5) Whether there is a need for deterring future violations.

(Indiana Utility Regulatory Commission; [170 IAC 7-8-2](#))

[170 IAC 7-8-3](#) Application fees for certificate of video franchise

Authority: [IC 8-1-34-16](#)

Affected: [IC 8-1-34-16](#)

Sec. 3. The application fee for a certificate of franchise authority by a video service provider is eight hundred thirty-two dollars (\$832), payable by the applicant when the applicant submits its application, and in a manner prescribed by the commission.

(Indiana Utility Regulatory Commission; [170 IAC 7-8-3](#))

[170 IAC 7-8-4](#) Universal service fund surcharge

Authority: [IC 8-1-2.6-13](#)

Affected: [IC 8-1-2.6-13](#)

Sec. 4. (a) The commission shall set the Indiana universal service fund surcharge in compliance with the order issued March 17, 2004, in commission cause number 42144, and the order issued February 22, 2012, in cause number 42144-S3. The surcharge percentage shall be set in cause number 42144-S3 not more than twice a year after considering the recommendation of the oversight committee and any other information submitted in that cause. The commission may open a new subdocket for this purpose, if needed.

(b) In setting the Indiana universal service fund surcharge, the commission shall consider the reasonableness factors contained in the order issued February 22, 2012, in cause number 42144-S3.

(Indiana Utility Regulatory Commission; [170 IAC 7-8-4](#))

[170 IAC 7-8-5](#) Surcharge for hearing impaired telecommunications services

Authority: [IC 8-1-2.8-11](#)

Affected: [IC 8-1-2.8](#)

Sec. 5. (a) The commission shall set the surcharge for hearing impaired services under [IC 8-1-2.8-11](#), and may adjust the surcharge under [IC 8-1-2.8-12](#) based on information received from InTRAC, as defined by [IC 8-1-2.8-6](#), in a commission proceeding in cause number 39880 INTRAC X.

(b) In setting the surcharge for hearing impaired services, the commission shall consider the reasonableness factors contained in the order issued March 23, 1994, in cause number 39880-INTRAC.

(Indiana Utility Regulatory Commission; [170 IAC 7-8-5](#))

Posted: 10/23/2024 by Legislative Services Agency

An [html](#) version of this document.