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# SENATE BILL No. 216

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-34.

**Synopsis:** Repeal of video service franchise fee. Provides that a provider of video service to Indiana customers under: (1) a certificate of franchise authority issued by the utility regulatory commission (IURC); or (2) an unexpired local franchise issued by a local unit before July 1, 2006; may not be required to pay a franchise fee to any local unit with respect to any calendar quarter or other reporting period that begins after June 30, 2010. Amends an incorrect reference to federal telecommunications law.

**Effective:** July 1, 2010.

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January 11, 2010, read first time and referred to Committee on Tax and Fiscal Policy.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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**SENATE BILL No. 216**



A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

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

1 SECTION 1. IC 8-1-34-17, AS AMENDED BY P.L.1-2007,  
2 SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2010]: Sec. 17. (a) Not later than fifteen (15) business days  
4 after the commission receives an application under section 16 of this  
5 chapter, the commission shall determine whether the application is  
6 complete and properly verified. If the commission determines that the  
7 application is incomplete or is not properly verified, the commission  
8 shall notify the applicant of the deficiency and allow the applicant to  
9 resubmit the application after correcting the deficiency. If the  
10 commission determines that the application is complete and properly  
11 verified, the commission shall issue the applicant a certificate of  
12 franchise authority. A certificate issued under this section must  
13 contain:  
14 (1) a grant of authority to provide the video service requested in  
15 the application;  
16 (2) a grant of authority to use and occupy public rights-of-way in  
17 the delivery of the video service, subject to:



1 (A) state and local laws and regulations governing the use and  
 2 occupancy of public rights-of-way; and  
 3 (B) the police powers of local units to enforce local ordinances  
 4 and regulations governing the use and occupancy of public  
 5 rights-of-way; and  
 6 (3) a statement that the authority granted under subdivisions (1)  
 7 and (2) is subject to the holder's lawful provision and operation of  
 8 the video service.

9 (b) Except as provided in subsection (c) and sections 16(c) and 28  
 10 of this chapter, the commission may not require a provider to:

11 (1) satisfy any build-out requirements;  
 12 (2) deploy, or make investments in, any infrastructure, facilities,  
 13 or equipment; or  
 14 (3) pay:  
 15 (A) an application fee;  
 16 (B) a document fee;  
 17 (C) a state franchise fee;  
 18 **(D) a local franchise fee under section 24 of this chapter**  
 19 **(before its expiration on January 1, 2012) with respect to**  
 20 **any calendar quarter that begins after June 30, 2010;**  
 21 (E) a service charge; or  
 22 (F) any fee other than ~~the~~ a franchise fee ~~paid owed~~ to a local  
 23 unit under section 24 of this chapter **(before its expiration on**  
 24 **January 1, 2012) for a calendar quarter that begins before**  
 25 **July 1, 2010;**

26 as a condition of receiving or holding a certificate under this chapter.

27 (c) This section does not limit the commission's right to enforce any  
 28 obligation described in subsection (b) that a provider is subject to  
 29 under the terms of a settlement agreement approved by the commission  
 30 before July 29, 2004.

31 (d) The general assembly, a state agency, or a unit may not adopt a  
 32 law, rule, ordinance, or regulation governing the use and occupancy of  
 33 public rights-of-way that:  
 34 (1) discriminates against any provider, or is unduly burdensome  
 35 with respect to any provider, based on the particular facilities or  
 36 technology used by the provider to deliver video service; or  
 37 (2) allows a video service system owned or operated by a unit to  
 38 use or occupy public rights-of-way on terms or conditions more  
 39 favorable or less burdensome than those that apply to other  
 40 providers.

41 A law, a rule, an ordinance, or a regulation that violates this subsection  
 42 is void.

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1 SECTION 2. IC 8-1-34-21, AS ADDED BY P.L.27-2006,  
 2 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2010]: Sec. 21. (a) For purposes of this section, a provider is  
 4 considered to be a holder of a local franchise on June 30, 2006, if:

- 5 (1) the provider; or  
 6 (2) any affiliate or successor entity of the provider;

7 holds a local franchise to provide video service in a unit on June 30,  
 8 2006.

9 (b) After June 30, 2006, a provider that is the holder of a local  
 10 franchise on June 30, 2006, regardless of whether the provider is the  
 11 incumbent provider in the local franchise service area, may elect to:

- 12 (1) continue providing video service under the local franchise  
 13 until the local franchise expires; or  
 14 (2) subject to section 22 of this chapter, terminate the local  
 15 franchise and apply to the commission for a certificate under this  
 16 chapter.

17 (c) A provider that elects to terminate a local franchise under  
 18 subsection (b) must provide written notice of the provider's election to:

- 19 (1) the commission; and  
 20 (2) the affected unit;

21 not later than November 1, 2006. The local franchise is terminated on  
 22 the date the commission issues a certificate to the provider under this  
 23 chapter.

24 (d) Not later than ninety (90) days after a local franchise is  
 25 terminated under subsection (c), the provider that terminated the local  
 26 franchise shall remit to the affected unit any accrued but unpaid  
 27 franchise fees due under the local franchise. If the provider has credit  
 28 remaining from any prepaid franchise fees, the provider may deduct the  
 29 amount of the credit from any future fees or taxes owed to the affected  
 30 unit.

31 **(e) A provider that elects under subsection (b)(1) to continue**  
 32 **providing video service under a local franchise:**

- 33 **(1) is not required to pay the franchise fee prescribed under**  
 34 **section 24 of this chapter (before its expiration on January 1,**  
 35 **2012); and**

36 **(2) shall pay any franchise fee that:**

- 37 **(A) is imposed under the terms of the local franchise; and**  
 38 **(B) is due and owing with respect to any:**

- 39 **(i) calendar quarter; or**  
 40 **(ii) other reporting period specified under the terms of**  
 41 **the local franchise;**

42 **that begins before July 1, 2010.**

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1 **A provider that elects under subsection (b)(1) to continue**  
 2 **providing video service under a local franchise may not be**  
 3 **required to pay a franchise fee to any unit for a calendar quarter**  
 4 **or other reporting period that begins after June 30, 2010,**  
 5 **regardless of the terms of the local franchise. If the provider has**  
 6 **credit remaining from any prepaid franchise fees, the provider**  
 7 **may deduct the amount of the credit from any future fees or taxes**  
 8 **owed to the affected unit.**

9 SECTION 3. IC 8-1-34-23, AS AMENDED BY P.L.1-2007,  
 10 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2010]: Sec. 23. (a) Except as provided in subsection (b), the  
 12 holder of a certificate under this chapter shall, at the end of each  
 13 calendar quarter **that begins before July 1, 2010**, determine under  
 14 subsections (c) and (d) the gross revenue received during that quarter  
 15 from the holder's provision of video service in each unit included in the  
 16 holder's service area under the certificate.

17 (b) This subsection applies to a holder or other provider providing  
 18 video service in a unit in which a provider of video service is required  
 19 on June 30, 2006, to pay a franchise fee based on a percentage of gross  
 20 revenues. The holder's or provider's gross revenue shall be determined  
 21 as follows:

22 (1) If only one (1) local franchise is in effect on June 30, 2006, the  
 23 holder or provider shall determine gross revenue as the term is  
 24 defined in the local franchise in effect on June 30, 2006.

25 (2) If:

26 (A) more than one (1) local franchise is in effect on June 30,  
 27 2006; and

28 (B) the holder or provider is subject to a local franchise in the  
 29 unit on June 30, 2006;

30 the holder or provider shall determine gross revenue as the term  
 31 is defined in the local franchise to which the holder or provider is  
 32 subject on June 30, 2006.

33 (3) If:

34 (A) more than one (1) local franchise is in effect on June 30,  
 35 2006; and

36 (B) the holder is not subject to a local franchise in the unit on  
 37 June 30, 2006;

38 the holder shall determine gross revenue as the term is defined in  
 39 the local franchise in effect on June 30, 2006, that is most  
 40 favorable to the unit.

41 (c) This subsection does not apply to a holder that is required to  
 42 determine gross revenue under subsection (b). The holder shall include

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1 the following in determining the gross revenue received during the  
 2 quarter with respect to a particular unit:

3 (1) Fees and charges charged to subscribers for video service  
 4 provided by the holder. Fees and charges under this subdivision  
 5 include the following:

6 (A) Recurring monthly charges for video service.  
 7 (B) Event based charges for video service, including pay per  
 8 view and video on demand charges.  
 9 (C) Charges for the rental of set top boxes and other  
 10 equipment.  
 11 (D) Service charges related to the provision of video service,  
 12 including activation, installation, repair, and maintenance  
 13 charges.  
 14 (E) Administrative charges related to the provision of video  
 15 service, including service order and service termination  
 16 charges.

17 (2) Revenue received by an affiliate of the holder from the  
 18 affiliate's provision of video service, to the extent that treating the  
 19 revenue as revenue of the affiliate, instead of revenue of the  
 20 holder, would have the effect of evading the payment of fees that  
 21 would otherwise be paid to the unit. However, revenue of an  
 22 affiliate may not be considered revenue of the holder if the  
 23 revenue is otherwise subject to fees to be paid to the unit.

24 (d) This subsection does not apply to a holder that is required to  
 25 determine gross revenue under subsection (b). The holder shall not  
 26 include the following in determining the gross revenue received during  
 27 the quarter with respect to a particular unit:

28 (1) Revenue not actually received, regardless of whether it is  
 29 billed. Revenue described in this subdivision includes bad debt.  
 30 (2) Revenue received by an affiliate or any other person in  
 31 exchange for supplying goods and services used by the holder to  
 32 provide video service under the holder's certificate.  
 33 (3) Refunds, rebates, or discounts made to subscribers,  
 34 advertisers, the unit, or other providers leasing access to the  
 35 holder's facilities.  
 36 (4) Revenue from providing service other than video service,  
 37 including revenue from providing:

38 (A) telecommunications service (as defined in 47 U.S.C.  
 39 153(46));  
 40 (B) information service (as defined in 47 U.S.C. 153(20)),  
 41 other than video service; or  
 42 (C) any other service not classified as cable service or video

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- 1 programming by the Federal Communications Commission.
- 2 (5) Any fee imposed on the holder under this chapter that is
- 3 passed through to and paid by subscribers, including the franchise
- 4 fee:
- 5 (A) imposed under section 24 of this chapter for the quarter
- 6 immediately preceding the quarter for which gross revenue is
- 7 being computed; and
- 8 (B) passed through to and paid by subscribers during the
- 9 quarter for which gross revenue is being computed.
- 10 (6) Revenue from the sale of video service for resale in which the
- 11 purchaser collects a franchise fee under:
- 12 (A) this chapter; or
- 13 (B) a local franchise agreement in effect on July 1, 2006;
- 14 from the purchaser's customers. This subdivision does not limit
- 15 the authority of a unit, or the commission on behalf of a unit, to
- 16 impose a tax, fee, or other assessment upon the purchaser under
- 17 42 U.S.C. 542(h).
- 18 (7) Any tax of general applicability:
- 19 (A) imposed on the holder or on subscribers by a federal, state,
- 20 or local governmental entity; and
- 21 (B) required to be collected by the holder and remitted to the
- 22 taxing entity;
- 23 including the state gross retail and use taxes (IC 6-2.5) and the
- 24 utility receipts tax (IC 6-2.3).
- 25 (8) Any forgone revenue from providing free or reduced cost
- 26 cable video service to any person, including:
- 27 (A) employees of the holder;
- 28 (B) the unit; or
- 29 (C) public institutions, public schools, or other governmental
- 30 entities, as required or permitted by this chapter or by federal
- 31 law.
- 32 However, any revenue that the holder chooses to forgo in
- 33 exchange for goods or services through a trade or barter
- 34 arrangement shall be included in gross revenue.
- 35 (9) Revenue from the sale of:
- 36 (A) capital assets; or
- 37 (B) surplus equipment that is not used by the purchaser to
- 38 receive video service from the holder.
- 39 (10) Reimbursements that:
- 40 (A) are made by programmers to the holder for marketing
- 41 costs incurred by the holder for the introduction of new
- 42 programming; and

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1 (B) exceed the actual costs incurred by the holder.  
 2 (11) Late payment fees collected from customers.  
 3 (12) Charges, other than those described in subsection (c)(1), that  
 4 are aggregated or bundled with charges described in subsection  
 5 (c)(1) on a customer's bill, if the holder can reasonably identify  
 6 the charges on the books and records by the holder in the regular  
 7 course of business.  
 8 (e) If, under the terms of the holder's certificate, the holder provides  
 9 video service to any unincorporated area in Indiana, the holder shall  
 10 calculate the holder's gross income received from each unincorporated  
 11 area served in accordance with:  
 12 (1) subsection (b); or  
 13 (2) subsections (c) and (d);  
 14 whichever is applicable.  
 15 (f) If a unit served by the holder under a certificate annexes any  
 16 territory after the certificate is issued or renewed under this chapter, the  
 17 holder shall:  
 18 (1) include in the calculation of gross revenue for the annexing  
 19 unit any revenue generated by the holder from providing video  
 20 service to the annexed territory; and  
 21 (2) subtract from the calculation of gross revenue for any unit or  
 22 unincorporated area:  
 23 (A) of which the annexed territory was formerly a part; and  
 24 (B) served by the holder before the effective date of the  
 25 annexation;  
 26 the amount of gross revenue determined under subdivision (1);  
 27 beginning with the calculation of gross revenue for the calendar quarter  
 28 in which the annexation becomes effective. The holder shall notify the  
 29 commission of the new boundaries of the affected service areas as  
 30 required under section 20(a)(7) of this chapter.  
 31 **(g) This section expires January 1, 2012.**  
 32 SECTION 4. IC 8-1-34-24, AS ADDED BY P.L.27-2006,  
 33 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2010]: Sec. 24. (a) Subject to subsection (e), not later than  
 35 forty-five (45) days after the end of each calendar quarter **that begins**  
 36 **before July 1, 2010**, the holder shall pay to each unit included in the  
 37 holder's service area under a certificate issued under this chapter a  
 38 franchise fee equal to:  
 39 (1) the amount of gross revenue received from providing video  
 40 service in the unit during the most recent calendar quarter, as  
 41 determined under section 23 of this chapter; multiplied by  
 42 (2) a percentage equal to one (1) of the following:

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- 1 (A) If a local franchise has never been in effect in the unit  
 2 before July 1, 2006, five percent (5%).
- 3 (B) If no local franchise is in effect in the unit on July 1, 2006,  
 4 but one (1) or more local franchises have been in effect in the  
 5 unit before July 1, 2006, the percentage of gross revenue paid  
 6 by the holder of the most recent local franchise in effect in the  
 7 unit, unless the unit elects to impose a different percentage,  
 8 which may not exceed five percent (5%).
- 9 (C) If there is one (1) local franchise in effect in the unit on  
 10 July 1, 2006, the percentage of gross revenue paid by the  
 11 holder of that local franchise as a franchise fee to the unit,  
 12 unless the unit elects to impose a different percentage, which  
 13 may not exceed five percent (5%). Upon the expiration of a  
 14 local franchise described in this clause, the percentage shall be  
 15 determined by the unit but may not exceed five percent (5%).
- 16 (D) If there is more than one (1) local franchise in effect with  
 17 respect to the unit on July 1, 2006, a percentage determined by  
 18 the unit, which may not exceed the greater of:
- 19 (i) five percent (5%); or
- 20 (ii) the percentage paid by a holder of any local franchise in  
 21 effect in the unit on July 1, 2006.
- 22 (b) If the holder provides video service to an unincorporated area in  
 23 Indiana, as described in section 23(e) of this chapter, the holder shall:
- 24 (1) calculate the franchise fee with respect to the unincorporated  
 25 area in accordance with subsection (a); and
- 26 (2) remit the franchise fee to the county in which the  
 27 unincorporated area is located.
- 28 If an unincorporated area served by the provider is located in one (1)  
 29 or more contiguous counties, the provider shall remit part of the  
 30 franchise fee calculated under subdivision (1) to each county having  
 31 territory in the unincorporated area served. The part of the franchise fee  
 32 remitted to a county must bear the same proportion to the total  
 33 franchise fee for the area, as calculated under subdivision (1), that the  
 34 number of subscribers in the county bears to the total number of  
 35 subscribers in the unincorporated area served.
- 36 (c) With each payment of a franchise fee to a unit under this section,  
 37 the holder shall include a statement explaining the basis for the  
 38 calculation of the franchise fee. A unit may review the books and  
 39 records of:
- 40 (1) the holder; or
- 41 (2) an affiliate of the holder, if appropriate;
- 42 to the extent necessary to ensure the holder's compliance with section

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1 23 of this chapter in calculating the gross revenue upon which the  
2 remitted franchise fee is based. Each party shall bear the party's own  
3 costs of an examination under this subsection. If the holder and the unit  
4 cannot agree on the amount of gross revenue on which the franchise fee  
5 should be based, either party may petition the commission to determine  
6 the amount of gross revenue on which the franchise fee should be  
7 based. A determination of the commission under this subsection is  
8 final, subject to the right of direct appeal by either party.

9 (d) A franchise fee owed by a holder to a unit under this section may  
10 be passed through to, and collected from, the holder's subscribers in the  
11 unit. To the extent allowed under ~~43~~ 47 U.S.C. 542(c), the holder may  
12 identify as a separate line item on each regular bill issued to a  
13 subscriber:

- 14 (1) the amount of the total bill assessed as a franchise fee under  
15 this section; and
- 16 (2) the identity of the unit to which the franchise fee is paid.

17 (e) A ~~holder~~ **provider** that elects under section 21(b)(1) of this  
18 chapter to continue providing video service under a local franchise is  
19 not required to pay the franchise fee prescribed under this section, but  
20 shall pay any franchise fee imposed under the terms of the local  
21 franchise.

22 **(f) This section expires January 1, 2012.**

23 SECTION 5. IC 8-1-34-25, AS ADDED BY P.L.27-2006,  
24 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
25 JULY 1, 2010]: Sec. 25. (a) This section applies in a unit that:

- 26 (1) is included in the service area of a holder of a certificate  
27 issued under this chapter; and
- 28 (2) requires a provider described in section 21(a) of this chapter  
29 to provide PEG channel capacity, facilities, or financial support  
30 under a local franchise issued to the provider by the unit before  
31 July 1, 2006, regardless of whether the provider elects to:

- 32 (A) continue the local franchise under section 21(b)(1) of this  
33 chapter; or
- 34 (B) terminate the local franchise under section 21(b)(2) of this  
35 chapter and continue providing video service in the unit under  
36 a certificate issued under this chapter.

37 (b) As used in this section, "PEG channel" refers to a channel made  
38 available by a provider on the provider's video service system for  
39 public, educational, and governmental programming.

40 (c) The holder of a certificate under this chapter shall provide in the  
41 unit at least the number of PEG channels that the provider described in  
42 section 21(a) of this chapter is required to provide in the unit under the

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1 terms of the local franchise described in subsection (a)(2).  
 2 (d) If the local franchise described in subsection (a)(2) requires the  
 3 provider described in section 21(a) of this chapter to provide financial  
 4 support for public, educational, or governmental programming in the  
 5 unit, the holder of a certificate under this chapter shall pay the unit the  
 6 same cash payments on a per subscriber basis that the provider  
 7 described in section 21(a) of this chapter is required to pay the unit  
 8 under the terms of the local franchise. The holder shall remit payments  
 9 under this subsection to the unit on a quarterly basis **for each calendar**  
 10 **quarter that begins after the certificate under this chapter takes**  
 11 **effect. For a calendar quarter that begins before July 1, 2010, the**  
 12 **holder shall remit the payments under this subsection** along with  
 13 the franchise fee paid to the unit under section 24 of this chapter  
 14 **(before its expiration on January 1, 2012).** For each calendar quarter,  
 15 the holder shall remit to the unit an amount equal to:  
 16 (1) the cash payment for the quarter due from the provider  
 17 described in section 21(a) of this chapter; multiplied by  
 18 (2) a fraction, the numerator of which equals the number of  
 19 subscribers served by the holder in the unit, and the denominator  
 20 of which equals the total number of subscribers served by all  
 21 providers in the unit.  
 22 (e) Any payments remitted to a unit under subsection (d):  
 23 (1) are made:  
 24 (A) for the purposes set forth in 47 U.S.C. 531; and  
 25 (B) under the unit's authority under 47 U.S.C. 541(a)(4)(B);  
 26 and  
 27 (2) may not be credited against the franchise fee payable to the  
 28 unit under section 24 of this chapter **(before its expiration on**  
 29 **January 1, 2012).**

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