



Reprinted
April 8, 2005

ENGROSSED SENATE BILL No. 381

DIGEST OF SB 381 (Updated April 7, 2005 7:33 pm - DI 92)

Citations Affected: IC 4-4; IC 5-21.5; IC 8-1; IC 20-12; noncode.

Synopsis: Technology and telecommunications. Establishes the statewide broadband system. Establishes the statewide broadband account within the higher education statewide telecommunications fund. Establishes the Indiana broadband development program to be administered by the Indiana development finance authority. The broadband development program is established to encourage the development of affordable broadband services and networks in underserved areas in Indiana. The broadband development program coordinates the financing of broadband infrastructure development and otherwise facilitates the establishment of broadband service in underserved areas in Indiana. Specifies that a person or an entity that
(Continued next page)

Effective: Upon passage; July 1, 2005.

Ford, Jackman, Hume

(HOUSE SPONSORS — CHERRY, BORROR, PIERCE, AUSTIN, MURPHY,
KUZMAN)

January 11, 2005, read first time and referred to Committee on Economic Development and Technology.
January 31, 2005, reported favorably — Do Pass.
February 3, 2005, read second time, amended, ordered engrossed.
February 4, 2005, engrossed.
February 14, 2005, returned to second reading.
February 22, 2005, reread second time, amended, ordered engrossed.
February 23, 2005, re-engrossed.
February 28, 2005, read third time, passed. Yeas 45, nays 3.
HOUSE ACTION
March 14, 2005, read first time and referred to Committee on Technology, Research and Development.
April 4, 2005, amended, reported — Do Pass.
April 7, 2005, read second time, amended, ordered engrossed.

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transmits communications over Internet Protocol enabled services is not a public utility subject to the regulation of the utility regulatory commission (IURC). Prohibits IURC from exercising jurisdiction over: (1) advanced and broadband services; and (2) information services. Prohibits, after June 30, 2007, IURC from exercising jurisdiction over any nonbasic telecommunications service. Requires an incumbent local exchange carrier to continue to offer a flat monthly rate with unlimited local calling for basic telecommunications services. Prohibits, after June 30, 2010, IURC from exercising jurisdiction over: pricing, terms, and conditions for basic telecommunications service. Provides that IURC may not exercise jurisdiction over basic telecommunications services in an exchange area if IURC determines that broadband services are available to at least 50% of the households located in the exchange area. Requires IURC to establish reasonable pricing for unbundled network elements, the resale of telecommunications services, and interconnection in accordance with the federal Telecommunications Act of 1996. Requires IURC to biennially identify and eliminate telecommunications regulations no longer necessary due to advances in technology and competition. Specifies that duties to provide dual party relay services for the hearing and speech impaired apply to providers of advanced, broadband, and other Internet services. Allows the IURC to retain jurisdiction over the provision of 211 services. Requires IURC to submit to the regulatory flexibility committee (the "committee") a report that includes an analysis of various issues concerning the telecommunications industry, including the status of competition in the industry and the availability of various telecommunication services in Indiana. Requires IURC to submit its report to the committee not later than November 15, 2006. Requires IURC to include in the report any recommendations for proposed legislation concerning the issues in the report. Requires IURC to retain jurisdiction over the rates that may be charged by an incumbent local exchange carrier to a pay phone service provider.

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Reprinted
April 8, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 381

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration and to make an appropriation.

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

1 SECTION 1. IC 4-4-10.9-2.1 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. "Broadband development**
4 **program" refers to the Indiana broadband development program**
5 **established by IC 8-1-33-15.**

6 SECTION 2. IC 4-4-10.9-2.2 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE UPON PASSAGE]: **Sec. 2.2. "Broadband development**
9 **project" means a project authorized by the broadband**
10 **development program under IC 8-1-33.**

11 SECTION 3. IC 4-4-10.9-11 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as
13 provided in subsection (b), "industrial development project" includes:

14 (1) the acquisition of land, site improvements, infrastructure
15 improvements, buildings, or structures, rehabilitation, renovation,
16 and enlargement of buildings and structures, machinery,
17 equipment, furnishings, or facilities (or any combination of these),

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1 comprising or being functionally related and subordinate to any
2 project (whether manufacturing, commercial, agricultural,
3 environmental, or otherwise) the development or expansion of
4 which serves the public purposes set forth in IC 4-4-11-2;

5 (2) educational facility projects; ~~and~~

6 (3) child care facility projects; **and**

7 **(4) broadband development projects.**

8 (b) For purposes of the industrial development guaranty fund
9 program, "industrial development project" includes the acquisition of
10 land, interests in land, site improvements, infrastructure improvements
11 (including information and high technology infrastructure (as defined
12 in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and
13 enlargement of buildings and structures, machinery, equipment,
14 furnishings, or facilities (or any combination of these), comprising or
15 being functionally related and subordinate to any of the following:

16 (1) A pollution control facility.

17 (2) A manufacturing enterprise.

18 (3) A business service enterprise involved in:

19 (A) computer and data processing services; or

20 (B) commercial testing services.

21 (4) A business enterprise the primary purpose of which is the
22 operation of an education and permanent marketing center for
23 manufacturers and distributors of robotic and flexible automation
24 equipment.

25 (5) Any other business enterprise, if the use of the guaranty
26 program creates a reasonable probability that the effect on Indiana
27 employment will be creation or retention of at least fifty (50) jobs.

28 (6) An agricultural enterprise in which:

29 (A) the enterprise operates pursuant to a producer or growout
30 agreement; and

31 (B) the output of the enterprise is processed predominantly in
32 Indiana.

33 (7) A business enterprise that is required by a state, federal, or
34 local regulatory agency to make capital expenditures to remedy a
35 violation of a state or federal law or a local ordinance.

36 (8) A recycling market development project.

37 (9) A high growth company with high skilled jobs (as defined in
38 IC 4-4-10.9-9.5).

39 **(10) A broadband development project.**

40 SECTION 4. IC 5-21.5 IS ADDED TO THE INDIANA CODE AS
41 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
42 PASSAGE]:

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1 **ARTICLE 21.5. INDIANA STATEWIDE BROADBAND**
2 **SYSTEM**

3 **Chapter 1. Definitions**

4 **Sec. 1. The definitions in this chapter apply throughout this**
5 **article.**

6 **Sec. 2. "Authorized user" means:**

7 (1) **an authorized user of the intelenet system under**
8 **IC 5-21-1-2, including:**

- 9 (A) **political subdivisions;**
- 10 (B) **instrumentalities of state or local government that**
- 11 **provide public safety or emergency management services;**
- 12 (C) **school corporations;**
- 13 (D) **institutions of higher education; and**
- 14 (E) **community networks;**

15 (2) **an authorized user of the Indiana Telecommunications**
16 **Network administered by the Indiana higher education**
17 **telecommunications system under IC 20-12-12;**

18 (3) **a local hospital authority or corporation, or other publicly**
19 **funded hospital; or**

20 (4) **a certified technology park established under IC 36-7-32.**

21 **Sec. 3. "Coordinating body" refers to the representatives**
22 **designated under IC 5-21.5-2-1 to coordinate the establishment of**
23 **a statewide broadband system.**

24 **Sec. 4. "Holder" means a state agency or other instrumentality**
25 **of state government that holds the contract for the state's**
26 **indefeasible right of use to I-Light.**

27 **Sec. 5. "I-Light" refers to the statewide high speed optical fiber**
28 **network. The term includes the fiber optic networks known at any**
29 **time as I-Light and I-Light 2.**

30 **Sec. 6. "Indefeasible right of use" means a temporary ownership**
31 **right in a fiber optic cable, specified in terms of a certain number**
32 **of channels of a given bandwidth.**

33 **Sec. 7. "Person" means any individual, corporation, limited**
34 **liability company, partnership, firm, association, public or private**
35 **agency, or other organization.**

36 **Sec. 8. "System" refers to a statewide broadband system that:**

37 (1) **makes use of the best available technology, as determined**
38 **by the coordinating body, including wireless broadband**
39 **technology;**

40 (2) **allows broadband communications at a speed of at least**
41 **twenty (20) megabits per second downstream to a subscriber;**
42 **and**

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(3) includes:

- (A) a statewide system of wireless broadband access points as described in IC 5-21.5-2-2(b); and**
- (B) a system of Ethernet ports at nodes distributed throughout the network to allow access to the system by authorized users and persons other than authorized users, as described in IC 5-21.5-2-2(c).**

Chapter 2. Establishment of the System; General Administration

Sec. 1. (a) The coordinating body to establish a statewide broadband system consists of seven (7) individuals. The state chief information officer serves as a member of the coordinating body by virtue of the office. The governor shall designate one (1) individual to represent the telecommunications industry. In addition, each of the following entities shall designate one (1) representative:

- (1) The coordinating unit established by IC 20-12-12-3.**
- (2) The holder.**
- (3) Purdue University.**
- (4) Indiana University.**
- (5) Ball State University.**

(b) The holder may assign to the coordinating body an indefeasible right of use of all or part of the I-Light fiber optic network.

(c) The coordinating body shall cease operation and be dissolved on July 15, 2007.

Sec. 2. (a) The coordinating body shall determine the feasibility of a statewide broadband system to be made available to authorized users and other persons as provided in section 3 of this chapter.

(b) In developing the system described by this section, the coordinating body may test and deploy a system of wireless broadband access points throughout Indiana. A wireless system established under this subsection must:

- (1) provide bandwidth transmission of at least five (5) megabits per second at each I-Light node; and**
- (2) be designed to permit the accommodation of additional capacity and coverage as the communication needs of the system's users may require.**

(c) In developing the system described by this section, the coordinating body may provide Ethernet ports at each I-Light node to allow access to the system by authorized users and persons

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other than authorized users, as permitted under section 3 of this chapter.

Sec. 3. (a) This section applies only if a functioning system is deployed by the coordinating body.

(b) The system shall be made available first to authorized users. However, if the coordinating body determines at any time that the system has sufficient capacity to serve other users, the coordinating body shall permit any person to access the system, subject to subsections (c), (d), and (e). A person eligible to access the system under this section includes a commercial:

- (1) telecommunications provider; or
- (2) Internet service provider;

that meets any qualifications or criteria for access established by the coordinating body under subsection (d).

(c) If the coordinating body acts under subsection (b) to permit one (1) or more persons to access capacity on the system that is not needed to meet the broadband needs of authorized users, and it becomes necessary to allocate the available capacity among those persons, the coordinating body shall consider the following for each new person seeking access:

- (1) Whether the person's allocated capacity on the system will be used by the person to provide broadband service to users:
 - (A) at a competitive rate; and
 - (B) within a reasonable period after the person acquires access to the system;
 as determined by the coordinating body.
- (2) The extent to which the person's allocated capacity on the system will be used to provide broadband service to underserved areas of Indiana.
- (3) The extent to which allowing the person to access the system will contribute to the broadband service choices available to Indiana residents and businesses.

(d) The coordinating body may establish standards or other requirements for access to the system by a person other than an authorized user. However, any standards or requirements established under this subsection must be applied on a uniform and competitively neutral basis.

(e) The coordinating body shall provide access to the system under subsection (b) or (c) at a cost that does not exceed the coordinating body's costs to establish, operate, maintain, and administer the system, including any costs of upgrading the system to incorporate the best available technology, as determined by the

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coordinating body.

(f) An authorized user may not sell, lease, or license the authorized user's right to use the system described in this chapter.

SECTION 5. IC 8-1-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) **Except as provided in section 1.1 of this chapter**, "public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

(b) "Municipal council", as used in this chapter, means the legislative body of any town or city in Indiana wherein the property of the public utility or any part thereof is located.

(c) "Municipality", as used in this chapter, means any city or town of Indiana.

(d) "Rate", as used in this chapter, means every individual or joint rate, fare, toll, charge, rental, or other compensation of any utility or any two (2) or more such individual or joint rates, fares, tolls, charges, rentals, or other compensation of any utility or any schedule or tariff thereof, but nothing in this subsection shall give the commission any control, jurisdiction, or authority over the rate charged by a municipally owned utility except as in this chapter expressly provided.

(e) "Service" is used in this chapter in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property, and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

(f) "Commission", as used in this chapter, means the commission created by IC 8-1-1-2.

(g) "Utility", as used in this chapter, means every plant or equipment within the state used for:

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- 1 (1) the conveyance of telegraph and telephone messages;
 2 (2) the production, transmission, delivery, or furnishing of heat,
 3 light, water, or power, either directly or indirectly to the public;
 4 or
 5 (3) collection, treatment, purification, and disposal in a sanitary
 6 manner of liquid and solid waste, sewage, night soil, and
 7 industrial waste.

8 The term does not include a municipality that may acquire, own, or
 9 operate facilities for the collection, treatment, purification, and disposal
 10 in a sanitary manner of liquid and solid waste, sewage, night soil, and
 11 industrial waste. A warehouse owned or operated by any person, firm,
 12 limited liability company, or corporation engaged in the business of
 13 operating a warehouse business for the storage of used household
 14 goods is not a public utility within the meaning of this chapter.

15 (h) "Municipally owned utility", as used in this chapter, includes
 16 every utility owned or operated by a municipality.

17 (i) "Indeterminate permit", as used in this chapter, means every
 18 grant, directly or indirectly from the state, to any corporation, company,
 19 partnership, limited liability company, individual, association of
 20 individuals, their lessees, trustees, or receivers appointed by a court, of
 21 power, right, or privilege to own, operate, manage, or control any plant
 22 or equipment, or any part of a plant or equipment, within this state, for
 23 the:

- 24 (1) production, transmission, delivery, or furnishing of heat, light,
 25 water, or power, either directly or indirectly to or for the public;
 26 (2) collection, treatment, purification, and disposal in a sanitary
 27 manner of liquid and solid waste, sewage, night soil, and
 28 industrial waste; or
 29 (3) furnishing of facilities for the transmission of intelligence by
 30 electricity between points within this state;

31 which shall continue in force until such time as the municipality shall
 32 exercise its right to purchase, condemn, or otherwise acquire the
 33 property of such public utility, as provided in this chapter, or until it
 34 shall be otherwise terminated according to law.

35 SECTION 6. IC 8-1-2-1.1 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2005]: **Sec. 1.1. A person or an entity that:**

- 38 (1) **transmits communications over Internet Protocol enabled**
 39 **services, including:**
 40 (A) **voice communications;**
 41 (B) **data;**
 42 (C) **video streams; or**

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- 1 **(D) any combination of voice, data, and video**
- 2 **communications; or**
- 3 **(2) provides the necessary software, hardware, transmission**
- 4 **service, or transmission path for communications described**
- 5 **in subdivision (1);**
- 6 **is not a public utility (as defined in section 1 of this chapter) solely**
- 7 **by reason of engaging in any activity described in subdivisions (1)**
- 8 **through (2).**

9 SECTION 7. IC 8-1-2.6-0.1 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2005]: **Sec. 0.1. (a) As used in this chapter, "basic**
 12 **telecommunications service" means stand alone local exchange**
 13 **service that:**

- 14 **(1) is provided to a residential customer through the**
- 15 **customer's primary line; and**
- 16 **(2) is:**
 - 17 **(A) the sole service purchased by the customer;**
 - 18 **(B) not part of a package of services, a promotion, or a**
 - 19 **contract; or**
 - 20 **(C) not otherwise offered at a discounted price.**

21 **(b) "Basic telecommunications service" includes, at a minimum,**
 22 **the following:**

- 23 **(1) Voice grade access to the public switched telephone**
- 24 **network with minimum bandwidth of three hundred (300) to**
- 25 **three thousand (3,000) Hertz.**
- 26 **(2) Dual tone multifrequency signaling and single party**
- 27 **service.**
- 28 **(3) Access to:**
 - 29 **(A) emergency services, including access to 911 and**
 - 30 **enhanced 911 if provided by the local government having**
 - 31 **jurisdiction in the service area;**
 - 32 **(B) operator services;**
 - 33 **(C) local directory assistance;**
 - 34 **(D) telephone relay services; and**
 - 35 **(E) interexchange service.**
- 36 **(4) Toll limitation services for qualifying low income**
- 37 **customers.**

38 SECTION 8. IC 8-1-2.6-0.2 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 2005]: **Sec. 0.2. As used in this chapter, "basic**
 41 **telecommunications rates and charges" means the monthly**
 42 **recurring rate for basic telecommunications service, including:**

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- 1 **(1) flat rate and message rate service; and**
- 2 **(2) any nonrecurring charge for installation or a line or**
- 3 **service connection.**

4 SECTION 9. IC 8-1-2.6-0.3 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2005]: **Sec. 0.3. (a) As used in this chapter, "nonbasic**
 7 **telecommunications service" means retail telecommunications**
 8 **service other than:**

- 9 **(1) basic telecommunications service, except when the service**
- 10 **is purchased by the customer:**
 - 11 **(A) in conjunction with another service;**
 - 12 **(B) as part of a package of services, a promotion, or a**
 - 13 **contract; or**
 - 14 **(C) at an otherwise discounted price;**
- 15 **(2) commercial mobile radio service (as defined in 47 CFR**
- 16 **51.5);**
- 17 **(3) services outside the jurisdiction of the commission under**
- 18 **section 1.1 of this chapter; and**
- 19 **(4) switched and special carrier access services.**

- 20 **(b) The term includes services included in:**
 - 21 **(1) customer specific contracts;**
 - 22 **(2) volume, term, and discount pricing options; and**
 - 23 **(3) packages, bundles, and promotions, including offers**
 - 24 **designed to win new customers, retain existing customers, or**
 - 25 **win back former customers.**

26 SECTION 10. IC 8-1-2.6-0.4 IS ADDED TO THE INDIANA
 27 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2005]: **Sec. 0.4. As used in this chapter,**
 29 **"provider" means a person or an entity that offers basic or**
 30 **nonbasic telecommunications service.**

31 SECTION 11. IC 8-1-2.6-0.5 IS ADDED TO THE INDIANA
 32 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. As used in this chapter,**
 34 **"telecommunications" has the meaning set forth in 47 U.S.C.**
 35 **153(43).**

36 SECTION 12. IC 8-1-2.6-0.6 IS ADDED TO THE INDIANA
 37 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2005]: **Sec. 0.6. As used in this chapter,**
 39 **"telecommunications service" has the meaning set forth in 47**
 40 **U.S.C. 153(46).**

41 SECTION 13. IC 8-1-2.6-0.7 IS ADDED TO THE INDIANA
 42 CODE AS A **NEW SECTION** TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2005]: **Sec. 0.7. As used in this chapter,**
2 **"incumbent local exchange carrier" means a local service**
3 **telephone utility that provides telephone service to customers in the**
4 **geographic territory served by the local exchange and is either of**
5 **the following:**

6 (1) **A telephone utility that on February 8, 1996, provided**
7 **telephone exchange service in the geographic territory and**
8 **was considered to be a member of the exchange carrier**
9 **association under 47 CFR 69.601(b).**

10 (2) **A person or an entity that on or after February 8, 1996,**
11 **became a successor or assignee of a member of the exchange**
12 **carrier association described in subdivision (1).**

13 SECTION 14. IC 8-1-2.6-0.8 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2005]: **Sec. 0.8. As used in this chapter,**
16 **"payphone service provider" means an entity, other than an**
17 **incumbent local exchange carrier, that owns and operates public**
18 **or semipublic pay telephones or pay telephones used to provide**
19 **telephone service in correctional institutions.**

20 SECTION 15. IC 8-1-2.6-1 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1. The Indiana general**
22 **assembly hereby declares that:**

23 (1) **the maintenance of universal telephone service is a continuing**
24 **goal of the commission in the exercise of its jurisdiction;**

25 (2) **competition has become commonplace in the provision of**
26 **certain telephone telecommunications services in Indiana and the**
27 **United States;**

28 (3) **advancements in and the convergence of technologies that**
29 **provide voice, video, and data transmission, including:**

30 (A) **landline, wireless, cable, satellite, and Internet**
31 **transmissions; and**

32 (B) **transmissions involving voice over Internet Protocol**
33 **(VOIP), Internet Protocol enabled services, and voice over**
34 **power lines;**

35 **are substantially increasing consumer choice, reinventing the**
36 **marketplace with unprecedented speed, and making available**
37 **highly competitive products and services and new methods of**
38 **delivering local exchange service.**

39 ~~(3)~~ (4) **traditional commission regulatory policies, and practices,**
40 **and existing statutes are not designed to deal with a competitive**
41 **environment and technological advancements;**

42 ~~(4)~~ (5) **an environment in which Indiana consumers will have**

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1 available the widest array of state-of-the-art ~~telephone~~
 2 **telecommunications** services at the most economic and
 3 reasonable cost possible will necessitate full and fair **facilities**
 4 **based** competition in the delivery of ~~certain telephone~~
 5 **telecommunications** services throughout ~~the state;~~ **Indiana**; and
 6 ~~(5) (6) streamlining of, and~~ flexibility in, the regulation of
 7 providers of ~~telephone telecommunications~~ services, **regardless**
 8 **of the technology used**, is essential to the well-being of ~~the state;~~
 9 **Indiana**, its economy, and its citizens and that the public interest
 10 requires that the commission be authorized to formulate and adopt
 11 rules and policies as will permit the commission, in the exercise
 12 of its expertise, to regulate and control the provision of ~~telephone~~
 13 **telecommunications** services to the public in an increasingly
 14 competitive **and technologically changing** environment, giving
 15 due regard to the interests of consumers and the public, **the**
 16 **ability of market forces to encourage innovation and**
 17 **investment**, and ~~to~~ the continued **universal** availability of
 18 ~~universal telephone basic telecommunications~~ service.

19 SECTION 16. IC 8-1-2.6-1.1 IS ADDED TO THE INDIANA
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2005]: **Sec. 1.1. (a) The commission shall not**
 22 **exercise jurisdiction over:**

- 23 (1) **advanced services (as defined in 47 CFR 51.5);**
 24 (2) **broadband service, as defined by the Federal**
 25 **Communications Commission; or**
 26 (3) **any service not commercially available on July 1, 2005.**

27 (b) **The commission shall not exercise jurisdiction over**
 28 **information services (as defined in 47 U.S.C. 153(20)) or Internet**
 29 **Protocol enabled services, as defined by the Federal**
 30 **Communications Commission, except:**

- 31 (1) **as expressly permitted under IC 8-1-2.8;**
 32 (2) **as may be reasonably necessary to provide for access to**
 33 **emergency services, including access to 911 and enhanced**
 34 **911; and**
 35 (3) **for purposes of determining the rights and obligations of**
 36 **any provider concerning the payment of switched network**
 37 **access rates or other compensation for use of another**
 38 **provider's facilities or services.**

39 **The commission shall not impose requirements under this**
 40 **subsection that exceed those imposed by, or that are otherwise**
 41 **inconsistent with, federal law, including federal regulations.**

42 SECTION 17. IC 8-1-2.6-1.2 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: **Sec. 1.2. (a) Except as provided in**
3 **section 16 of this chapter, the commission shall not, by entering an**
4 **order, adopting a rule, or taking any other action, do any of the**
5 **following:**

6 (1) **Impose a regulation concerning any nonbasic**
7 **telecommunications service unless the regulation is imposed**
8 **equally and uniformly on all providers.**

9 (2) **Impose a service quality regulation or performance**
10 **standard concerning any nonbasic telecommunications**
11 **service.**

12 (3) **Exercise jurisdiction over:**

13 (A) **any nonbasic telecommunications service; or**

14 (B) **the provider of any nonbasic telecommunications**
15 **service;**

16 **if the commission has declined to exercise jurisdiction over the**
17 **service or provider before July 1, 2005.**

18 (b) **Subject to sections 12 and 16 of this chapter, after June 30,**
19 **2007, the commission shall not exercise jurisdiction over any**
20 **nonbasic telecommunications service except as follows:**

21 (1) **A provider may elect to file and maintain with the**
22 **commission tariffs for nonbasic telecommunications services**
23 **offered by the provider in Indiana. The commission shall**
24 **permit a provider to implement a tariff, or a modification to**
25 **a tariff, on the first day immediately following the date of**
26 **filing with the commission.**

27 (2) **The commission may investigate, on a formal or an**
28 **informal basis, a complaint concerning a provider's**
29 **compliance with a tariff filed with the commission under**
30 **subdivision (1). The commission's investigation shall be**
31 **limited to the sole issue of the provider's compliance with the**
32 **filed tariff. The commission shall conduct a formal**
33 **investigation only upon the request of any class satisfying the**
34 **standing requirements of IC 8-1-2-54.**

35 SECTION 18. IC 8-1-2.6-1.3 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2005]: **Sec. 1.3. (a) The commission shall not,**
38 **by entering an order, adopting a rule, or taking any other action,**
39 **do any of the following with respect to basic telecommunications**
40 **services and providers of basic telecommunications services:**

41 (1) **Impose a regulation concerning any basic**
42 **telecommunications service unless the regulation is imposed**

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equally and uniformly on all providers.

(2) Impose a service quality regulation unless the regulation is imposed equally and uniformly on all providers.

(3) Impose a regulation or performance standard concerning service quality that:

(A) is more stringent than any service quality regulation or performance standard in effect on July 1, 2005; or

(B) measures performance more often than quarterly.

(4) Impose a reporting requirement concerning service quality that requires reporting to the commission more frequently than quarterly.

(5) Impose a regulation concerning universal availability of basic telecommunications service unless the regulation is imposed on a nondiscriminatory and competitively and technologically neutral basis.

(6) Exercise jurisdiction over:

(A) any basic telecommunications service; or

(B) the provider of any basic telecommunications service; if the commission has declined to exercise jurisdiction over the service or provider before July 1, 2005.

(7) Impose a regulation on, or exercise jurisdiction over:

(A) any basic telecommunications service; or

(B) the provider of any basic telecommunications service; if the service or provider is exempt from commission jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5, except as allowed under IC 8-1-2-88.5 or IC 8-1-17-22.5.

(b) The commission may not exercise jurisdiction over the price, terms, and conditions of basic telecommunications service, or any provider of basic telecommunications service in an exchange area in which the commission finds, after notice and hearing, that broadband services are available to at least fifty percent (50%) of the households located in the exchange area. The commission may make a finding under this subsection at the request of a provider or on its own motion.

(c) The commission shall make a finding under subsection (b) within three (3) months after a provider's request to make a finding that broadband services are available to at least fifty percent (50%) of the households located in an exchange area.

(d) Notwithstanding subsections (b) through (c), a provider may continue to elect to file and maintain with the commission tariffs for basic telecommunications services offered by the provider in Indiana. The commission shall permit a provider to implement a

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1 tariff or a modification to a tariff on the first day immediately
2 following the date of filing with the commission. A provider may
3 withdraw without the approval of the commission any tariff filed
4 under this subsection.

5 (e) The commission may investigate, on a formal or an informal
6 basis, a complaint concerning a provider's compliance with a tariff
7 filed with the commission under subsection (d). The commission's
8 investigation shall be limited to the sole issue of the provider's
9 compliance with the filed tariff. The commission shall conduct a
10 formal investigation only upon the request of any class satisfying
11 the standing requirements of IC 8-1-2-54.

12 (f) An incumbent local exchange carrier shall continue to make
13 available a flat monthly rate with unlimited local calling for basic
14 telecommunications services in the local calling areas in which the
15 provider offers basic telecommunications services on July 1, 2005.

16 SECTION 19. IC 8-1-2.6-2 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Notwithstanding
18 any other statute, the commission may:

- 19 (1) on its own motion;
- 20 (2) at the request of the utility consumer counselor;
- 21 (3) at the request of one (1) or more telephone companies; or
- 22 (4) at the request of any class satisfying the standing requirements
23 of IC 8-1-2-54;

24 enter an order, after notice and hearing, that the public interest requires
25 the commission to commence an orderly process to decline to exercise,
26 in whole or in part, its jurisdiction over telephone companies or certain
27 telephone services. (a) This section applies to commission rules and
28 orders concerning telecommunications service or providers of
29 telecommunications service.

- 30 (b) Rules and orders described in this section:
 - 31 (1) may be adopted or issued only after notice and hearing;
 - 32 and
 - 33 (2) must be:
 - 34 (A) consistent with this chapter; and
 - 35 (B) in the public interest, as determined by the commission
36 under subsection (d).

- 37 (c) Rules and orders described in this section must promote one
38 (1) or more of the following:
 - 39 (1) Cost minimization for providers to the extent that a
40 provider's quality of service and facilities are not diminished.
 - 41 (2) A more accurate evaluation by the commission of a
42 provider's physical or financial conditions or needs as well as

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1 a less costly regulatory procedure for either the provider, the
 2 provider's customers, or the commission.
 3 (3) Development of depreciation guidelines and procedures
 4 that recognize technological obsolescence.
 5 (4) Increased provider management efficiency beneficial to
 6 customers.
 7 (5) Regulation consistent with a competitive environment.
 8 ~~(b)~~ (d) In determining whether the public interest will be served, as
 9 required under subsection (b), the commission shall consider:
 10 (1) whether technological change, competitive forces, or
 11 regulation by other state and federal regulatory bodies render the
 12 exercise of jurisdiction by the commission unnecessary or
 13 wasteful;
 14 (2) whether the exercise of commission jurisdiction produces
 15 tangible benefits to telephone company the customers of
 16 providers; and
 17 (3) whether the exercise of commission jurisdiction inhibits a
 18 regulated entity from competing with unregulated providers of
 19 functionally similar telephone telecommunications services or
 20 equipment.
 21 (c) The commission may:
 22 (1) on its own motion;
 23 (2) at the request of the utility consumer counselor;
 24 (3) at the request of one (1) or more telephone companies; or
 25 (4) at the request of any class satisfying the standing requirements
 26 of IC 8-1-2-54;
 27 enter an order notifying any telephone company or class of telephone
 28 companies jurisdiction over which was either limited or not exercised
 29 according to this section that the commission will proceed to exercise
 30 jurisdiction over the telephone company; class of telephone companies;
 31 or class of telephone services provided by telephone companies to the
 32 extent the commission considers appropriate unless one (1) or more of
 33 those telephone companies formally request a hearing within fifteen
 34 (15) days following the date of such order.
 35 SECTION 20. IC 8-1-2.6-4 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A regulatory
 37 flexibility committee is established to monitor competition in the
 38 telephone industry.
 39 (b) The committee is composed of the members of a house standing
 40 committee selected by the speaker of the house of representatives and
 41 a senate standing committee selected by the president pro tempore of
 42 the senate. In selecting standing committees under this subsection, the

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1 speaker and president pro tempore shall determine which standing
2 committee of the house of representatives and the senate, respectively,
3 has subject matter jurisdiction that most closely relates to the
4 electricity, gas, energy policy, and telecommunications jurisdiction of
5 the regulatory flexibility committee. The chairpersons of the standing
6 committees selected under this subsection shall cochair the regulatory
7 flexibility committee.

8 (c) The commission shall, by July 1 of each year, prepare for
9 presentation to the regulatory flexibility committee an analysis of the
10 effects of competition **and technological change** on universal service
11 and on pricing of all ~~telephone~~ **telecommunications** services
12 **remaining** under the jurisdiction of the commission.

13 (d) In addition to reviewing the commission report prepared under
14 subsection (c), the regulatory flexibility committee shall also issue a
15 report and recommendations to the legislative council by November 1
16 of each year that is based on a review of the following issues:

17 (1) The effects of competition in the ~~telephone~~
18 **telecommunications** industry and impact of competition **and**
19 **technological change** on available subsidies used to maintain
20 universal service.

21 (2) The status of modernization of the public **switched** telephone
22 network in Indiana and the incentives required to further enhance
23 this infrastructure.

24 (3) The effects on economic development and educational
25 opportunities of this modernization.

26 (4) The current method of regulating ~~telephone companies~~
27 **telecommunications providers** and the method's effectiveness.

28 (5) The economic and social effectiveness of current ~~telephone~~
29 **telecommunications** service pricing.

30 (6) All other telecommunications issues the committee deems
31 appropriate.

32 The report and recommendations issued under this subsection to the
33 legislative council must be in an electronic format under IC 5-14-6.

34 (e) The regulatory flexibility committee shall meet on the call of the
35 cochairpersons to study telecommunications issues described in
36 subsection (d). The committee shall, with the approval of the
37 commission, retain the independent consultants the committee
38 considers appropriate to assist the committee in the review and study.
39 The expenses for the consultants shall be paid by the commission.

40 SECTION 21. IC 8-1-2.6-4.1 IS ADDED TO THE INDIANA
41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2005]: **Sec. 4.1. (a) Not later than:**

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1 **(1) July 1, 2007; and**
2 **(2) July 1 of each odd-numbered year after July 1, 2007;**
3 **the commission shall, through rulemaking under IC 4-22-2 or**
4 **another commission proceeding, identify and eliminate regulations**
5 **and policies concerning telecommunications services and providers**
6 **that are no longer necessary or appropriate as a result of**
7 **technological advancement and competition in the**
8 **telecommunications industry.**
9 **(b) In carrying out this section, the commission shall promote**
10 **the policies and purposes set forth in this chapter. The**
11 **commission's annual report to the regulatory flexibility committee**
12 **under section 4 of this chapter must:**
13 **(1) identify any regulation or policy eliminated under this**
14 **section; and**
15 **(2) justify any regulation or policy that is retained.**
16 **SECTION 22. IC 8-1-2.6-8 IS AMENDED TO READ AS**
17 **FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) As used in this**
18 **section, "rate reduction" means a decrease in either recurring or**
19 **nonrecurring rates or charges.**
20 **(b) Notwithstanding any other provision of this chapter or any other**
21 **statute, a telephone company provider may subject to the prior**
22 **approval of the commission, participate in any rate reduction program**
23 **for residential customers funded from revenues provided by any**
24 **governmental entity or other revenues administered by an agency of**
25 **that entity.**
26 **SECTION 23. IC 8-1-2.6-10 IS ADDED TO THE INDIANA CODE**
27 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
28 **1, 2005]: Sec. 10. (a) The commission shall not, when acting under**
29 **any authority delegated to the commission by federal law, impose**
30 **any requirements or set any prices concerning:**
31 **(1) unbundled network elements;**
32 **(2) the resale of telecommunications services; or**
33 **(3) interconnection with the facilities and equipment of**
34 **providers;**
35 **that exceed the commission's authority delegated under federal**
36 **laws and regulations.**
37 **(b) The commission shall establish reasonable pricing for**
38 **unbundled network elements, the resale of telecommunications**
39 **services, and interconnection in accordance with the federal**
40 **Telecommunications Act of 1996, 47 U.S.C. 251 et seq., and all**
41 **other federal laws and regulations.**
42 **(c) This chapter does not affect:**

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- 1 **(1) the commission's continuing authority to resolve**
- 2 **interconnection disputes between telecommunications carriers**
- 3 **that arise under the federal Telecommunications Act of 1996,**
- 4 **47 U.S.C. 251 et seq.; or**
- 5 **(2) a provider's ability to file a complaint with the commission**
- 6 **to have a dispute, after notice and hearing, decided by the**
- 7 **commission consistent with this article.**

8 SECTION 24. IC 8-1-2.6-11 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2005]: **Sec. 11. (a) Notwithstanding any other law, the**
 11 **commission shall not, by entering an order, adopting a rule, or**
 12 **taking any other action, impose a regulation or performance**
 13 **standard concerning the transfer of customers between providers**
 14 **unless the regulation or performance standard is imposed equally**
 15 **and uniformly on all providers.**

16 **(b) After a customer's telecommunications services have been**
 17 **ported, the initial provider may, to the extent permitted by federal**
 18 **law and by IC 24-4.7-4, contact the customer to confirm that the**
 19 **customer has made the decision to change to the other provider.**

20 **(c) A provider may not refuse to transfer or facilitate the**
 21 **transfer of a local exchange service customer of the provider to**
 22 **another provider on the same terms and conditions that the**
 23 **provider receives from any other provider unless the terms and**
 24 **conditions violate federal law.**

25 SECTION 25. IC 8-1-2.6-12 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2005]: **Sec. 12. This chapter does not terminate or otherwise**
 28 **change the terms and conditions of a settlement agreement**
 29 **approved by the commission under this chapter before July 29,**
 30 **2004.**

31 SECTION 26. IC 8-1-2.6-13 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2005]: **Sec. 13. This chapter does not modify, affect, or nullify the**
 34 **responsibilities lawfully delegated to the commission under:**

- 35 **(1) 47 U.S.C. 251; and**
- 36 **(2) 47 U.S.C. 252.**

37 SECTION 27. IC 8-1-2.6-14 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2005]: **Sec. 14. This chapter does not affect the rights and**
 40 **obligations of any person or entity concerning the payment of**
 41 **switched network access rates or other carrier compensation**
 42 **concerning:**

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1 **(1) Internet Protocol enabled service;**
 2 **(2) advanced services (as defined in 47 CFR 51.5);**
 3 **(3) broadband service; or**
 4 **(4) other Internet access services.**
 5 SECTION 28. IC 8-1-2.6-15 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 2005]: **Sec. 15. (a) Except as provided in subsection (b), if there**
 8 **is a conflict between this chapter and another provision of this**
 9 **article, this chapter controls.**
 10 **(b) This chapter does not affect the rights of a**
 11 **telecommunications provider under IC 8-1-2-88.5 or**
 12 **IC 8-1-17-22.5.**
 13 SECTION 29. IC 8-1-2.6-16 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2005]: **Sec. 16. Notwithstanding any other statute, the**
 16 **commission shall retain jurisdiction to establish just and**
 17 **reasonable rates that may be charged by an incumbent local**
 18 **exchange carrier to a payphone service provider. Rates established**
 19 **under this section must be:**
 20 **(1) based on the costs incurred by the incumbent local**
 21 **exchange carrier to provide the service;**
 22 **(2) consistent with the requirements of 47 U.S.C. 276;**
 23 **(3) nondiscriminatory; and**
 24 **(4) consistent with the pricing guidelines for payphone service**
 25 **providers established by the Federal Communications**
 26 **Commission.**
 27 SECTION 30. IC 8-1-2.8-8 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 8. As used in this**
 29 **chapter, "local exchange telephone company" or "LEC" means a**
 30 **company authorized by the commission to provide, among other**
 31 **services, local exchange access service. The term includes a provider**
 32 **of Internet Protocol enabled services that is required to provide**
 33 **dual party relay services to hearing impaired and speech impaired**
 34 **persons under federal law.**
 35 SECTION 31. IC 8-1-19.5-14 IS ADDED TO THE INDIANA
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2005]: **Sec. 14. (a) Notwithstanding**
 38 **IC 8-1-2.6, the commission may retain:**
 39 **(1) jurisdiction over the rates, charges, and service quality of**
 40 **211 services provided by telecommunications providers; and**
 41 **(2) the authority to fulfill the commission's duties under this**
 42 **chapter.**

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1 (b) The commission may not impose a rule concerning the
2 service quality of 211 services provided by a telecommunications
3 provider unless the rule is imposed equally and uniformly on all
4 telecommunications providers.

5 (c) Upon a petition by:
6 (1) a telecommunications provider; or
7 (2) a recognized 211 services provider;
8 the commission may formally or informally investigate a
9 telecommunications provider's rates and charges to determine
10 whether the rates and charges are just and reasonable. For
11 purposes of this section, a rate is considered reasonable if the rate
12 covers the telecommunications provider's costs and allows a
13 reasonable profit.

14 SECTION 32. IC 8-1-33 IS ADDED TO THE INDIANA CODE AS
15 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
16 PASSAGE]:

17 **Chapter 33. Indiana Broadband Development Program**

18 **Sec. 1. (a) The general assembly finds that:**

- 19 (1) certain areas of Indiana are not being adequately served
20 with broadband services;
- 21 (2) for the benefit of the people of Indiana and the
22 improvement of their health, welfare, and living conditions,
23 the improvement of the economic and educational welfare of
24 Indiana, and the improvement of its public safety and
25 security, it is essential that broadband infrastructure be
26 expanded to provide broadband services throughout Indiana;
- 27 (3) the private sector should be encouraged to continue to
28 invest in the deployment of broadband services and networks
29 and that financing through this program will encourage
30 broadband investment in underserved areas;
- 31 (4) economic, technological, and logistical integrated
32 broadband services should be provided throughout Indiana
33 on a nondiscriminatory basis;
- 34 (5) the provision of affordable broadband services and
35 networks in underserved areas will:
 - 36 (A) ensure the long term growth of and the enhancement
37 and delivery of services by the business, educational,
38 medical, commercial, nonprofit, and governmental entities
39 within Indiana; and
 - 40 (B) benefit residential, commercial, public, governmental,
41 and nonprofit entities within Indiana; and
- 42 (6) the program created and powers conferred by this chapter

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1 **constitute a necessary program and serve a necessary public**
2 **purpose.**

3 **(b) To increase the speed and availability at which affordable**
4 **broadband services become available in underserved areas in**
5 **Indiana, it is declared to be a valid public purpose to assist in the**
6 **financing and refinancing of the development of a statewide**
7 **broadband infrastructure.**

8 **(c) It is further declared to be a valid public purpose for the**
9 **development finance authority to issue bonds and notes, and loan**
10 **the proceeds of those bonds and notes to the program, so that the**
11 **authority may provide for financing or refinancing to broadband**
12 **developers and broadband operators serving underserved areas.**

13 **Sec. 2. As used in this chapter, "affordable broadband services"**
14 **means broadband services that are available at a price reasonably**
15 **comparable to the price charged for broadband services in an area**
16 **that is not an underserved area.**

17 **Sec. 3. As used in this chapter, "authority" refers to the Indiana**
18 **development finance authority established in IC 4-4-11-4.**

19 **Sec. 4. As used in this chapter, "broadband developer" means**
20 **a person selected by the authority to acquire, construct, develop,**
21 **and create any part of the broadband infrastructure.**

22 **Sec. 5. As used in this chapter, "broadband development**
23 **program" or "program" refers to the Indiana broadband**
24 **development program established by section 15 of this chapter.**

25 **Sec. 6. As used in this chapter, "broadband infrastructure"**
26 **includes all facilities, hardware, and software and other intellectual**
27 **property used for and necessary to provide broadband services in**
28 **underserved areas of Indiana, including voice, video, and data.**

29 **Sec. 7. As used in this chapter, "broadband operator" means a**
30 **person selected by the authority to operate any part of the**
31 **broadband infrastructure.**

32 **Sec. 8. As used in this chapter, "broadband services" includes**
33 **services, including voice, video, and data, that provide capacity for**
34 **transmission of more than two hundred (200) kilobits per second**
35 **in at least one (1) direction regardless of the technology or medium**
36 **used, including wireless, copper wire, fiber optic cable, or coaxial**
37 **cable. If voice transmission capacity is offered in conjunction with**
38 **other services using transmission of more than two hundred (200)**
39 **kilobits per second, the voice transmission capacity may be less**
40 **than two hundred (200) kilobits per second. The authority shall**
41 **annually reconsider the two hundred (200) kilobits threshold under**
42 **this section with a bias toward raising the threshold in a manner**

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consistent with technological advances.

Sec. 9. As used in this chapter, "development costs" means the costs associated with the broadband infrastructure that have been approved by the authority and includes all the following:

- (1) The costs for the planning, acquiring, leasing, constructing and maintaining of the broadband infrastructure.**
- (2) Payments for options to purchase, deposits on contracts of purchase, and payments for the purchases of properties for the broadband infrastructure.**
- (3) Financing, refinancing, acquisition, demolition, construction, rehabilitation, and site development of new and existing buildings.**
- (4) Carrying charges during construction.**
- (5) Purchases of hardware, software, facilities, or other expenses related to the broadband infrastructure.**
- (6) Legal, organizational, and marketing expenses, project manager and clerical staff salaries, office rent, and other incidental expenses.**
- (7) Payment of fees for preliminary feasibility studies and advances for planning, engineering, and architectural work.**
- (8) Any other costs and expenses necessary for the acquisition, construction, maintenance, and operation of all or part of the broadband infrastructure.**

Sec. 10. As used in this chapter, "person" means an individual, a corporation, a rural electric membership corporation, a limited or general partnership, a joint venture, a limited liability company, or a governmental entity, including a body corporate and politic, political subdivision, municipal corporation, school, college, university, hospital, health care facility, library, or nonprofit organization. The term does not include the state.

Sec. 11. (a) As used in this chapter, "relevant services" refers to:

- (1) cable service (as defined in 47 U.S.C. 522(6));**
- (2) telecommunications service (as defined in 47 U.S.C. 153(46)); and**
- (3) information service (as defined in 47 U.S.C. 153(20)).**

(b) The term includes:

- (1) advanced services (as defined in 47 CFR 51.5);**
- (2) broadband service; and**
- (3) Internet Protocol enabled services;**

however classified by the Federal Communications Commission.

Sec. 12. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13. The term includes any entity:

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- 1 (1) owned, operated, or controlled by a political subdivision;
- 2 or
- 3 (2) in which a political subdivision otherwise has an interest,
- 4 whether direct or indirect.

5 Sec. 13. As used in this chapter, "underserved area" means an
 6 area within Indiana that the authority determines does not have a
 7 person that:

- 8 (1) provides broadband service in the area at the time of the
- 9 authority's inquiry under section 14 of this chapter; or
- 10 (2) intends to provide broadband service not later than three
- 11 (3) months after the date of the authority's inquiry under
- 12 section 14 of this chapter.

13 Sec. 14. (a) The authority shall conduct an inquiry to determine
 14 underserved areas within Indiana. The authority shall send a
 15 written request by certified mail to each person that provides a
 16 relevant service within one hundred (100) miles of the proposed
 17 broadband service area. A written request under this subsection
 18 must inquire as to whether the person:

- 19 (1) provides broadband service; or
- 20 (2) intends to provide broadband service not later than three
- 21 (3) months after the date of the authority's written request
- 22 under this subsection;

23 in the proposed broadband service area. This section does not
 24 empower the authority to require providers of broadband service
 25 to disclose confidential and proprietary business plans and other
 26 confidential information without adequate protection of the
 27 information.

28 (b) The authority may determine that there is not a person that
 29 provides or intends to provide broadband service in the proposed
 30 broadband service area if the authority's inquiry under subsection
 31 (a) results in any of the following:

- 32 (1) The authority does not receive a written response to any
- 33 of the requests sent under subsection (a) within sixty (60) days
- 34 after the date the requests were postmarked.
- 35 (2) The authority:
- 36 (A) receives one (1) or more responses to a request under
- 37 subsection (a) that indicate that the persons responding
- 38 provide broadband service in the proposed broadband
- 39 service area at the time of the request; and
- 40 (B) determines that no person responding actually
- 41 provides broadband service in the designated area.
- 42 (3) The authority:

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- 1 (A) receives one (1) or more responses to a request under
- 2 subsection (a) that indicate that the persons responding
- 3 intend to provide broadband service in the proposed
- 4 broadband service area not later than three (3) months
- 5 after the date of the authority's written request under
- 6 subsection (a); and
- 7 (B) determines, after the appropriate amount of time, that
- 8 no person responding actually provided broadband service
- 9 in the proposed broadband service area not later than
- 10 three (3) months after the date of the authority's written
- 11 request under subsection (a).

12 Sec. 15. (a) The Indiana broadband development program is
 13 established in order to encourage the provision of affordable
 14 broadband services and networks that will:

- 15 (1) ensure the long term growth of and the enhancement and
- 16 delivery of services by the business, educational, medical,
- 17 commercial, nonprofit, and governmental entities in
- 18 underserved areas in Indiana; and
- 19 (2) benefit residential, commercial, public, governmental, and
- 20 nonprofit entities in underserved areas in Indiana.

21 (b) The authority shall administer the broadband development
 22 program.

23 Sec. 16. (a) The powers of the authority under this chapter
 24 include all those necessary to carry out and effectuate the purposes
 25 of this chapter, including the following:

- 26 (1) To invest any money of the authority at the authority's
- 27 discretion, in any obligations determined proper by the
- 28 authority, and name and use depositories for its money.
- 29 (2) To receive and distribute state or local funding, including
- 30 grants, loans, and appropriations.
- 31 (3) To make loans to broadband developers and broadband
- 32 operators that will acquire, construct, maintain, and operate
- 33 all or part of the broadband infrastructure serving
- 34 underserved areas.
- 35 (4) To provide operating assistance to make broadband
- 36 services more affordable to broadband developers, broadband
- 37 operators, and broadband customers in underserved areas, in
- 38 conjunction with broadband infrastructure financed by the
- 39 authority.
- 40 (5) To set construction, operation, and financing standards for
- 41 the broadband infrastructure in connection with authority
- 42 financing and to provide for inspections to determine

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compliance with those standards.

(6) To investigate, evaluate, and assess the current broadband infrastructure and the future broadband infrastructure needs of Indiana and to encourage and participate in aggregation strategies for the broadband services of all public entities and nonprofit corporations in Indiana to maximize the interconnectivity and efficiencies of the broadband infrastructure.

(7) To make expenditures necessary to carry out the authority's duties under this chapter, including paying the authority's operating expenses.

(b) As part of an application for financing under this chapter, a broadband developer or broadband operator must file with the authority a participation plan for small and minority owned businesses and a communitywide outreach plan to educate the public with respect to the availability of broadband services. The authority may not approve an application unless a plan is submitted under this subsection.

SECTION 33. IC 20-12-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) A special and distinct fund is hereby created to be known as the higher education statewide telecommunications fund. Expenditures from the fund may be made only for the following:

(1) Payments by the universities for the use of a telecommunications system or the lease, purchase, rental, or production of a videotape program as provided in this chapter.

(2) Studies regarding the possibilities of extending the use of the telecommunications system described in section 1(a) of this chapter to other colleges and universities in Indiana and of extending the use of the system for post-high school and other educational uses.

(3) The expenses of coordinating, planning, and supervising the use of the telecommunications system, and the videotape program.

(4) Equipment for the originating and receiving of instructional communication and educational information by means of the telecommunications system and the videotape program.

(b) The statewide broadband account is established within the fund to pay the costs of the coordinating body established under IC 5-21.5-2 to establish, operate, maintain, and administer a statewide broadband system under IC 5-21.5. Costs under this subsection include any costs of upgrading the system to incorporate

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1 the best available technology, as determined by the coordinating
2 body. The account consists of fees or charges collected by the
3 coordinating body for providing access to the system by authorized
4 users or other persons, to the extent permitted under
5 IC 5-21.5-2-3(e). Money in the account is continuously
6 appropriated for the purposes of this subsection. Money in the
7 account at the end of a state fiscal year does not revert to the fund.

8 ~~(b)~~ (c) The ~~state~~ auditor of state shall pay, as needed, from the fund
9 and the account established under subsection (b) amounts to the
10 trustees of Indiana University as agent for the universities and the
11 coordinating body established under IC 5-21.5-2. The trustees of
12 Indiana University as the agent shall apply the funds to the payment of
13 items as payment becomes due from the higher education statewide
14 telecommunications fund or the account established under
15 subsection (b).

16 SECTION 34. THE FOLLOWING ARE REPEALED [EFFECTIVE
17 JULY 1, 2005]: IC 8-1-2.6-3; IC 8-1-2.6-5; IC 8-1-2.6-7.

18 SECTION 35. [EFFECTIVE UPON PASSAGE] (a) As used in this
19 SECTION, "commission" refers to the Indiana utility regulatory
20 commission created by IC 8-1-1-2.

21 (b) Not later than November 15, 2006, the commission shall
22 submit to the regulatory flexibility committee established by
23 IC 8-1-2.6-4 a report that includes an analysis of the following
24 issues:

- 25 (1) The status of competition in Indiana within the wireline
26 and wireless telecommunications industries and between the
27 wireline and wireless telecommunications industries.
- 28 (2) The level of concentration of ownership in the
29 telecommunications industry and the degree to which
30 corporate mergers, acquisitions, and buyouts within the
31 industry affect consumer choices and pricing in Indiana.
- 32 (3) For each county in Indiana, a breakdown of the number of
33 available providers of the following services:
 - 34 (A) Wireline telephone services.
 - 35 (B) Wireless telephone services.
 - 36 (C) Wireless broadband services.
 - 37 (D) Broadband services other than wireless broadband
38 services.

39 The commission shall pay particular attention to the
40 availability of broadband services in underserved areas (as
41 defined in IC 8-1-33-12, as added by this act).

42 (4) The effects of the following on universal service in

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- 1 **Indiana:**
- 2 (A) The convergence of telecommunications services and
- 3 technologies.
- 4 (B) State and federal regulatory decisions.
- 5 (5) The degree to which the use of new technologies in the
- 6 telecommunications industry affects the reliability of
- 7 telecommunications services, including the provision of
- 8 enhanced 911 services and 211 services.
- 9 (6) The impact on consumers and telecommunications
- 10 providers of:
- 11 (A) federal telecommunications laws and regulations; and
- 12 (B) state and federal judicial decisions concerning
- 13 telecommunications laws and regulations.
- 14 (7) A comparison of Indiana's contributions to the federal
- 15 universal services fund versus federal universal service fund
- 16 allocations or discounts provided to eligible recipients in
- 17 Indiana.
- 18 (c) The report prepared under this SECTION must include a
- 19 map identifying the location of the infrastructure used to provide
- 20 the services described in subsection (b)(3).
- 21 (d) The report prepared under this SECTION may be made in
- 22 conjunction with the commission's annual report to the regulatory
- 23 flexibility committee under IC 8-1-2.6-4. The commission shall
- 24 include in the report any recommendations for proposed legislation
- 25 concerning the issues analyzed in the report.
- 26 (e) The commission shall involve the following entities in the
- 27 development of the report under this SECTION:
- 28 (1) Colleges and universities.
- 29 (2) Rural electric membership corporations.
- 30 (3) Incumbent local exchange carriers.
- 31 (4) Competitive local exchange carriers.
- 32 (5) Cable television providers.
- 33 SECTION 36. [EFFECTIVE UPON PASSAGE] (a) As used in this
- 34 SECTION, "coordinating body" refers to the coordinating body
- 35 established under IC 5-21.5-2-1, as added by this act.
- 36 (b) As used in this SECTION, "system" refers to the statewide
- 37 broadband system described in IC 5-21.5-2-2, as added by this act.
- 38 (c) Not later than October 1, 2005, the coordinating body shall
- 39 submit the initial report on the feasibility of establishing and
- 40 implementing the system to the general assembly in an electronic
- 41 format under IC 5-14-6. The report must provide a detailed
- 42 analysis of broadband penetration throughout Indiana, specifically

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1 **stating all broadband options in use and detailing available:**
2 **(1) technologies;**
3 **(2) types of service;**
4 **(3) areas of service;**
5 **(4) costs of service; and**
6 **(5) the populations in Indiana to whom the capabilities**
7 **described in this subsection are available.**
8 **(d) On April 1, 2006, and October 1, 2006, the coordinating**
9 **body shall submit reports on the coordinating body's progress in**
10 **determining the feasibility of establishing and implementing the**
11 **system to the general assembly in an electronic format under**
12 **IC 5-14-6.**
13 **(e) Not later than July 1, 2007, the coordinating body shall**
14 **submit the final report on the feasibility of establishing and**
15 **implementing the system to the general assembly in an electronic**
16 **format under IC 5-14-6. The report may include a**
17 **recommendation on how to structure governance of the system.**
18 **(f) This SECTION expires July 15, 2007.**
19 **SECTION 37. An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 381, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 381 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 8, Nays 3.

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SENATE MOTION

Madam President: I move that Senate Bill 381 be amended to read as follows:

Page 2, line 38, delete "The:" and insert "**The coordinating body to establish a statewide broadband system comprises four (4) individuals. The governor shall designate one (1) individual to represent the telecommunications industry. In addition, each of the following entities shall designate one (1) representative:**

- (1) **The intelenet commission established by IC 5-21-2-1.**
- (2) **The coordinating unit established by IC 20-12-12-3.**
- (3) **The holder."**

Page 2, delete lines 39 through 42.

Page 3, delete line 1.

Page 5, line 7, delete "state a" and insert "**a state**".

(Reference is to SB 381 as printed February 1, 2005.)

FORD

SENATE MOTION

Madam President: I move that Senate Bill 381, which is eligible for third reading, be returned to second reading for purposes of amendment.

FORD



SENATE MOTION

Madam President: I move that Senator Jackman be added as coauthor of Engrossed Senate Bill 381.

FORD

 SENATE MOTION

Madam President: I move that Senate Bill 381 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-4-10.9-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. "Broadband development program" refers to the Indiana broadband development program established by IC 8-1-33-12.**

SECTION 2. IC 4-4-10.9-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 2.2. "Broadband development project" means a project authorized by the broadband development program under IC 8-1-33.**

SECTION 3. IC 4-4-10.9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as provided in subsection (b), "industrial development project" includes:

- (1) the acquisition of land, site improvements, infrastructure improvements, buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any project (whether manufacturing, commercial, agricultural, environmental, or otherwise) the development or expansion of which serves the public purposes set forth in IC 4-4-11-2;
- (2) educational facility projects; ~~and~~
- (3) child care facility projects; ~~and~~
- (4) broadband development projects.**

(b) For purposes of the industrial development guaranty fund program, "industrial development project" includes the acquisition of land, interests in land, site improvements, infrastructure improvements (including information and high technology infrastructure (as defined

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in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any of the following:

- (1) A pollution control facility.
- (2) A manufacturing enterprise.
- (3) A business service enterprise involved in:
 - (A) computer and data processing services; or
 - (B) commercial testing services.
- (4) A business enterprise the primary purpose of which is the operation of an education and permanent marketing center for manufacturers and distributors of robotic and flexible automation equipment.
- (5) Any other business enterprise, if the use of the guaranty program creates a reasonable probability that the effect on Indiana employment will be creation or retention of at least fifty (50) jobs.
- (6) An agricultural enterprise in which:
 - (A) the enterprise operates pursuant to a producer or growout agreement; and
 - (B) the output of the enterprise is processed predominantly in Indiana.
- (7) A business enterprise that is required by a state, federal, or local regulatory agency to make capital expenditures to remedy a violation of a state or federal law or a local ordinance.
- (8) A recycling market development project.
- (9) A high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5).
- (10) A broadband development project."**

Page 2, line 31, delete "required by" and insert "**described in**".

Page 2, line 32, delete "each I-Light node" and insert "**nodes distributed throughout the network**".

Page 2, line 34, "required by" and insert "**described in**".

Page 2, line 39, delete "four (4)" and insert "**seven (7)**".

Page 2, line 39, after "individuals." insert "**The state chief information officer serves as a member of the coordinating body by virtue of the office.**".

Page 3, delete line 1.

Page 3, line 2, delete "(2)" and insert "**(1)**".

Page 3, line 3, delete "(3)" and insert "**(2)**".

Page 3, between lines 3 and 4, begin a new line double block indented and insert:

"(3) Purdue University.

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(4) Indiana University.

(5) Ball State University."

Page 3, between lines 6 and 7, begin a new paragraph and insert:

"(c) The coordinating body shall cease operation and be dissolved on July 15, 2007."

Page 3, line 7, delete "establish" and insert **"determine the feasibility of"**.

Page 3, line 10, delete "required" and insert **"described"**.

Page 3, line 11, delete "shall" and insert **"may"**.

Page 3, line 19, delete "required" and insert **"described"**.

Page 3, line 20, delete "shall" and insert **"may"**.

Page 3, line 24, delete "The system shall be made available first to authorized" and insert **"This section applies only if a functioning system is deployed by the coordinating body."**

Page 3, line 25, before "users." begin a new paragraph and insert:

(b) "The system shall be made available first to authorized".

Page 3, line 28, delete "(b), (c), and (d)." and insert **"(c), (d), and (e)."**

Page 3, line 33, delete "(d)." and insert **"(e)."**

Page 3, line 34, delete "(b)" and insert **"(c)"**.

Page 3, line 34, delete "(a)" and insert **"(b)"**.

Page 4, line 10, delete "(c)" and insert **"(d)"**.

Page 4, line 15, delete "(d)" and insert **"(e)"**.

Page 4, line 16, delete "(a) or (b)" and insert **"(b) or (c)"**.

Page 4, between lines 20 and 21, begin a new paragraph and insert:

"(f) An authorized user may not sell, lease, or license the authorized user's right to use the system described in this chapter.

SECTION 16. IC 8-1-33 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 33. Indiana Broadband Development Program

Sec. 1. (a) The general assembly finds that:

(1) certain areas of Indiana are not being adequately served with broadband services;

(2) for the benefit of the people of Indiana and the improvement of their health, welfare, and living conditions, the improvement of the economic and educational welfare of Indiana, and the improvement of its public safety and security, it is essential that broadband infrastructure be expanded to provide broadband services throughout Indiana;

(3) the private sector should be encouraged to continue to invest in the deployment of broadband services and networks

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and that financing through this program will encourage broadband investment in underserved areas;

(4) economic, technological, and logistical integrated broadband services should be provided throughout Indiana on a nondiscriminatory basis;

(5) the provision of affordable broadband services and networks in underserved areas will:

(A) ensure the long term growth of and the enhancement and delivery of services by the business, educational, medical, commercial, nonprofit, and governmental entities within Indiana; and

(B) benefit residential, commercial, public, governmental, and nonprofit entities within Indiana; and

(6) the program created and powers conferred by this chapter constitute a necessary program and serve a necessary public purpose.

(b) To increase the speed and availability at which affordable broadband services become available in underserved areas in Indiana, it is declared to be a valid public purpose to assist in the financing and refinancing of the development of a statewide broadband infrastructure.

(c) It is further declared to be a valid public purpose for the development finance authority to issue bonds and notes, and loan the proceeds of those bonds and notes to the program, so that the authority may provide for financing or refinancing to broadband developers and broadband operators serving underserved areas.

Sec. 2. As used in this chapter, "authority" refers to the Indiana development finance authority established in IC 4-4-11-4.

Sec. 3. As used in this chapter, "broadband developer" means a person selected by the authority to acquire, construct, develop, and create any part of the broadband infrastructure.

Sec. 4. As used in this chapter, "broadband development program" or "program" refers to the Indiana broadband development program established by section 16 of this chapter.

Sec. 5. As used in this chapter, "broadband infrastructure" includes all facilities, hardware, and software and other intellectual property used for and necessary to provide broadband services in underserved areas of Indiana, including voice, video, and data.

Sec. 6. As used in this chapter, "broadband operator" means a person selected by the authority to operate any part of the broadband infrastructure.

Sec. 7. As used in this chapter, "broadband services" includes

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services, including voice, video, and data, that provide capacity for transmission of more than two hundred (200) kilobits per second in at least one (1) direction regardless of the technology or medium used, including wireless, copper wire, fiber optic cable, or coaxial cable. If voice transmission capacity is offered in conjunction with other services using transmission of more than two hundred (200) kilobits per second, the voice transmission capacity may be less than two hundred (200) kilobits per second. The authority shall annually reconsider the two hundred (200) kilobits threshold in the definition of the term with a bias toward raising the threshold in a manner consistent with technological advances.

Sec. 8. As used in this chapter, "development costs" means the costs associated with the broadband infrastructure that have been approved by the authority and includes all the following:

- (1) The costs for the planning, acquiring, leasing, constructing, maintaining, and operating of the broadband infrastructure.
- (2) Payments for options to purchase, deposits on contracts of purchase, and payments for the purchases of properties for the broadband infrastructure.
- (3) Financing, refinancing, acquisition, demolition, construction, rehabilitation, and site development of new and existing buildings.
- (4) Carrying charges during construction.
- (5) Purchases of hardware, software, facilities, or other expenses related to the broadband infrastructure.
- (6) Legal, organizational, and marketing expenses, project manager and clerical staff salaries, office rent, and other incidental expenses.
- (7) Payment of fees for preliminary feasibility studies and advances for planning, engineering, and architectural work.
- (8) Any other costs and expenses necessary for the acquisition, construction, maintenance, and operation of all or part of the broadband infrastructure.

Sec. 9. As used in this chapter, "development finance authority" refers to the Indiana development finance authority established by IC 4-4-11-4.

Sec. 10. As used in this chapter, "person" means an individual, a corporation, a limited or general partnership, a joint venture, a limited liability company, or a governmental entity, including a body corporate and politic, political subdivision, municipal corporation, school, college, university, hospital, health care

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facility, library, or nonprofit organization. The term does not include the state.

Sec. 11. (a) As used in this chapter, "relevant services" refers to:

- (1) cable service (as defined in 47 U.S.C. 522(6));
- (2) telecommunications service (as defined in 47 U.S.C. 153(46)); and
- (3) information service (as defined in 47 U.S.C. 153(20)).

(b) The term includes:

- (1) advanced services (as defined in 47 CFR 51.5);
- (2) broadband service; and
- (3) Internet Protocol enabled services;

however classified by the Federal Communications Commission.

Sec. 12. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13. The term includes any entity:

- (1) owned, operated, or controlled by a political subdivision; or
- (2) in which a political subdivision otherwise has an interest, whether direct or indirect.

Sec. 13. As used in this chapter, "underserved area" means an area within Indiana that the authority determines does not have a person that:

- (1) provides broadband service in the area at the time of the authority's inquiry under this section; or
- (2) intends to provide broadband service not later than three
- (3) months after the date of the authority's inquiry under section 14 of this chapter.

Sec. 14. (a) The authority shall conduct an inquiry to determine underserved areas within Indiana. The authority shall send a written request by certified mail to each person that provides a relevant service in the proposed broadband service area. A written request under this subsection must inquire as to whether the person:

- (1) provides broadband service; or
- (2) intends to provide broadband service not later than three
- (3) months after the date of the authority's written request under this subsection;

in the proposed broadband service area.

(b) The authority may determine that there is not a person that provides or intends to provide broadband service in the proposed broadband service area if the authority's inquiry under subsection (a) results in any of the following:

- (1) The authority does not receive a written response to any

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of the requests sent under subsection (a) within sixty (60) days after the date the requests were postmarked.

(2) The authority:

(A) receives one (1) or more responses to a request under subsection (a) that indicate that the persons responding provide broadband service in the proposed broadband service area at the time of the request; and

(B) determines that no person responding actually provides broadband service in the designated area.

(3) The authority:

(A) receives one (1) or more responses to a request under subsection (a) that indicate that the persons responding intend to provide broadband service in the proposed broadband service area not later than three (3) months after the date of the authority's written request under subsection (a); and

(B) determines, after the appropriate amount of time, that no person responding actually provided broadband service in the proposed broadband service area not later than three (3) months after the date of the authority's written request under subsection (a).

Sec. 15. The Indiana broadband development program is established in order to encourage the provision of affordable broadband services and networks that will:

(1) ensure the long term growth of and the enhancement and delivery of services by the business, educational, medical, commercial, nonprofit, and governmental entities in underserved areas in Indiana; and

(2) benefit residential, commercial, public, governmental, and nonprofit entities in underserved areas in Indiana.

Sec. 16. (a) The Indiana broadband development program is established as a separate body corporate and politic, constituting an instrumentality of the state, but not a state agency, for the public purposes set forth in this chapter. The program is separate and apart from the state in its corporate and sovereign capacity, and though separate from the state, the exercise by the authority of its powers constitutes an essential governmental, public, and corporate function.

(b) The Indiana development finance authority shall administer the broadband development program.

Sec. 17. The program may do the following:

(1) Request the development finance authority to issue bonds

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or notes and loan the proceeds to the authority to provide funds to enable the authority to participate in financing and refinancing the expansion of broadband infrastructure services to underserved residential, commercial, public, governmental, and nonprofit customers in Indiana to enhance the delivery of services by the business, educational, medical, commercial, nonprofit, and governmental entities in Indiana.

(2) Request the development finance authority to issue bonds or notes and loan the proceeds to the authority to enable the making of loans to broadband developers and broadband operators serving or proposing to serve underserved areas.

(3) Authorize the imposition and collection of rents, charges, and fees for the services furnished by the broadband infrastructure in conjunction with financing entered into by the authority.

(4) Assist broadband developers and operators with all other matters necessary for the acquisition, construction, maintenance, and operation of the broadband infrastructure.

(5) Continuously evaluate all types of technologies to encourage the widest deployment of broadband services in underserved areas and broadband infrastructure in Indiana.

(6) Make broadband services to authorized users (as defined in IC 5-21.5-1-2) located in underserved areas a priority under authority financing programs.

(7) Ensure that the financing and refinancing of the development of broadband services under this chapter includes provisions ensuring that small businesses and each region of Indiana will have an equal opportunity to receive financing and refinancing.

Sec. 18. (a) The powers of the authority under this chapter include all those necessary to carry out and effectuate the purposes of this chapter, including the following:

(1) To borrow money from the development finance authority for the purposes described in section 17(1) and 17(2) of this chapter.

(2) To invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and name and use depositories for its money.

(3) To receive and distribute state or local funding, including grants, loans, and appropriations.

(4) To make loans to broadband developers and broadband operators that will acquire, construct, maintain, and operate

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all or part of the broadband infrastructure.

(5) To provide operating assistance to make broadband services more affordable to broadband developers, broadband operators, and broadband customers in underserved areas, in conjunction with broadband infrastructure financed by the authority.

(6) To impose and collect charges, fees, or rentals for the services furnished by those parts of the broadband infrastructure financed by the authority under this chapter.

(7) To set construction, operation, and financing standards for the broadband infrastructure in connection with authority financing and to provide for inspections to determine compliance with those standards.

(8) To investigate, evaluate, and assess the current broadband infrastructure and the future broadband infrastructure needs of Indiana and to encourage and participate in aggregation strategies for the broadband services of all public entities and nonprofit corporations in Indiana to maximize the interconnectivity and efficiencies of the broadband infrastructure.

(b) As part of an application for financing under this chapter, a broadband developer or broadband operator must file with the authority a participation plan for small and minority owned businesses and a communitywide outreach plan to educate the public with respect to the availability of broadband services. The authority may not approve an application unless a plan is submitted under this subsection.

Sec. 19. The development finance authority may exercise any of its powers to assist the authority in the accomplishment of the purposes of this chapter, including the power to borrow money, issue bonds and notes, and loan the proceeds to the authority to permit the authority to:

- (1) finance or refinance part or all of the development costs of the broadband infrastructure;
- (2) refinance existing debt for technology that constitutes part of or is related to the broadband infrastructure;
- (3) make loans to persons for development costs;
- (4) make loans to enable persons to make purchases related to the broadband infrastructure;
- (5) make loans to persons to refinance existing debt incurred by persons in connection with the acquisition or development of technology that constitutes a part of or is related to the

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broadband infrastructure; and

(6) make other expenditures necessary to carry out the authority's duties under this chapter, including the payment of the authority's operating expenses.

Sec. 20. (a) The authority, as administrator of the broadband development program, may negotiate one (1) or more loans from the development finance authority upon any terms and conditions the authority considers appropriate, necessary, or desirable to carry out the purposes of this chapter.

(b) A loan under this section must be evidenced by a note of the authority, executed by the chairperson and attested to by the executive director.

Sec. 21. All property of the broadband development program is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments, direct or indirect, of the state or a political subdivision of the state. All notes and bonds issued under this chapter are issued by a body corporate and politic of the state, but not a state agency, and for an essential public and governmental purpose, and the notes and bonds, the interest thereon, the proceeds received by the holder from the sale of the notes and bonds to the extent of the holder's cost of acquisition proceeds received upon redemption before maturity, and proceeds received at maturity and the receipt of the interest and proceeds are exempt from taxation in the state for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1".

Page 5, line 22, delete "required to be established under" and insert "described in".

Page 5, line 25, delete "a report on its progress in" and insert "the initial report on the feasibility of".

Page 5, line 27, after "IC 5-14-6." insert "The report must provide a detailed analysis of broadband penetration throughout Indiana, specifically stating all broadband options in use and detailing available:

- (1) technologies;
- (2) types of service;
- (3) areas of service;
- (4) costs of service; and
- (5) the populations in Indiana to whom the capabilities described in this subsection are available.

(d) On April 1, 2006, and October 1, 2006, the coordinating body shall submit reports on the coordinating body's progress in

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determining the feasibility of establishing and implementing the system to the general assembly in an electronic format under IC 5-14-6.

(e) Not later than July 1, 2007, the coordinating body shall submit the final report on the feasibility of establishing and implementing the system to the general assembly in an electronic format under IC 5-14-6. The report may include a recommendation on how to structure governance of the system."

Page 5, line 28, delete "January 1, 2006." and insert "July 15, 2007."

Renumber all SECTIONS consecutively.

(Reference is to SB 381 as reprinted February 4, 2005.)

FORD

SENATE MOTION

Madam President: I move that Senator Hume be added as coauthor of Engrossed Senate Bill 381.

FORD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Technology, Research and Development, to which was referred Senate Bill 381, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 5, delete "IC 8-1-33-12." and insert "**IC 8-1-33-15**."

Page 2, delete lines 40 through 42.

Delete pages 3 through 5.

Page 6, delete lines 1 through 3, begin a new paragraph and insert:

"SECTION 5. IC 8-1-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) **Except as provided in section 1.1 of this chapter**, "public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

- (1) conveyance of telegraph or telephone messages;

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(2) production, transmission, delivery, or furnishing of heat, light, water, or power; or

(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

(b) "Municipal council", as used in this chapter, means the legislative body of any town or city in Indiana wherein the property of the public utility or any part thereof is located.

(c) "Municipality", as used in this chapter, means any city or town of Indiana.

(d) "Rate", as used in this chapter, means every individual or joint rate, fare, toll, charge, rental, or other compensation of any utility or any two (2) or more such individual or joint rates, fares, tolls, charges, rentals, or other compensation of any utility or any schedule or tariff thereof, but nothing in this subsection shall give the commission any control, jurisdiction, or authority over the rate charged by a municipally owned utility except as in this chapter expressly provided.

(e) "Service" is used in this chapter in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property, and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

(f) "Commission", as used in this chapter, means the commission created by IC 8-1-1-2.

(g) "Utility", as used in this chapter, means every plant or equipment within the state used for:

(1) the conveyance of telegraph and telephone messages;

(2) the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to the public; or

(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate facilities for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. A warehouse owned or operated by any person, firm,

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limited liability company, or corporation engaged in the business of operating a warehouse business for the storage of used household goods is not a public utility within the meaning of this chapter.

(h) "Municipally owned utility", as used in this chapter, includes every utility owned or operated by a municipality.

(i) "Indeterminate permit", as used in this chapter, means every grant, directly or indirectly from the state, to any corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, of power, right, or privilege to own, operate, manage, or control any plant or equipment, or any part of a plant or equipment, within this state, for the:

- (1) production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to or for the public;
- (2) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; or
- (3) furnishing of facilities for the transmission of intelligence by electricity between points within this state;

which shall continue in force until such time as the municipality shall exercise its right to purchase, condemn, or otherwise acquire the property of such public utility, as provided in this chapter, or until it shall be otherwise terminated according to law.

SECTION 6. IC 8-1-2-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.1. A person or an entity that:**

(1) transmits communications over Internet Protocol enabled services, including:

- (A) voice communications;**
- (B) data;**
- (C) video streams; or**
- (D) any combination of voice, data, and video communications; or**

(2) provides the necessary software, hardware, transmission service, or transmission path for communications described in subdivision (1);

is not a public utility (as defined in section 1 of this chapter) solely by reason of engaging in any activity described in subdivisions (1) through (2).

SECTION 7. IC 8-1-2.6-0.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.1. (a) As used in this chapter, "basic**

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telecommunications service" means stand alone local exchange service that:

- (1) is provided to a residential customer through the customer's primary line; and
- (2) is:
 - (A) the sole service purchased by the customer;
 - (B) not part of a package of services, a promotion, or a contract; or
 - (C) not otherwise offered at a discounted price.

(b) "Basic telecommunications service" includes, at a minimum, the following:

- (1) Voice grade access to the public switched telephone network with minimum bandwidth of three hundred (300) to three thousand (3,000) Hertz.
- (2) Dual tone multifrequency signaling and single party service.
- (3) Access to:
 - (A) emergency services, including access to 911 and enhanced 911 if provided by the local government having jurisdiction in the service area;
 - (B) operator services;
 - (C) local directory assistance;
 - (D) telephone relay services; and
 - (E) interexchange service.
- (4) Toll limitation services for qualifying low income customers.

SECTION 8. IC 8-1-2.6-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.2. As used in this chapter, "basic telecommunications rates and charges" means the monthly recurring rate for basic telecommunications service, including:**

- (1) flat rate and message rate service; and
- (2) any nonrecurring charge for installation or a line or service connection.

SECTION 9. IC 8-1-2.6-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.3. (a) As used in this chapter, "nonbasic telecommunications service" means retail telecommunications service other than:**

- (1) basic telecommunications service, except when the service is purchased by the customer:
 - (A) in conjunction with another service;

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- (B) as part of a package of services, a promotion, or a contract; or
 - (C) at an otherwise discounted price;
 - (2) commercial mobile radio service (as defined in 47 CFR 51.5);
 - (3) services outside the jurisdiction of the commission under section 1.1 of this chapter; and
 - (4) switched and special carrier access services.
- (b) The term includes services included in:
- (1) customer specific contracts;
 - (2) volume, term, and discount pricing options; and
 - (3) packages, bundles, and promotions, including offers designed to win new customers, retain existing customers, or win back former customers.

SECTION 10. IC 8-1-2.6-0.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.4. As used in this chapter, "provider" means a person or an entity that offers basic or nonbasic telecommunications service.**

SECTION 11. IC 8-1-2.6-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. As used in this chapter, "telecommunications" has the meaning set forth in 47 U.S.C. 153(43).**

SECTION 12. IC 8-1-2.6-0.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.6. As used in this chapter, "telecommunications service" has the meaning set forth in 47 U.S.C. 153(46).**

SECTION 13. IC 8-1-2.6-0.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.7. As used in this chapter, "incumbent local exchange carrier" means a local service telephone utility that provides telephone service to customers in the geographic territory served by the local exchange and is either of the following:**

- (1) A telephone utility that on February 8, 1996, provided telephone exchange service in the geographic territory and was considered to be a member of the exchange carrier association under 47 CFR 69.601(b).
- (2) A person or an entity that on or after February 8, 1996, became a successor or assignee of a member of the exchange

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carrier association described in subdivision (1).

SECTION 14. IC 8-1-2.6-0.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.8. As used in this chapter, "payphone service provider" means an entity, other than an incumbent local exchange carrier, that owns and operates public or semipublic pay telephones or pay telephones used to provide telephone service in correctional institutions.**

SECTION 15. IC 8-1-2.6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The Indiana general assembly hereby declares that:

- (1) the maintenance of universal telephone service is a continuing goal of the commission in the exercise of its jurisdiction;
- (2) competition has become commonplace in the provision of ~~certain telephone~~ **telecommunications** services in Indiana and the United States;

(3) advancements in and the convergence of technologies that provide voice, video, and data transmission, including:

- (A) landline, wireless, cable, satellite, and Internet transmissions; and**
- (B) transmissions involving voice over Internet Protocol (VOIP), Internet Protocol enabled services, and voice over power lines;**

are substantially increasing consumer choice, reinventing the marketplace with unprecedented speed, and making available highly competitive products and services and new methods of delivering local exchange service.

~~(3)~~ **(4) traditional commission regulatory policies, and practices, and existing statutes are not designed to deal with a competitive environment and technological advancements;**

~~(4)~~ **(5) an environment in which Indiana consumers will have available the widest array of state-of-the-art ~~telephone~~ telecommunications services at the most economic and reasonable cost possible will necessitate full and fair facilities based competition in the delivery of certain telephone telecommunications services throughout the state; Indiana; and**

~~(5)~~ **(6) streamlining of, and flexibility in, the regulation of providers of ~~telephone~~ telecommunications services, regardless of the technology used, is essential to the well-being of the state; Indiana, its economy, and its citizens and that the public interest requires that the commission be authorized to formulate and adopt rules and policies as will permit the commission, in the exercise**

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of its expertise, to regulate and control the provision of ~~telephone~~ **telecommunications** services to the public in an increasingly competitive **and technologically changing** environment, giving due regard to the interests of consumers and the public, **the ability of market forces to encourage innovation and investment**, and to the continued **universal** availability of ~~universal telephone~~ **basic telecommunications** service.

SECTION 16. IC 8-1-2.6-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.1. (a) The commission shall not exercise jurisdiction over:**

- (1) **advanced services (as defined in 47 CFR 51.5);**
- (2) **broadband service, as defined by the Federal Communications Commission; or**
- (3) **any service not commercially available on February 8, 1996.**

(b) The commission shall not exercise jurisdiction over information services (as defined in 47 U.S.C. 153(20)) or Internet Protocol enabled services, as defined by the Federal Communications Commission, except:

- (1) **as expressly permitted under IC 8-1-2.8;**
- (2) **as may be reasonably necessary to provide for access to emergency services, including access to 911 and enhanced 911; and**
- (3) **for purposes of determining the rights and obligations of any provider concerning the payment of switched network access rates or other compensation for use of another provider's facilities or services.**

The commission shall not impose requirements under this subsection that exceed those imposed by, or that are otherwise inconsistent with, federal law, including federal regulations.

SECTION 17. IC 8-1-2.6-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.2. (a) Except as provided in section 16 of this chapter, the commission shall not, by entering an order, adopting a rule, or taking any other action, do any of the following:**

- (1) **Impose a regulation concerning any nonbasic telecommunications service unless the regulation is imposed equally and uniformly on all providers.**
- (2) **Impose a service quality regulation or performance standard concerning any nonbasic telecommunications**

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service.

(3) Exercise jurisdiction over:

- (A) any nonbasic telecommunications service; or**
- (B) the provider of any nonbasic telecommunications service;**

if the commission has declined to exercise jurisdiction over the service or provider before July 1, 2005.

(b) Subject to sections 12 and 16 of this chapter, after June 30, 2007, the commission shall not exercise jurisdiction over any nonbasic telecommunications service except as follows:

(1) A provider may elect to file and maintain with the commission tariffs for nonbasic telecommunications services offered by the provider in Indiana. The commission shall permit a provider to implement a tariff, or a modification to a tariff, on the first day immediately following the date of filing with the commission.

(2) The commission may investigate, on a formal or an informal basis, a complaint concerning a provider's compliance with a tariff filed with the commission under subdivision (1). The commission's investigation shall be limited to the sole issue of the provider's compliance with the filed tariff. The commission shall conduct a formal investigation only upon the request of any class satisfying the standing requirements of IC 8-1-2-54.

SECTION 18. IC 8-1-2.6-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.3. (a) The commission shall not, by entering an order, adopting a rule, or taking any other action, do any of the following with respect to basic telecommunications services and providers of basic telecommunications services:

(1) Impose a regulation concerning any basic telecommunications service unless the regulation is imposed equally and uniformly on all providers.

(2) Impose a service quality regulation unless the regulation is imposed equally and uniformly on all providers.

(3) Impose a regulation or performance standard concerning service quality that:

(A) is more stringent than any service quality regulation or performance standard in effect on July 1, 2005; or

(B) measures performance more often than quarterly.

(4) Impose a reporting requirement concerning service quality that requires reporting to the commission more

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frequently than quarterly.

(5) Impose a regulation concerning universal availability of basic telecommunications service unless the regulation is imposed on a nondiscriminatory and competitively and technologically neutral basis.

(6) Exercise jurisdiction over:

(A) any basic telecommunications service; or

(B) the provider of any basic telecommunications service; if the commission has declined to exercise jurisdiction over the service or provider before July 1, 2005.

(7) Impose a regulation on, or exercise jurisdiction over:

(A) any basic telecommunications service; or

(B) the provider of any basic telecommunications service; if the service or provider is exempt from commission jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5, except as allowed under IC 8-1-2-88.5 or IC 8-1-17-22.5.

(b) The commission may not exercise jurisdiction over any basic telecommunications service, including the price, terms, and conditions of providing the service, or any provider of basic telecommunications service in an exchange area in which the commission finds, after notice and hearing, that basic telecommunications service or another voice communications service that enables customers to make and receive local voice communications is available to customers from at least three (3) non-affiliated providers. The commission may make a finding under this subsection at the request of a provider or on its own motion. In determining whether at least three (3) non-affiliated providers serve an exchange area, the commission shall count the following:

(1) Incumbent and other providers of traditional wireline telecommunications services.

(2) Competitive local exchange services.

(3) Commercial mobile services providers as identified in 47 U.S.C. 331(d)(1) and either 47 CFR Part 22 or 47 CFR Part 24.

(4) Other wireless services.

(5) Cable television operators and other broadband providers providing voice communications services.

(6) Providers of Internet Protocol enabled services such as voice over Internet protocol (VOIP) service providers.

(c) For the purposes of making a finding under subsection (b):

(1) a commercial mobile service provider described in

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subsection (b)(3) is considered an entity providing basic telecommunications or other voice communications service;

(2) if an exchange area is served by more than one (1) commercial mobile service provider described in subsection (b)(3), the commercial mobile service providers count as only one (1) nonaffiliated provider;

(3) an entity providing voice communications services is considered a basic telecommunications services provider regardless of whether the entity is subject to regulation by the commission; and

(4) regardless of the technology utilized voice communications services means a two-way voice service capable of being originated and terminated with the exchange of the local exchange telecommunications company.

(d) The commission shall make a finding under subsection (b) within three (3) months after a provider's request to make a finding that at least three (3) basic telecommunications service providers or other voice communications service providers are available to the customers in an exchange area.

(e) Notwithstanding subsections (b) through (d), a provider may continue to elect to file and maintain with the commission tariffs for basic telecommunications services offered by the provider in Indiana. The commission shall permit a provider to implement a tariff or a modification to a tariff on the first day immediately following the date of filing with the commission. A provider may withdraw without the approval of the commission any tariff filed under this subsection.

(f) The commission may investigate, on a formal or an informal basis, a complaint concerning a provider's compliance with a tariff filed with the commission under subsection (e). The commission's investigation shall be limited to the sole issue of the provider's compliance with the filed tariff. The commission shall conduct a formal investigation only upon the request of any class satisfying the standing requirements of IC 8-1-2-54.

(g) An incumbent local exchange carrier shall continue to make available a flat monthly rate with unlimited local calling for basic telecommunications services in the local calling areas in which the provider offers basic telecommunications services on July 1, 2005.

SECTION 19. IC 8-1-2.6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Notwithstanding any other statute, the commission may:

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- (2) at the request of the utility consumer counselor;
- (3) at the request of one (1) or more telephone companies; or
- (4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;

enter an order, after notice and hearing, that the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over telephone companies or certain telephone services. **(a) This section applies to commission rules and orders concerning telecommunications service or providers of telecommunications service.**

(b) Rules and orders described in this section:

- (1) may be adopted or issued only after notice and 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) Development of depreciation guidelines and procedures that recognize technological obsolescence.
- (4) Increased provider management efficiency beneficial to customers.
- (5) Regulation consistent with a competitive environment.

~~(b)~~ **(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 ~~telephone company~~ **the customers of providers**; and
- (3) whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar ~~telephone~~ **telecommunications** services or

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equipment.

(c) The commission may:

- (1) on its own motion;
- (2) at the request of the utility consumer counselor;
- (3) at the request of one (1) or more telephone companies; or
- (4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;

enter an order notifying any telephone company or class of telephone companies jurisdiction over which was either limited or not exercised according to this section that the commission will proceed to exercise jurisdiction over the telephone company, class of telephone companies, or class of telephone services provided by telephone companies to the extent the commission considers appropriate unless one (1) or more of those telephone companies formally request a hearing within fifteen (15) days following the date of such order.

SECTION 20. IC 8-1-2.6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A regulatory flexibility committee is established to monitor competition in the telephone industry.

(b) The committee is composed of the members of a house standing committee selected by the speaker of the house of representatives and a senate standing committee selected by the president pro tempore of the senate. In selecting standing committees under this subsection, the speaker and president pro tempore shall determine which standing committee of the house of representatives and the senate, respectively, has subject matter jurisdiction that most closely relates to the electricity, gas, energy policy, and telecommunications jurisdiction of the regulatory flexibility committee. The chairpersons of the standing committees selected under this subsection shall cochair the regulatory flexibility committee.

(c) The commission shall, by July 1 of each year, prepare for presentation to the regulatory flexibility committee an analysis of the effects of competition **and technological change** on universal service and on pricing of all ~~telephone~~ **telecommunications** services **remaining** under the jurisdiction of the commission.

(d) In addition to reviewing the commission report prepared under subsection (c), the regulatory flexibility committee shall also issue a report and recommendations to the legislative council by November 1 of each year that is based on a review of the following issues:

- (1) The effects of competition in the ~~telephone~~ **telecommunications** industry and impact of competition **and technological change** on available subsidies used to maintain

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universal service.

(2) The status of modernization of the public **switched** telephone network in Indiana and the incentives required to further enhance this infrastructure.

(3) The effects on economic development and educational opportunities of this modernization.

(4) The current method of regulating ~~telephone companies~~ **telecommunications providers** and the method's effectiveness.

(5) The economic and social effectiveness of current ~~telephone~~ **telecommunications** service pricing.

(6) All other telecommunications issues the committee deems appropriate.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(e) The regulatory flexibility committee shall meet on the call of the cochairpersons to study telecommunications issues described in subsection (d). The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid by the commission.

SECTION 21. IC 8-1-2.6-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.1. (a) Not later than:**

(1) July 1, 2007; and

(2) July 1 of each odd-numbered year after July 1, 2007; the commission shall, through rulemaking under IC 4-22-2 or another commission proceeding, identify and eliminate regulations and policies concerning telecommunications services and providers that are no longer necessary or appropriate as a result of technological advancement and competition in the telecommunications industry.

(b) In carrying out this section, the commission shall promote the policies and purposes set forth in this chapter. The commission's annual report to the regulatory flexibility committee under section 4 of this chapter must:

(1) identify any regulation or policy eliminated under this section; and

(2) justify any regulation or policy that is retained.

SECTION 22. IC 8-1-2.6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 8. (a)** As used in this section, "rate reduction" means a decrease in either recurring or nonrecurring rates or charges.

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(b) Notwithstanding any other provision of this chapter or any other statute, a ~~telephone company~~ **provider** may ~~subject to the prior approval of the commission,~~ participate in any rate reduction program for residential customers funded from revenues provided by any governmental entity or other revenues administered by an agency of that entity.

SECTION 23. IC 8-1-2.6-10 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10. (a) The commission shall not, when acting under any authority delegated to the commission by federal law, including when conducting arbitration of interconnection agreements under the federal Telecommunications Act of 1996, 47 U.S.C. 251 et seq., impose any requirements or set any prices concerning:**

- (1) unbundled network elements;**
- (2) the resale of telecommunications services; or**
- (3) interconnection with the facilities and equipment of providers;**

that exceed, or are otherwise inconsistent with, federal laws and regulations.

(b) The commission shall establish reasonable pricing for unbundled network elements, the resale of telecommunications services, and interconnection in accordance with the federal Telecommunications Act of 1996, 47 U.S.C. 251 et seq., and all other federal laws and regulations.

(c) This chapter does not affect:

- (1) the commission's continuing authority to resolve interconnection disputes between telecommunications carriers that arise under the federal Telecommunications Act of 1996, 47 U.S.C. 251 et seq.; or**
- (2) a provider's ability to file a complaint with the commission to have a dispute, after notice and hearing, decided by the commission.**

SECTION 24. IC 8-1-2.6-11 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 11. (a) Notwithstanding any other law, the commission shall not, by entering an order, adopting a rule, or taking any other action, impose a regulation or performance standard concerning the transfer of customers between providers unless the regulation or performance standard is imposed equally and uniformly on all providers.**

(b) After a customer's telecommunications services have been

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ported, the initial provider may, to the extent permitted by federal law and by IC 24-4.7-4, contact the customer to confirm that the customer has made the decision to change to the other provider.

(c) A provider may not refuse to transfer or facilitate the transfer of a local exchange service customer of the provider to another provider on the same terms and conditions that the provider receives from any other provider unless the terms and conditions violate federal law.

SECTION 25. IC 8-1-2.6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 12. This chapter does not terminate or otherwise change the terms and conditions of a settlement agreement approved by the commission under this chapter before July 29, 2004.**

SECTION 26. IC 8-1-2.6-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 13. This chapter does not modify, affect, or nullify the responsibilities lawfully delegated to the commission under:**

- (1) 47 U.S.C. 251; and
- (2) 47 U.S.C. 252.

SECTION 27. IC 8-1-2.6-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 14. This chapter does not affect the rights and obligations of any person or entity concerning the payment of switched network access rates or other carrier compensation concerning:**

- (1) Internet Protocol enabled service;
- (2) advanced services (as defined in 47 CFR 51.5);
- (3) broadband service; or
- (4) other Internet access services.

SECTION 28. IC 8-1-2.6-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 15. (a) Except as provided in subsection (b), if there is a conflict between this chapter and another provision of this article, this chapter controls.**

(b) This chapter does not affect the rights of a telecommunications provider under IC 8-1-2-88.5 or IC 8-1-17-22.5.

SECTION 29. IC 8-1-2.6-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 16. Notwithstanding any other statute, the commission shall retain jurisdiction to establish just and**

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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 30. IC 8-1-2.8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. As used in this chapter, "local exchange telephone company" or "LEC" means a company authorized by the commission to provide, among other services, local exchange access service. **The term includes a provider of Internet Protocol enabled services that is required to provide dual party relay services to hearing impaired and speech impaired persons under federal law.**

SECTION 31. IC 8-1-19.5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) Notwithstanding IC 8-1-2.6, the commission may retain:

- (1) jurisdiction over the rates, charges, and service quality of 211 services provided by telecommunications providers; and
- (2) the authority to fulfill the commission's duties under this chapter.

(b) The commission may not impose a rule concerning the service quality of 211 services provided by a telecommunications provider unless the rule is imposed equally and uniformly on all telecommunications providers.

(c) Upon a petition by:

- (1) a telecommunications provider; or
- (2) a recognized 211 services provider;

the commission may formally or informally investigate a telecommunications provider's rates and charges to determine whether the rates and charges are just and reasonable. For purposes of this section, a rate is considered reasonable if the rate covers the telecommunications provider's costs and allows a reasonable profit."

Page 7, between lines 2 and 3, begin a new paragraph and insert:

"Sec 2. As used in this chapter, "affordable broadband services" means broadband services that are available at a price reasonably

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comparable to the price charged for broadband services in an area that is not an underserved area."

Page 7, line 3, delete "2." and insert "**3.**".

Page 7, line 5, delete "3." and insert "**4.**".

Page 7, line 8, delete "4." and insert "**5.**".

Page 7, line 10, delete "16" and insert "**15**".

Page 7, line 11, delete "5." and insert "**6.**".

Page 7, line 15, delete "6." and insert "**7.**".

Page 7, line 18, delete "7." and insert "**8.**".

Page 7, line 27, delete "in the" and insert "**under this section**".

Page 7, line 28, delete "definition of the term".

Page 7, line 30, delete "8." and insert "**9.**".

Page 7, line 34, delete ", maintaining, and operating" and insert "**and maintaining**".

Page 8, delete lines 11 through 13.

Page 8, line 15, after "corporation," insert "**a rural electric membership corporation,**".

Page 8, line 41, delete "this section;" and insert "**section 14 of this chapter;**".

Page 9, line 6, delete "in" and insert "**within one hundred (100) miles of**".

Page 9, line 40, after "15." insert "**(a)**".

Page 10, delete lines 7 through 14.

Page 10, line 15, delete "Indiana development finance".

Page 10, delete lines 17 through 42.

Page 11, delete lines 1 through 5.

Page 11, line 6, delete "18." and insert "**16.**".

Page 11, delete lines 9 through 11.

Page 11, line 12, delete "(2)" and insert "**(1)**".

Page 11, line 15, delete "(3)" and insert "**(2)**".

Page 11, line 17, delete "(4)" and insert "**(3)**".

Page 11, line 19, delete "infrastructure." and insert "**infrastructure serving underserved areas.**".

Page 11, line 20, delete "(5)" and insert "**(4)**".

Page 11, delete lines 25 through 27.

Page 11, line 28, delete "(7)" and insert "**(5)**".

Page 11, line 32, delete "(8)" and insert "**(6)**".

Page 11, between lines 38 and 39, begin a new line block indented and insert:

"(7) To make expenditures necessary to carry out the authority's duties under this chapter, including paying the authority's operating expenses."

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Page 12, delete lines 4 through 42.

Page 13, delete lines 1 through 41, begin a new paragraph and insert:

"SECTION 32. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 8-1-2.6-3; IC 8-1-2.6-5; IC 8-1-2.6-7.

SECTION 33. [EFFECTIVE UPON PASSAGE] (a) **As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

(b) **Not later than November 15, 2006, the commission shall submit to the regulatory flexibility committee established by IC 8-1-2.6-4 a report that includes an analysis of the following issues:**

- (1) **The status of competition in Indiana within the wireline and wireless telecommunications industries and between the wireline and wireless telecommunications industries.**
- (2) **The level of concentration of ownership in the telecommunications industry and the degree to which corporate mergers, acquisitions, and buyouts within the industry affect consumer choices and pricing in Indiana.**
- (3) **For each county in Indiana, a breakdown of the number of available providers of the following services:**
 - (A) **Wireline telephone services.**
 - (B) **Wireless telephone services.**
 - (C) **Wireless broadband services.**
 - (D) **Broadband services other than wireless broadband services.**

The commission shall pay particular attention to the availability of broadband services in underserved areas (as defined in IC 8-1-33-12, as added by this act).

- (4) **The effects of the following on universal service in Indiana:**
 - (A) **The convergence of telecommunications services and technologies.**
 - (B) **State and federal regulatory decisions.**
- (5) **The degree to which the use of new technologies in the telecommunications industry affects the reliability of telecommunications services, including the provision of enhanced 911 services and 211 services.**
- (6) **The impact on consumers and telecommunications providers of:**
 - (A) **federal telecommunications laws and regulations; and**
 - (B) **state and federal judicial decisions concerning**

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telecommunications laws and regulations.

(7) A comparison of Indiana's contributions to the federal universal services fund versus federal universal service fund allocations or discounts provided to eligible recipients in Indiana.

(c) The report prepared under this SECTION may be made in conjunction with the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4. The commission shall include in the report any recommendations for proposed legislation concerning the issues analyzed in the report.

(d) The commission shall involve the following entities in the development of the report under this SECTION:

- (1) Colleges and universities.
- (2) Rural electric membership corporations.
- (3) Incumbent local exchange carriers.
- (4) Competitive local exchange carriers.
- (5) Cable television providers."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 381 as reprinted February 23, 2005.)

MURPHY, Chair

Committee Vote: yeas 8, nays 2.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 381 be amended to read as follows:

Page 2, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 4. IC 5-21.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 21.5. INDIANA STATEWIDE BROADBAND SYSTEM

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Authorized user" means:

- (1) an authorized user of the intelenet system under IC 5-21-1-2, including:



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- (A) political subdivisions;
- (B) instrumentalities of state or local government that provide public safety or emergency management services;
- (C) school corporations;
- (D) institutions of higher education; and
- (E) community networks;

(2) an authorized user of the Indiana Telecommunications Network administered by the Indiana higher education telecommunications system under IC 20-12-12;

(3) a local hospital authority or corporation, or other publicly funded hospital; or

(4) a certified technology park established under IC 36-7-32.

Sec. 3. "Coordinating body" refers to the representatives designated under IC 5-21.5-2-1 to coordinate the establishment of a statewide broadband system.

Sec. 4. "Holder" means a state agency or other instrumentality of state government that holds the contract for the state's infeasible right of use to I-Light.

Sec. 5. "I-Light" refers to the statewide high speed optical fiber network. The term includes the fiber optic networks known at any time as I-Light and I-Light 2.

Sec. 6. "Infeasible right of use" means a temporary ownership right in a fiber optic cable, specified in terms of a certain number of channels of a given bandwidth.

Sec. 7. "Person" means any individual, corporation, limited liability company, partnership, firm, association, public or private agency, or other organization.

Sec. 8. "System" refers to a statewide broadband system that:

(1) makes use of the best available technology, as determined by the coordinating body, including wireless broadband technology;

(2) allows broadband communications at a speed of at least twenty (20) megabits per second downstream to a subscriber; and

(3) includes:

(A) a statewide system of wireless broadband access points as described in IC 5-21.5-2-2(b); and

(B) a system of Ethernet ports at nodes distributed throughout the network to allow access to the system by authorized users and persons other than authorized users, as described in IC 5-21.5-2-2(c).

Chapter 2. Establishment of the System; General

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Administration

Sec. 1. (a) The coordinating body to establish a statewide broadband system consists of seven (7) individuals. The state chief information officer serves as a member of the coordinating body by virtue of the office. The governor shall designate one (1) individual to represent the telecommunications industry. In addition, each of the following entities shall designate one (1) representative:

- (1) The coordinating unit established by IC 20-12-12-3.**
- (2) The holder.**
- (3) Purdue University.**
- (4) Indiana University.**
- (5) Ball State University.**

(b) The holder may assign to the coordinating body an indefeasible right of use of all or part of the I-Light fiber optic network.

(c) The coordinating body shall cease operation and be dissolved on July 15, 2007.

Sec. 2. (a) The coordinating body shall determine the feasibility of a statewide broadband system to be made available to authorized users and other persons as provided in section 3 of this chapter.

(b) In developing the system described by this section, the coordinating body may test and deploy a system of wireless broadband access points throughout Indiana. A wireless system established under this subsection must:

- (1) provide bandwidth transmission of at least five (5) megabits per second at each I-Light node; and**
- (2) be designed to permit the accommodation of additional capacity and coverage as the communication needs of the system's users may require.**

(c) In developing the system described by this section, the coordinating body may provide Ethernet ports at each I-Light node to allow access to the system by authorized users and persons other than authorized users, as permitted under section 3 of this chapter.

Sec. 3. (a) This section applies only if a functioning system is deployed by the coordinating body.

(b) The system shall be made available first to authorized users. However, if the coordinating body determines at any time that the system has sufficient capacity to serve other users, the coordinating body shall permit any person to access the system, subject to

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subsections (c), (d), and (e). A person eligible to access the system under this section includes a commercial:

- (1) telecommunications provider; or
- (2) Internet service provider;

that meets any qualifications or criteria for access established by the coordinating body under subsection (d).

(c) If the coordinating body acts under subsection (b) to permit one (1) or more persons to access capacity on the system that is not needed to meet the broadband needs of authorized users, and it becomes necessary to allocate the available capacity among those persons, the coordinating body shall consider the following for each new person seeking access:

- (1) Whether the person's allocated capacity on the system will be used by the person to provide broadband service to users:
 - (A) at a competitive rate; and
 - (B) within a reasonable period after the person acquires access to the system;

as determined by the coordinating body.

- (2) The extent to which the person's allocated capacity on the system will be used to provide broadband service to underserved areas of Indiana.

- (3) The extent to which allowing the person to access the system will contribute to the broadband service choices available to Indiana residents and businesses.

(d) The coordinating body may establish standards or other requirements for access to the system by a person other than an authorized user. However, any standards or requirements established under this subsection must be applied on a uniform and competitively neutral basis.

(e) The coordinating body shall provide access to the system under subsection (b) or (c) at a cost that does not exceed the coordinating body's costs to establish, operate, maintain, and administer the system, including any costs of upgrading the system to incorporate the best available technology, as determined by the coordinating body.

(f) An authorized user may not sell, lease, or license the authorized user's right to use the system described in this chapter."

Page 8, line 20, delete "February 8," and insert "July 1, 2005."

Page 8, delete line 21.

Page 10, line 22, delete "any basic".

Page 10, line 23, delete "telecommunications service, including".

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Page 10, line 24, delete "providing the" and insert "**basic telecommunications**".

Page 10, line 26, delete "basic".

Page 10, delete lines 27 through 29.

Page 10, line 30, delete "non-affiliated providers." and insert "**broadband services are available to at least fifty percent (50%) of the households located in the exchange area.**".

Page 10, line 32, delete "In determining whether at least three (3) non-affiliated".

Page 10, delete lines 33 through 42.

Page 11, delete lines 1 through 19.

Page 11, line 20, delete "(d)" and insert "(c)".

Page 11, line 22, delete "at least three (3) basic telecommunications service".

Page 11, line 23, delete "providers or other voice communications service providers" and insert "**broadband services**".

Page 11, line 24, delete "the customers" and insert "**at least fifty percent (50%) of the households located**".

Page 11, line 25, delete "(e)" and insert "(d)".

Page 11, line 25, delete "(d)," and insert "(c)".

Page 11, line 33, delete "(f)" and insert "(e)".

Page 11, line 35, delete "(e)." and insert "(d).".

Page 11, line 40, delete "(g)" and insert "(f)".

Page 15, delete lines 16 through 17.

Page 15, line 18, delete "U.S.C. 251 et seq.,".

Page 15, line 24, delete "exceed, or are otherwise inconsistent with," and insert "**exceed the commission's authority delegated under**".

Page 15, line 38, delete "." and insert "**consistent with this article.**".

Page 21, line 12, after "area." insert "**This section does not empower the authority to require providers of broadband service to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information.**".

Page 23, between lines 3 and 4, begin a new paragraph and insert:
"SECTION 33. IC 20-12-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) A special and distinct fund is hereby created to be known as the higher education statewide telecommunications fund. Expenditures from the fund may be made only for the following:

- (1) Payments by the universities for the use of a telecommunications system or the lease, purchase, rental, or production of a videotape program as provided in this chapter.

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(2) Studies regarding the possibilities of extending the use of the telecommunications system described in section 1(a) of this chapter to other colleges and universities in Indiana and of extending the use of the system for post-high school and other educational uses.

(3) The expenses of coordinating, planning, and supervising the use of the telecommunications system, and the videotape program.

(4) Equipment for the originating and receiving of instructional communication and educational information by means of the telecommunications system and the videotape program.

(b) The statewide broadband account is established within the fund to pay the costs of the coordinating body established under IC 5-21.5-2 to establish, operate, maintain, and administer a statewide broadband system under IC 5-21.5. Costs under this subsection include any costs of upgrading the system to incorporate the best available technology, as determined by the coordinating body. The account consists of fees or charges collected by the coordinating body for providing access to the system by authorized users or other persons, to the extent permitted under IC 5-21.5-2-3(e). Money in the account is continuously appropriated for the purposes of this subsection. Money in the account at the end of a state fiscal year does not revert to the fund.

(c) The state auditor of state shall pay, as needed, from the fund and the account established under subsection (b) amounts to the trustees of Indiana University as agent for the universities and the coordinating body established under IC 5-21.5-2. The trustees of Indiana University as the agent shall apply the funds to the payment of items as payment becomes due from the higher education statewide telecommunications fund or the account established under subsection (b)."

Page 24, between lines 5 and 6, begin a new paragraph and insert:

"(c) The report prepared under this SECTION must include a map identifying the location of the infrastructure used to provide the services described in subsection (b)(3)."

Page 24, line 6, delete "(c)" and insert "(d)".

Page 24, line 11, delete "(d)" and insert "(e)".

Page 25, line 3, delete "(d)" and insert "(f)".

Renumber all SECTIONS consecutively.

(Reference is to ESB 381 as printed April 5, 2005.)

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