

**Regulatory Analysis**  
LSA Document #24-392**I. Description of Rule**

This rulemaking implements HEA 1623-2023 by including in a rule certain fees and penalties that may be assessed by the Indiana Utility Regulatory Commission ("IURC"). In total, this rulemaking includes six different fees or penalties over the six sections in the rulemaking. Each section is discussed separately below.

**a. History and Background of the Rule –****1. Slamming and Cramming Penalties**

The IURC is authorized to investigate allegations and issue civil penalties for the unauthorized switching of customers between telecommunications providers (slamming) and the billing of unauthorized charges (cramming) under [IC 8-1-29-7.5](#). The IURC promulgated rules in 2002 under [IC 8-1-29-6](#) ensuring that a customer of a telecommunication provider is not switched to another telecommunications service provider or billed for additional services without the customer's authorization. The rules are found at [170 IAC 7-1.3-8.1](#). A customer is authorized to make a complaint to the IURC regarding slamming or cramming under [IC 8-1-29-7](#) and [170 IAC 7-1.3-9](#). If the IURC determines that the telecommunication provider has engaged in slamming or cramming, the IURC may impose a civil penalty of not more than \$2,500 for each offense. [IC 8-1-29-7.5](#).

The most recent instance of penalties ordered by the IURC for slamming or cramming occurred in 2008. On October 8, 2008, the IURC issued a final order in IURC Cause No. 43365. In that case, the IURC issued a judgment against ACCXX Communications, LLC in the amount of \$165,000 for 66 incidents of cramming, equating to the maximum penalty of \$2,500 per incident. It also issued a judgment of \$65,000 against Virtual Reach Corporation for 26 incidents of cramming, also at \$2,500 per incident.

**2. Penalties for Unjust and Unsafe Practices**

Under [IC 8-1-29.5-6](#), the IURC is empowered to investigate complaints by essentially ten or more customers, the Office of Utility Consumer Counselor, a municipality, or another public utility, against a telecommunications provider or video service provider. A telecommunications provider is defined by [IC 8-1-2.6-0.4](#) as an entity offering basic or non-basic telecommunications service, and a video service provider is an entity that is required to obtain a certificate of [video] franchise authority under [IC 8-1-34-17](#). A video service provider is often a cable tv provider, or any entity that qualifies as a multichannel video programming distributor under [IC 8-1-34-11](#).

Upon receipt of a qualifying complaint, the IURC determines, after notice and opportunity for a hearing, whether the telecommunications provider or video service provider engaged in any unsafe, unjustly discriminatory, or inadequate service. [IC 8-1-29.5-6](#). If so, the Commission may impose a civil penalty of not more than \$10,000 per offense against the provider or certificate holder if the offense involved a willful disregard of its obligation to remedy the offense after becoming aware, or repeated errors in bills. See [IC 8-1-29.5-6\(b\)\(4\)](#). The penalty must either be returned to customers as a bill credit or deposited in designated account by the IEDC. [IC 8-1-29.5-7\(c\)](#). The statute at [IC 8-1-29.5-7\(a\)](#) lists factors for the IURC to consider in setting assessing a penalty.

To date, the IURC has not yet imposed a penalty under [IC 8-1-29.5](#).

**3. Penalty Considerations for Limitations on Competition**

After March 27, 2006, a communications service provider is prohibited from entering into an agreement that restricts the ability of a competing communications service provider from obtaining easements or rights of way or otherwise limits the ability of a competitor from providing service to Indiana customers. And a communications service provider is prohibited from offering incentives to a property owner for the property owner to restrict the ability of a competing communications service provider to provide service to the property. [IC 8-1-32.6-7](#). A communications service provider is defined by [IC 8-1-32.6-3](#), and essentially refers to any entity providing telecommunication, information, video, broadband or internet service. If the IURC finds a communications service provider engages in the prohibited activity, it may assess a penalty of not more than \$500 for each violation for each day the violation remains in effect. [IC 8-1-32.6-7](#). The penalty is

deposited in the state general fund.

To date, the IURC has not yet imposed a penalty on any entity under this section.

#### 4. Application Fees for Certificate of Video Franchise Authority

The IURC is the sole franchise authority in the state for the provision of video service. [IC 8-1-34-16](#). A video service provider is essentially defined as an entity that is a multichannel video programming distributor, often a cable tv provider. See IC§ 8-1-34-11, -14. A video service provider is required to obtain a certificate of [video] franchise authority under [IC 8-1-34-17](#).

The IURC may charge an application fee to obtain a certificate of franchise authority (CFA) under [IC 8-1-34-16\(d\)](#), and that application fee may not to exceed the IURC's actual costs to process and review the application.

The application fee is set by a General Administrative Order (GAO) issued by the IURC. The most recent GAO approving the application fee was issued on Nov 27, 2019, in GAO 2019-4. <https://www.in.gov/iurc/files/GAO-2019-4-Certificates-of-FA-for-Video-Srvc-Providers.pdf>.

The application fee is currently \$832.00. The IURC has not received applications, and thus no application fees, since 2020. The below table shows the applications received since 2012.

Year	No. of Applications	Total Fees
2012	6	\$4,992
2013	7	\$5,824
2014	1	\$832
2015	4	\$3,328
2016	5	\$4,160
2017	3	\$2,496
2018	3	\$2,496
2019	3	\$2,496
2020	2	\$1,664
2021	0	\$ -
2022	0	\$ -
2023	0	\$ -

#### 5. Universal Service Fund Fee

The IURC has responsibility to fulfill its 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. Under this authority, the IURC established the Indiana Universal Service Fund (IUSF) in IURC Cause No. 42144 in 2004. The purpose of the universal service fund is to provide support for all households, whether in a remote area or in the city, to obtain and maintain telephone service and to have access to comparable services at comparable prices. [IC 8-1-2.6-13\(c\)\(4\)](#).

All telecommunications carriers remit to the IUSF administrator an IUSF contribution each month equal to the Surcharge Percentage (currently set at 2.26%) multiplied by the billed intrastate retail telecommunications revenue charged by such telecommunications carrier to its end user customers for the prior month, less intrastate retail uncollectables.

The IUSF is administered by a third party, Solix, Inc., selected by the IUSF Oversight Committee and approved by the IURC.

#### 6. Fee for Hearing Impaired Telecommunications Services

The IURC implements the surcharge for hearing impaired services under [IC 8-1-2.8-11](#). The surcharge is statutorily set at \$0.05 on each residential and business line or line equivalent, but was set at \$.03 based on the final order in IURC cause no. 39880, issued in 2004. InTRAC may periodically apply for adjustments to the surcharge and the last adjustment was approved by the IURC on August 10, 2022, in Cause No. 39880

INTRAC 6. The IURC approved a downward adjustment from \$0.03 per line or line equivalent to \$0.02, effective on November 1, 2022. The proceeds of the surcharge are deposited with the Indiana Telephone Relay Access Corporation, (InTRAC), a not-for-profit corporation formed under [IC 23-7-1.1](#).

**b. Scope of the Rule** – The scope of each section in the proposed rule above in section 1, 2, 3, above is to describe the considerations the IURC will use in setting the applicable penalty and in section 4, 5, and 6, state the applicable fee in a rulemaking, all as required by [IC 4-22-2-19.6](#).

**c. Statement of Need** – This rulemaking is mandatory 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 and either set the amount of the fee or penalty, or provide the factors that will be used in setting the penalty.

Under the "safe harbor" in [IC 4-22-2-19.6\(e\)\(2\)\(B\)](#), the IURC submitted the applicable fines, fees, and penalties to the State Budget Committee. The State Budget Committee included the IURC's fines, fees, and penalties on its agenda for April 19, 2024. The State Budget Committee had no substantive comments or concerns with the IURC fines, fees, and penalties. See the April 19, 2024, agenda, attached to this Regulatory Analysis.

In addition, the IURC sent a draft "strawman" proposed rule to stakeholders on June 19, 2024, and requested informal comments by July 19, 2024. The rulemaking was sent to the Utility Law Section of the Indiana State Bar Association, the Office of Utility Consumer Counselor, telecommunications companies for which the IURC had valid contact information, as well as the Indiana Rural Broadband Association, an association of rural telecommunications carriers. The draft proposed rule was also posted to the IURC's website, here: <https://www.in.gov/iurc/rulemakings/rulemakings-pending-and-effective/rm-24-03-regarding-170-iac-7-1.3-170-iac-7-8/iurc>. No objections to this proposed rulemaking were received, and the IURC received no comments or suggested changes from any stakeholder.

**d. Statutory Authority for the Proposed Rule** –

1. Slamming and Cramming Penalties

Authority: [IC 8-1-1-3](#); 8-1-29-5.5; 8-1-29-6; 8-1-29-7.5

2. Penalties for Unjust and Unsafe Practices

Authority: [IC 8-1-1-3](#); 8-1-29.5

3. Penalty Considerations for Limitations on Competition

Authority: [IC 8-1-1-3](#); 8-1-32.6

4. Application Fees for Certificate of Video Franchise Authority

Authority: [IC 8-1-1-3](#); 8-1-34-16(d)

5. Universal Service Fund Fee

Authority: [IC 8-1-1-3](#); 8-1-2.6-13

6. Fee for Hearing Impaired Telecommunications Services

Authority: [IC 8-1-1-3](#); 8-1-2.8-11

**e. Fees, Fines, and Civil Penalties** – This rulemaking does not add or increase any fee, fine or penalty. It is intended only to include the already existing applicable fees or penalties in a rulemaking to comply with [IC 4-22-2-19.6](#).

**II. Fiscal Impact Analysis**

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This section should include a discussion of the impact of the proposed rulemaking on State and local government expenditures and revenues. Topics to address include (as applicable):

**a. Anticipated Effective Date of the Rule**

- The Commission anticipates receiving approval from the Office of Management and Budget and State Budget Agency within forty-five (45) days.
- Assume fourteen (14) days for the Commission to approve the proposed rule.
- Assume twenty-one (21) days for the Legislative Services Agency (LSA) to publish the Notice of First Public Comment Period and Notice of Public Hearing in the Indiana Register.
- Assume thirty (30) days for the first public comment period and public hearing.
- Assume fourteen (14) days for staff to review the comments from the first public comment period.
- If needed, assume twenty-one (21) days for the Legislative Services Agency (LSA) to publish the Notice of Second Public Comment Period and Notice of Public Hearing in the Indiana Register.
- If needed, assume thirty (30) days for the second public comment period and second public hearing.
- If needed, assume fourteen (14) days for staff to review the comments from the second public comment period.
- Assume fourteen (14) days for staff to assemble the rule packet.
- Assume fourteen (14) days for the Commission to approve the final rule.
- The Attorney General has forty-five (45) days to review the packet.
- The Governor's office has up to thirty (30) days to review the packet.
- The rule is effective thirty (30) days from the date the Legislative Services Agency accepts the rule for filing.

Therefore, with added time for uncertainty, based on the facts and timeline above, the Commission anticipates the rule would be fully promulgated within 325 days, which would be effective before July 1<sup>st</sup>, 2025.

**b. Estimated Fiscal Impact on State and Local Government** – This rulemaking will have no impact the IURC, any state agency or local government. The fees and penalties currently exist and this rulemaking does not change those fees or penalties in any way. The rulemaking is intended only to include the already existing applicable fees or penalties in a rulemaking to comply with [IC 4-22-2-19.6](#).

**c. Sources of Expenditures or Revenues Affected by the Rule** – This rulemaking will not impact expenditures or revenues of State agencies or local governments.

**III. Impacted Parties**

The existing fees and penalties in this rulemaking can impact telecommunications carriers, communications service providers, and video service providers. There are currently 812 such entities active in the IURC's database. However, this rule does not change any of the fees or penalties; it merely embeds those fees and penalties into a rule to comply with [IC 4-22-2-19.6](#).

**IV. Changes in Proposed Rule**

The below list describes the changes to existing regulations in this rulemaking; however, this rulemaking **does not represent any change from existing practice or any change to the fees and penalties**. This rulemaking only includes those fees and penalties into a rule to comply with [IC 4-22-2-19.6](#).

1. Slamming and Cramming Penalties

In section 1 of the proposed rule, the rule specifies that the Commission shall impose a \$2,500 civil penalty for violations unless the IURC finds that (1) the conduct was limited to single or 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; or (4) the commission determines other facts are present that warrant a lesser penalty.

2. Penalties for Unjust and Unsafe Practices

In section 2 of the proposed rule, the rule specifies that if the IURC imposes a penalty under [IC 8-1-29.5](#), it must consider: (1) Whether the pattern of conduct shows a willful disregard, as evidenced by a continuing pattern of conduct, by the provider or the 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 one (1) or more customer classes, and if the errors: (A) represent intentional misconduct or an act of fraud; or (B) demonstrate, by a continuing pattern of conduct, a willful disregard of its

obligation to remedy the errors after the provider or the certificate holder becomes aware of the errors.

### 3. Penalty Considerations for Limitations on Competition

In section 3 of the proposed rule, the rule specifies that if the IURC imposes a penalty under [IC 8-1-32.6-7](#) it 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 ceased engaging in the violation and made appropriate restitution; (5) Whether there is a need for deterrence of future violations.

### 4. Application Fees for Certificate of Video Franchise Authority

In section 4 of the proposed rule, the rule specifies that the application fee shall be set by GAO and shall not exceed the IURC's actual costs to process and review the application.

### 5. Universal Service Fund Fee

In section 5 of the proposed rule, the rule specifies that the IURC shall set the Indiana universal service fund surcharge in compliance with its order issued on March 17, 2004, in IURC cause number 42144 and the order issued on February 22, 2012, in cause number 42144-S3. The surcharge percentage shall be set in cause number 42144-S3 not more than twice per year after considering the recommendation of the oversight committee and any other information submitted in that cause. In setting the fee, the IURC shall consider the reasonableness factors in the final order in cause number 42144-S3.

### 6. Fee for Hearing Impaired Telecommunications Services

In section 6 of the proposed rule, the rule specifies that the IURC 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. In setting the fee, the IURC shall consider the reasonableness factors contained in the final order in cause number 39880-INTRAC.

## V. Benefit Analysis

Compared to existing fees and penalties, this rulemaking makes no changes. However, there may be benefits to regulated entities and the public by including references to the relevant fees and penalties in the Indiana Administrative Code.

**a. Estimate of Primary and Direct Benefits of the Rule** – There may be efficiencies realized by the general public, regulated entities, businesses, agencies, law firms and anyone else looking for information regarding the relevant fees and penalties. Those entities may save time, and consequently, money, in assessing and determining the fees and penalties that are associated with this rulemaking. Lawyers and their staff, utilities, companies and any other interested party will have access to this information in the Indiana Administrative code, instead of looking for the fees in various other locations, such as General Administrative Orders or specific forms. This time saved is a direct benefit.

**b. Estimate of Secondary or Indirect Benefits of the Rule** - An indirect benefit of this rulemaking is the corresponding productivity gains that may result in listing the fees and penalties in the Indiana Administrative Code. Time saved not looking for fees and penalties is time that can be spent elsewhere.

**c. Estimate of Any Cost Savings to Regulated Industries** – Cost savings will result from the aforementioned direct and indirect benefits. It would be expected that entities such as regulated entities and law offices will spend less time looking for this information and thus save time and money.

## VI. Cost Analysis

There are no costs, tangible or intangible, being imposed as a result of the changes made in the proposed rule compared to existing requirements. These fees and penalties are unchanged by this rulemaking.

### a. Estimate of Compliance Costs for Regulated Entities

Proposed <a href="#">170 IAC 7-1.3-8.2</a>	No additional costs as the possible civil penalty of \$2,500 for slamming and cramming already exists in statute. This rulemaking provides the factors the IURC
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	shall use in possibly reducing the penalty.
Proposed <a href="#">170 IAC 7-8-1</a>	No additional costs as the possible civil penalty for unjust and unsafe practices already exists in statute. This rulemaking provides the factors the IURC shall use in assessing the penalty.
Proposed <a href="#">70 IAC 7-8-2</a>	No additional costs as the possible civil penalty of \$500 per day for limitation on competition already exists in statute. This rulemaking provides the factors the IURC shall use in possibly reducing the penalty.
Proposed <a href="#">170 IAC 7-8-3</a>	No additional costs as the \$823 fee for applying for a certificate of franchise authority already exists. This rulemaking only puts that fee in the Indiana Administrative Code.
Proposed <a href="#">170 IAC 7-8-4</a>	No additional costs as Universal Service Fund surcharge is already set. This rulemaking simply requires the Commission to proceed through the process it has already used to set the surcharge.
Proposed <a href="#">170 IAC 7-8-5</a>	No additional costs as the hearing impaired surcharge is already set. This rulemaking simply requires the Commission to proceed through the process it has already used to set the surcharge.

**b. Estimate of Administrative Expenses Imposed by the Rules** – This rule will not require any additional administrative expense not already present.

**c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#)** – This rule does not add or increase a fee, fine, or civil penalty.

**d. If the implementation costs of the proposed rule are expected to exceed the threshold set in [IC 4-22-2-22.7\(c\)\(6\)](#)** – This rule will not have implementation costs not already present.

**VII. Sources of Information**

The Commission staff relied on its own analysis in determining the information presented here.

**a. Independent Verifications or Studies** - None

**b. Sources Relied Upon in Determining and Calculating Costs and Benefits** – The Commission staff relied on its own analysis, based on its knowledge and experience, for costs and benefits.

**VIII. Regulatory Analysis**

As previously stated, this rulemaking will not impose additional costs on any regulated entity as the relevant fees and penalties are already in existence. There may be benefits to regulated entities and the public by including an easy reference to the relevant fees and penalties in the Indiana Administrative Code. For these reasons, the Commission staff believes the benefits to this proposed rule outweigh its costs.

**IX. Contact Information of Staff to Answer Substantive Questions**

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*Notice of First Public Comment Period with Proposed Rule:* [20241023-IR-170240392FNA](#)

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