

Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1315

AN ACT to amend the Indiana Code concerning utilities and transportation.

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

SECTION 1. IC 8-1-34-16, AS ADDED BY HEA 1279-2006, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) Except as provided in section 21 of this chapter, after June 30, 2006:

(1) the commission is the sole franchising authority (as defined in 47 U.S.C. 522(10)) for the provision of video service in Indiana; and

(2) a unit may not:

(A) require a provider to obtain a separate franchise; or

(B) impose any fee, gross receipt tax, licensing requirement, rate regulation, or build-out requirement on a provider;

except as authorized by this chapter.

(b) Except as provided in section 21 of this chapter, a person who seeks to provide video service in Indiana after June 30, 2006, shall file with the commission an application for a franchise. The application shall be made on a form prescribed by the commission and must include the following:

(1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms the following:

(A) That the applicant has filed or will timely file with the

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Federal Communications Commission all forms required by the Federal Communications Commission before offering video service in Indiana.

(B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations applicable to the operation of the applicant's video service system.

(C) That the applicant agrees to:

(i) comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service; and

(ii) recognize the police powers of a unit to enforce the ordinance or regulation.

(D) If the applicant will terminate an existing local franchise under section 21 of this chapter, that the applicant agrees to perform any obligations owed to any private person, ~~under the terminated franchise until such time as the local franchise would otherwise terminate or expire~~, as required by section 22 of this chapter.

(2) The applicant's legal name and any name under which the applicant does or will do business in Indiana, as authorized by the secretary of state.

(3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the commission.

(4) The names and titles of the applicant's principal officers.

(5) The legal name, address, and telephone number of the applicant's parent company, if any.

(6) A description of each service area in Indiana to be served by the applicant. A service area described under this subdivision may include an unincorporated area in Indiana.

(7) The expected date for the deployment of video service in each of the areas identified in subdivision (6).

(8) A list of other states in which the applicant provides video service.

(9) If the applicant will terminate an existing local franchise under section 21(b) of this chapter, a copy of the written notice sent to the municipality under section 21(c) of this chapter.

(10) Any other information the commission considers necessary to:

(A) monitor the provision of video service to Indiana customers; and

(B) prepare the commission's annual report to the regulatory

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flexibility committee under IC 8-1-2.6-4.

This subsection does not empower the commission to require an applicant to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subsection.

(c) The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 17 of this chapter.

SECTION 2. IC 8-1-34-22, AS ADDED BY HEA 1279-2006, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) A provider that elects to terminate a local franchise under section 21 of this chapter remains subject to the contractual rights, duties, and obligations incurred by the provider under the terms and conditions of the terminated local franchise that are owed to any private person, including a subscriber.

(b) The obligations that a provider owes to a private person under subsection (a) include any obligations based on the gross income received by the provider:

- (1) after the provider becomes a holder of a certificate under this chapter; and
- (2) for video service provided in the service area covered by the terminated local franchise;

if, under the terms of the terminated local franchise, the obligations would have been based on the gross income received by the provider for video service provided in the service area covered by the terminated local franchise.

(c) (b) All liens, security interests, royalties, and other contracts, rights, and interests arising out of the terminated local franchise and owed to a private person, shall:

- (1) continue in full force and effect without the need for renewal, extension, or continuance; **and**
- (2) be paid or performed by the provider after becoming a holder of a certificate under this chapter. **and**
- (3) apply as though the gross revenue of the provider continued to be generated under the terminated local franchise with respect to any revenue generated in the service area covered by the terminated local franchise.

(d) (c) The commission shall condition the issuance or renewal of a certificate under this chapter on a provider's payment and

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performance of the rights, duties, and obligations described in this section. ~~until the time the terminated local franchise would ordinarily terminate or expire if the provider had not made the election under section 21 of this chapter.~~ In applying for an initial certificate or a renewal certificate under this chapter, a provider shall agree to pay or perform the obligations described in this section, as required by section 16(b)(1)(D) of this chapter.

~~(c)~~ (d) A private person that claims to be:

- (1) owed any rights, duties, or obligations by a holder under this section; and
 - (2) aggrieved by a holder's alleged violation of this section;
- may bring an action in a court with jurisdiction to enforce the rights, duties, or obligations claimed to be owed to the person.

~~(f)~~ (e) As used in this section, "private person" does not include:

- (1) the unit that issued the terminated local franchise;
- (2) a political subdivision (as defined in IC 36-1-2-13) not described in subdivision (1); or
- (3) any official, agent, or employee of:
 - (A) the unit that issued the terminated local franchise; or
 - (B) a political subdivision described in subdivision (2);
 in the individual's official capacity.

SECTION 3. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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