

Members

Sen. James Merritt, Co-Chairperson  
Sen. Glenn Howard  
Sen. Timothy Lanane  
Sen. Larry Lutz  
Sen. Frank Mrvan  
Sen. David Long  
Sen. Beverly Gard  
Sen. Becky Skillman  
Sen. Thomas Wyss  
Sen. Lawrence Borst  
Rep. Dan Stevenson, Co-Chairperson  
Rep. Alan Chowning  
Rep. Ryan Dvorak  
Rep. Jerry Denbo  
Rep. Craig Fry  
Rep. Scott Reske  
Rep. Terri Austin  
Rep. Scott Pelath  
Rep. Jack Lutz  
Rep. Robert Behning  
Rep. David Frizzell  
Rep. Brooks LaPlante  
Rep. Michael Murphy  
Rep. David Yount



## REGULATORY FLEXIBILITY COMMITTEE

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### MEETING MINUTES<sup>1</sup>

Meeting Date: September 28, 2004  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington  
St., Senate Chambers  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Sen. James Merritt, Co-Chairperson; Sen. Glenn Howard; Sen. Timothy Lanane; Sen. Larry Lutz; Sen. Frank Mrvan; Sen. Beverly Gard; Rep. Dan Stevenson, Co-Chairperson; Rep. Alan Chowning; Rep. Ryan Dvorak; Rep. Scott Reske; Rep. Scott Pelath; Rep. Jack Lutz; Rep. Robert Behning; Rep. David Frizzell; Rep. David Yount.

**Members Absent:** Sen. Thomas Wyss; Sen. Becky Skillman; Sen. David Long; Sen. Lawrence Borst; Rep. Jerry Denbo; Rep. Craig Fry; Rep. Terri Austin; Rep. Brooks LaPlante; Rep. Michael Murphy.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Senator James Merritt and Representative Dan Stevenson, Co-Chairmen of the Regulatory Flexibility Committee, convened the meeting at 1:50 p.m. Senator Merritt announced that the agenda would include: (1) the annual industry reports from the Indiana Utility Regulatory Commission (IURC); and (2) a discussion of enhanced 911 fees and the relationship between the state wireless fee and local wireline fees, as assigned by the Legislative Council.

Before introducing Chairman William McCarty of the IURC, the Co-Chairs invited Representative Scott Pelath to offer comments to the Committee. Representative Pelath thanked the Co-Chairs for the opportunity to address the Committee, but declined to offer any remarks, stating that he did not have any issues to bring before the Committee at that time.

### **Annual Reports from the IURC**

#### **(1) Report on the Electric Industry<sup>2</sup>**

Senator Merritt then asked Chairman McCarty to present the IURC's annual reports on the energy and telecommunications industries. Chairman McCarty thanked the Committee for the opportunity to discuss the Commission's activities and acknowledged the efforts of fellow Commissioners Judith Ripley, David Hadley, Larry Landis, and David Ziegner. He then began his discussion of the electric industry with comments on the blackout of August 14, 2003. Pointing out Indiana's good fortune in having been spared from the widespread power outages that occurred that day, Chairman McCarty noted that the final report of the joint U.S.-Canada Power System Outage Task Force included several technical and policy recommendations to prevent or minimize the likelihood of future blackouts. The Task Force concluded that deficiencies in the corporate policies of utilities, a lack of adherence to existing standards (including vegetation management practices), and inadequate management of voltage and reactive power all contributed to the blackout.

Next, Chairman McCarty reported on the status of merchant power plants in Indiana. He reminded Committee members that merchant plants generate electricity to sell on the wholesale power market. Unlike traditional regulated utilities, merchant plant operators assume the costs of construction and operations, with the expectation that they will be able to recoup such costs through sales on the wholesale energy market. Often powered by natural gas, merchant plants typically locate near the intersection of transmission lines and gas pipelines.

Several years ago, anticipating a lucrative wholesale market and taking note of Indiana's plentiful gas pipelines and transmission facilities, a number of merchant plants filed petitions to operate in Indiana. However, in recent years, interest in building new merchant plants has declined, due largely to adequate existing capacity and lower wholesale market prices. In fact, Chairman McCarty reported that the IURC has not received a new petition for the construction of a merchant plant since March 2001. Additionally, four projects have been cancelled and the corresponding certificates of need revoked by the IURC. According to Chairman McCarty, only three approved plant projects remain to be completed or cancelled. While economic conditions have not favored the development of new projects, nine plants currently operate in Indiana, providing 3,626 MW of generation capacity to Indiana and the region.

Chairman McCarty then highlighted some recent environmental policies affecting the

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<sup>2</sup>See Exhibit 1.

electric industry. He reported that May 31, 2004, marked the effective date of a federal regulation requiring electric utilities to reduce NOx emissions by 65% during the summer ozone season. To meet this requirement, Indiana electric utilities have had to install costly pollution control equipment at some of their generating facilities. Additionally, on March 15, 2005, the U.S. Environmental Protection Agency (EPA) will issue a new rule requiring coal-fired power plants to substantially cut mercury emissions. Also under development by the EPA is the Interstate Air Quality Rule, which aims to reduce sulfur dioxide and NOx emissions by 70% and 65%, respectively. The two phases of this rule would begin in 2010 and 2015. Chairman McCarty suggested that these new environmental regulations could ultimately lead to increased electric rates in Indiana, as utilities seek to recover the costs of compliance.

Turning to the continuing development of regional transmission organizations (RTOs), Chairman McCarty reported that the Carmel-based Midwest Independent Transmission System Operator (MISO) is preparing to implement a wholesale energy market in its territory beginning in March 2005. Under its plan, MISO will operate day-ahead and real-time energy markets for all generation facilities within its region. In turn, MISO members will operate their systems in response to price signals issued by MISO. Additionally, in response to the 2003 blackout, MISO has taken several steps to improve reliability in the Midwest, including the use of computer simulation as a primary tool for monitoring grid reliability. Finally, MISO has continued to work with PJM, another RTO that operates in Indiana, to create seamless wholesale operations across their respective territories. Commenting on the status of deregulated wholesale and retail energy markets, Chairman McCarty reiterated the IURC's support of the evolving wholesale market. However, he cautioned that the IURC does not favor deregulating the retail energy sector until the wholesale market is fully functioning and open.

As the energy industry continues to move toward deregulation, Chairman McCarty stressed the need for the IURC to have authority over mergers and acquisitions involving Indiana utilities. He argued that the issue has taken on increased importance, given the possible repeal of the federal Public Utility Holding Company Act of 1935 (PUHCA). Chairman McCarty noted that if Congress repeals PUCHA, with the intent of leaving the regulation of holding company mergers to the states, Indiana would be one of the few states without specific statutory authority over mergers. He maintained that the IURC needs the authority to consider a proposed transaction's effect on: (1) future investments in Indiana communities; (2) employment opportunities and stability for Indiana's workforce; (3) the reliability and quality of utility service; and (4) the quality of customer service.

Chairman McCarty concluded his report on the electric industry by updating the Committee on several of the IURC's rulemakings. He reported that the IURC's net metering<sup>3</sup> rule, which was discussed by the Committee during the 2003 interim, was in the final stages of the rulemaking process. When finally adopted, the rule will require investor owned utilities to make net metering available to residential customers and K-12 schools. In June 2004, the IURC initiated a rulemaking concerning the reporting of outage and reliability statistics by electric utilities. The proposed rule clarifies the current outage reporting requirements and defines a set of standard reliability statistics to be reported annually by each utility. Finally, in July 2004, the IURC proposed a rule concerning customer service rights and

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<sup>3</sup>Net metering arrangements allow an electric customer with a limited capacity generator on the customer's premises to interconnect the generator with an investor owned utility's electric system. A special metering configuration measures the difference between the electricity that is supplied by the utility to the customer, and the electricity that is supplied by the customer back to the utility. The customer is billed or credited for the net kilowatt hours consumed or supplied.

responsibilities. The rule addresses issues such as customer creditworthiness, customer deposits required to establish service, and estimated billing programs. Chairman McCarty stated that he expected all three of the IURC's rulemakings to be finalized over the next year.

## **(2) Report on the Telecommunications Industry**

Chairman McCarty then directed the Committee's attention to the telecommunications industry. He noted that the 2004 telecommunications report<sup>4</sup> examines three main areas of change within the industry: (1) market transitions; (2) technology transitions; and (3) regulatory transitions. Turning to the first issue, Chairman McCarty addressed the status of competition in the market for local telephone service. He reported that of Indiana's 4.5 million total wirelines in service at the end of 2003, 12.4% were held by competitive local exchange carriers (CLECs), versus 8.4% at the end of 2002. From 2002 to 2003, the CLECs more than doubled the number of residential lines they controlled, while the incumbent local exchange carriers (ILECs) reported gaining 60,000 residential lines and 9,000 nonresidential lines. These gains represented a 57.7% growth rate for CLECs, a 1.8% growth rate for ILECs, and a 6.4% statewide growth rate for all carriers.

As to the methods used by CLECs to deliver services, Chairman McCarty reported that the use of Unbundled Network Elements-Platform (UNE-P) was the preferred method, representing 52% of all services delivered by CLECs. With UNE-P, a CLEC can lease all necessary service elements using a cost methodology developed by the Federal Communications Commission (FCC) that results in low rates. UNE-P requires no CLEC-owned facilities and allows the CLEC to collect long distance access revenues and reciprocal compensation. However, Chairman McCarty pointed out that the future of UNE-P is uncertain, in light of a March 2004 decision by the U.S. Court of Appeals for the D.C. Circuit. In that case,<sup>5</sup> the Court struck down portions of the FCC's Triennial Review Order (TRO), issued in August 2003, which relieved ILECs of some previous obligations to provide certain parts of their networks at regulated prices and delegated to state regulators the authority to determine the remaining obligations of ILECs to provide discounted access to other parts of their networks. Specifically, the Court held that state commissions, like the IURC, do not have the authority delegated to them to make decisions about the specific UNEs to be made available. Chairman McCarty reported that after deciding not to appeal the ruling, the FCC has issued interim rules that include a six-month freeze on UNE-P rates. If no final rules are in place after six months, UNE-P rates will increase by \$1.00. According to Chairman McCarty, many in the industry believe that CLECs will ultimately pass these higher rates onto consumers or will be forced out of the market, resulting in fewer competitive choices.

Turning to the second area of change in the industry, Chairman McCarty updated the Committee on technological advances in the telecommunications sector. He noted that broadband Internet access has become a priority at both the federal and state levels. In 2003, companies reported 419,000 high speed Internet access connections in Indiana, more than double the number from 2002. For its part, the IURC has helped accelerate broadband deployment by Indiana's largest telephone providers by negotiating Alternative Regulatory Plans (ARPs) for Sprint, SBC, and Verizon, which combined serve 76% of all wirelines in Indiana. Each ARP calls for the deployment of high speed Internet access to

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<sup>4</sup>See Exhibit 2.

<sup>5</sup>See *United States Telecom Ass'n v. Federal Communications Comm'n*, 359 F.3d 554 (D.C. Cir. 2004).

almost 80% of all lines served by these companies.

Finally, Chairman McCarty discussed the third area of change in the industry by highlighting regulatory issues faced by the IURC and other state commissions. For example, the increase in telecommunications providers and in the number of wireless customers has put pressure on regulators to split area codes as the number of available telephone numbers decreases. Chairman McCarty reminded the Committee that in 2001, the IURC had overseen the split of the 219 area code in northern Indiana into the 219, 574, and 260 area codes. At the time, the IURC had decided not to use an area code overlay, in which existing customers would have retained the 219 area code, while new customers within the same geographic area would have been assigned a new code. Chairman McCarty reported that the decision to forego an overlay has preserved seven-digit dialing within the region. Now, regulators are monitoring the impact of Voice Over Internet Protocol (VOIP) on existing numbering resources. Of particular concern is the potential exemption of VOIP providers from a federal rule that gives state regulators the authority to certify which carriers are allowed to obtain numbers within their states. According to Chairman McCarty, without this certification mechanism, which is required of all other telecommunications providers seeking phone numbers from the North American Numbering Plan Administrator (NANPA), the IURC's ability to monitor the allocation of numbers in Indiana would be severely hindered.

Chairman McCarty also expressed concern about the proliferation of line-item charges on telephone bills. He explained that providers are increasingly listing charges for "regulatory," "administrative," or "government-mandated costs." According to Chairman McCarty, some of the charges do not represent government-mandated taxes or surcharges but are, in fact, an attempt by the providers to recover their ordinary operating costs. For example, when the General Assembly replaced the gross receipts tax with the utility receipts tax in 2002, many providers passed the cost of the utility receipts tax through to their customers. However, the gross receipts tax had never appeared as a separate line item on customer bills, because utilities had considered it a cost of doing business. While adding the new charge for the utility receipts tax, some providers did not offer a corresponding credit to reflect the elimination of the gross receipts tax or the relief they received through property tax reductions. When the IURC sent notice to providers to discontinue this practice, some providers simply rolled the utility receipts tax into some other charge, such as a "regulatory cost recovery fee." Chairman McCarty noted that line-item charges are a problem across the country. He reported that the IURC has filed comments supporting a petition asking the FCC to declare that providers are prohibited from imposing line-item charges on bills unless the charges are expressly mandated by federal, state, or local regulatory action.

### **(3) Report on the Natural Gas Industry<sup>6</sup>**

Turning to the natural gas industry, Chairman McCarty reminded the Committee of the significant spikes in natural gas prices during the 2000-2001 and 2003-2004 heating seasons. He pointed out that because the natural gas market is deregulated, such price spikes are inevitable. While higher gas prices during the winter months are typical due to increased demand for heating purposes, prices during the non-heating period of April through October historically have been lower. During these months, local distribution companies (LDCs) have purchased relatively inexpensive gas and injected it into storage for use in the upcoming winter. During the summer of 2004, however, gas futures prices did not conform to the historical norm. From April 2004 through the end of August 2004,

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<sup>6</sup>See Exhibit 3.

gas futures prices ranged from \$4.50/MMBtu to \$6.00/MMBtu. According to Chairman McCarty, these prices were 10% higher than those recorded in 2003 and 60% higher than 2002 prices.

Chairman McCarty explained that demand for natural gas no longer peaks only during the winter months. With the increased use of natural gas as the primary fuel source for electric peaking plants, which are designed to operate during the summer months when electric demand is high, natural gas prices are now influenced by higher summer demand as well. To illustrate the increasing demand for natural gas for use in electricity generation, Chairman McCarty pointed out that in 1998, in the East Central Area Reliability (ECAR) region of states, which includes Indiana, the amount of electricity generated from natural gas represented 2%, or 2,637 MW, of all electricity generated. By 2005, natural gas is expected to fuel 19%, or 20,387 MW, of all electricity generation in the region.

Chairman McCarty also highlighted some of the IURC's recent actions with respect to the gas industry. He reported that the IURC has continued to aggressively review the gas costs of LDCs, in some cases disallowing the gas cost adjustments sought by the utilities. For example, in March 2003, the Northern Indiana Public Service Company (NIPSCO) sought a gas cost adjustment that would have resulted in a 28% increase in a typical residential bill over the previous month, and would have been double the amount billed during the same month in 2002. While the IURC allowed the adjustment to be implemented on a temporary basis, it ultimately determined that NIPSCO's purchasing and storage practices warranted a \$3.8 million disallowance of costs. That amount was refunded to customers from November 2003 through January 2004. According to Chairman McCarty, the NIPSCO case has highlighted the need for LDCs to incorporate price volatility mitigation in their purchasing strategies. He reported that NIPSCO has since implemented such practices, resulting in lower bills for customers.

Additionally, the IURC has continued to promote LDCs' budget billing plans as a way to alleviate the impact of high heating bills on customers. The continued need for these programs was highlighted during the IURC's annual industry forum in June 2004, at which time participating LDCs outlined their plans for the upcoming winter. The LDCs predicted that the volatility in gas prices would continue throughout the winter, with gas prices expected to be at least as high as those during the 2003-2004 heating season.

Finally, Chairman McCarty updated the Committee on the status of customer choice at the retail level. He explained that while the wholesale natural gas market is deregulated, retail customers have been limited to the services provided by the particular LDC serving their area. However, with the IURC's approval, NIPSCO has been offering a customer choice program since 1998. The program has been phased in, with eligible customers increasing from 50,000 residential and 1,500 business customers in the first year, to NIPSCO's entire customer base of 602,000 residential and 50,000 business customers. While all customers are now eligible to participate, the actual enrollment numbers are capped at 150,000 residential and 20,000 commercial customers. However, NIPSCO estimates that all of its customers will have access to unbundled services by January 1, 2005. After a period of declining enrollment from 2000 to 2002, due to waning marketer interest and volatility in the natural gas market, NIPSCO made a concerted effort to revitalize the program in late 2002. As a result of those efforts, NIPSCO reported that as of April 2004, nearly 50,000 customers were enrolled, and seven suppliers were participating in the program. Still, Chairman McCarty noted that the participating customers represent only 12% of the business customer base and 7.3% of the residential customer base.

Before opening the discussion to questions from the Committee, Chairman McCarty commended the IURC's staff on its accomplishments, given its limited size and resources.

He explained that in terms of actual utility commission staffing levels, Indiana ranks 35th in the nation. When adjusted for the population served, Indiana ranks 49th in terms of the number of staff per Indiana resident. Chairman McCarty suggested that despite its limited human resources, the IURC has nevertheless served the state efficiently and effectively. He pointed to the efforts of the Consumer Division's five-member staff in obtaining \$1.26 million in refunds and bill adjustments for utility customers.

Noting that the industry report reflected a spike in customer bill adjustments during 2004, Senator Mrvan asked if there was a reason for the increased adjustments. Chairman McCarty indicated that the Consumer Division had reduced a backlog of telecommunications complaints during the past year. In particular, the Commission had used its authority to impose fines on providers engaging in telecommunications "slamming," a practice in which a customer's service provider is switched without the customer's authorization. Chairman McCarty noted that the penalties collected are deposited in the State General Fund.

Representative Pelath asked what additional functions the IURC could perform with increased staffing levels. Chairman McCarty explained that the IURC is not funded through the State General Fund. Rather, the IURC's operating costs are funded by fees paid by the regulated utilities. Noting that he has never objected to this funding arrangement, Chairman McCarty acknowledged that the IURC would necessarily accomplish more with increased staffing. For example, the IURC could play a greater role in working with MISO as it continues to develop a regional transmission organization (RTO). According to Chairman McCarty, only one staff member is currently assigned to the effort. Chairman McCarty also predicted that the current staff of four assigned to pipeline safety issues would soon prove inadequate as stricter federal regulations take effect.

Noting that his appearance before the Commission marked his eighth presentation of the industry reports, Chairman McCarty thanked the Committee for its efforts in the utility arena and concluded his remarks.

#### **(4) Report from the State Utility Forecasting Group<sup>7</sup>**

Following Chairman McCarty's presentation of the annual industry reports, Dr. Ron Rardin delivered the State Utility Forecasting Group's (SUFG's) second annual update on renewable resources in Indiana. He reminded the Committee that SEA 29 (2002) had required the SUFG to "conduct an annual study on the use, availability, and economics of using renewable energy resources in Indiana."<sup>8</sup> In accordance with this directive, the SUFG examined seven renewable resources: wind energy, dedicated crops grown for energy production, organic waste biomass, solar energy, photovoltaic cells, fuel cells, and hydropower. For each technology examined, the SUFG focused on the technology's capital and operating costs, existing and potential levels of usage nationally, and existing and potential levels of usage in Indiana. The report also highlights existing incentives to promote the development of each technology and includes recommendations for additional ways to encourage the use of the technologies studied. Dr. Rardin noted that there had been little change in the data since the 2003 report. However, he pointed out that the 2004 report includes a more in-depth analysis of solar and photovoltaic technologies, in keeping with the SUFG's plan to focus on a different technology in each annual report.

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<sup>7</sup>See Exhibit 4.

<sup>8</sup>See IC 8-1-8.8-14.

Instead of describing each technology included in the report, Dr. Rardin reported the SUFG's overall conclusion that while many possibilities exist for the use of renewable resources in Indiana, significant impediments exist to the widespread implementation of the accompanying technologies. When asked by Senator Lanane for examples of some of those impediments, Dr. Rardin noted that Indiana's climate does not support the large-scale use of solar or wind technologies, due to inadequate sunlight during the winter months and the absence of the consistent winds found in elsewhere in the country, such as the Great Plains.

### **Enhanced 911 Fees**

Representative Stevenson then turned to the two issues assigned to the Committee by the Legislative Council: (1) enhanced 911 fees as addressed in the introduced version of HB 1304 (2004); and (2) the relationship between the state wireless 911 fee and local wireline 911 fees. As introduced, HB 1304 (2004) would have required a county that: (1) collects a countywide monthly enhanced 911 fee;<sup>9</sup> and (2) has at least one municipality operating a 911 public safety answering point (PSAP); to remit to the municipality, on a quarterly basis, 75% of the fees collected from customers within the municipality. Representative Stevenson explained that he had introduced the bill at the urging of a number of municipalities operating PSAPs within his district. Those municipalities had complained that they were not receiving adequate money from the counties for use in operating the PSAPs. Representative Stevenson pointed out that the funding problem for PSAPs was exacerbated by the reduction in enhanced 911 fees collected as more customers abandon wirelines in favor of using wireless telephone service only. According to Representative Stevenson, the money that PSAPs receive from a separate wireless 911 fee<sup>10</sup> does not compensate for the lost wireline 911 fees when a customer abandons wireline service. Having explained the impetus for HB 1304 (2004), he then invited Matt Brooks, Executive Director of the Association of Indiana Counties (AIC), to address the Committee.

### **(1) Testimony from the Association of Indiana Counties**

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<sup>9</sup>Under IC 36-8-16, a county may impose an enhanced emergency telephone system fee on each county resident who receives local wireline telephone service. Collected by local phone service providers as part of their monthly billings, the fees may be used by the county for the installation and operation of an enhanced emergency telephone system. Such a system uses the 911 dialing code to send automatic number identification and automatic location identification for reporting police, fire, medical, and other emergency situations. If a county does not impose the fee, a municipality in the county may impose a fee on each of its residents who receive local wireline service.

<sup>10</sup>Under IC 36-8-16.5, wireless customers pay a separate "wireless emergency enhanced 911 fee." Collected by wireless providers as part of their monthly billing process, the wireless 911 fee is deposited in a statewide fund administered by a seven-member board chaired by the Treasurer of State. The monthly fee is currently set at \$0.65 per wireless subscriber. A portion of the fee collected (\$0.03) is used to reimburse wireless providers for the cost of implementing "Phase II" of a 1996 FCC order that requires wireless providers to report to PSAPs the telephone number and precise location of a wireless 911 caller. Another portion of the fee (\$0.25) is used to reimburse providers for capital and operating costs incurred in complying with the FCC's wireless 911 requirements. The remainder of the fee, after a 2% allowance is subtracted for the board's administrative expenses, is then distributed to each county containing one or more PSAPs to reimburse the PSAPs for the costs of complying with the FCC's order.



Mr. Brooks explained that the AIC had concerns about HB 1304's proposed solution to the problem of underfunded municipal PSAPs. He suggested that a preferable alternative would be the consolidation of existing PSAPs to improve efficiency. He pointed to Lake County, which has 18 local PSAPs, as an example of a county that could eliminate service redundancies by combining existing PSAPs that serve adjoining territories. Mr. Brooks further urged regulators to re-examine the 3% administrative fee that local phone companies are allowed to keep as compensation for collecting the fee. He suggested that the reduction or elimination of the administrative fee would allow more of the fees collected to be directed to the operating and capital costs of enhanced emergency telephone systems.

Acknowledging that the increased number of customers abandoning wireline service in favor of wireless options had reduced the amount of enhanced 911 fees collected, Mr. Brooks suggested that other new technologies could lead to an even greater reduction in fees. For example, if voice over Internet protocol (VOIP) technologies encourage more customers to abandon wireline service, then local phone companies will collect even fewer enhanced 911 fees on behalf of counties and municipalities. Mr. Brooks argued that regulators should consider requiring wireless providers and other new participants in the telecommunications industry to collect fees to help fund the services provided by PSAPs. For example, the existing wireless enhanced 911 fee was established to reimburse wireless providers for the costs of implementing "Phase II" of the FCC order that requires wireless providers to be able to identify the telephone number and location of a wireless 911 caller.<sup>11</sup> Mr. Brooks suggested that once Phase II is fully implemented, the money collected by wireless providers could be redirected to fund wireline enhanced emergency systems. According to Mr. Brooks, such wireline systems will remain crucial, especially in rural areas where new technologies have been slow to expand, or where the quality or clarity of such technologies is not always dependable.

## **(2) Testimony of Captain Harold Williams**

Mr. Brooks then introduced Captain Harold Williams of Jasper County 911. Captain Williams explained that even in Jasper County, which has a population of 35,000, there has been a decrease in the number of wireline subscribers, while the costs of operating a PSAP have increased. He noted that the statute establishing the enhanced emergency 911 fee (IC 36-8-16) was enacted in 1988, when legislators could not have foreseen the eventual reduction in wireline subscribers with the expansion of wireless service and the emergence of new telecommunications technologies. Nevertheless, given the technologies available today, the existing funding mechanism, which relies on collections from wireline subscribers, is inadequate to fund the emergency services on which those subscribers depend. Captain Williams argued that while consolidation of PSAPs may be an option in Lake County, where there is an abundance of local PSAPs, it is not a viable solution in less densely populated areas such as Jasper County. He therefore suggested that the current funding mechanism be modified to recognize the emergence of new technologies.

## **(3) Testimony from Chief Larry Brinker**

Following the testimony from county representatives, Representative Stevenson invited Chief Larry Brinker of the Plainfield Police Department to discuss the concerns of municipal PSAPs. Speaking on behalf of the Indiana Association of Cities and Towns (IACT), Chief Brinker noted that IACT had supported the introduced version of HB 1304

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<sup>11</sup>See *supra* note 10.

(2004). While acknowledging the concerns expressed by the county representatives, he pointed out that 60% of the counties have only one countywide PSAP and thus would not be affected by the bill's revenue distribution requirements. He reminded the Committee that the revenue sharing requirement would apply only to a county that: (1) charges a countywide fee; and (2) has at least one municipal PSAP. As an example of one such county, Chief Brinker pointed to Hendricks County, in which Plainfield, Brownsburg, and Danville operate municipal PSAPs. The \$1.00 per line fee imposed by the county, along with the \$0.65 per phone wireless 911 fee, generate about \$800,000 annually in Hendricks County. Of this amount, Plainfield receives about \$64,000, or 8% of the total. However, Plainfield provides about 22% of 911 services in the county. Under the introduced version of HB 1304 (2004), the amount Plainfield would receive would increase to 75% of the countywide 911 fees collected from all wireline customers within Plainfield. Chief Brinker argued that the bill's modified distribution formula better reflects the reality that municipalities are growing faster than unincorporated areas of counties in many parts of the state. According to Chief Brinker, these fast-growing municipalities have an urgent need for efficient emergency response systems.

Representative Stevenson asked whether the consolidation of PSAPs, as advocated by Mr. Brooks, would have any effect on the response times of affected PSAPs. Chief Brinker indicated that consolidation would increase the amount of time it would take dispatchers to respond to emergencies. He pointed out that even though Marion County has a central dispatch system, the municipalities of Speedway, Lawrence, and Beech Grove have opted to maintain their own PSAPs. According to Chief Brinker, the residents of those municipalities are willing to pay for the dependable service that a local PSAP is able to provide.

Representative Stevenson commented that he had also received complaints that some counties were using countywide 911 fees to pay for expenses not related to the provision of emergency services. Chief Brinker confirmed that this practice was occurring. He noted that some counties have even used 911 fees to pay for health insurance for county employees--justifying such expenditures by arguing that 911 employees are among the recipients of such policies.

#### **(4) Testimony from John Koppin**

Inviting the perspective of Indiana's telecommunications providers, Representative Stevenson asked John Koppin, President of the Indiana Telecommunications Association, to address the Committee. Explaining that he had participated in the drafting of the 1988 statute establishing the enhanced 911 fee, Mr. Koppin noted that, at the time, no one had contemplated the eventual establishment of the more than 170 PSAPs that now serve Indiana. However, Mr. Koppin argued that a 1990 amendment to the statute has proved to be even more problematic for municipalities operating PSAPs. That amendment expanded the permissible uses of enhanced 911 fees to include "personnel expenses" for an emergency telephone system.<sup>12</sup> According to Mr. Koppin, the addition of that language prompted many counties to increase the enhanced 911 fee to the maximum \$1.00 per line allowed under the statute. Also encouraging counties to increase their fees was a 2002 amendment that expanded the permissible uses of the fees to include the acquisition and maintenance of communications infrastructure and other equipment "necessary to provide emergency response services."<sup>13</sup> With counties now using the fees for personnel

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<sup>12</sup>See IC 36-8-16-14(a)(3).

<sup>13</sup>See IC 36-8-16-14(a)(4).

expenses and to pay for radio towers, police radios, and other equipment, less money has been directed to local PSAPs.

In closing, Mr. Koppin urged the legislature to consider changes to the current funding mechanism. However, he recommended that lawmakers examine ways to require more efficient use of the fees, rather than allowing units to increase the fees to address the problem of underfunded PSAPs. According to Mr. Koppin, an increased enhanced 911 fee would provide one more reason for customers to abandon their phone lines in favor of wireless and other new technologies.

**(5) Testimony from Chris Ternet<sup>14</sup>**

Finally, the Committee heard from Chris Ternet, Executive Director for the Indiana Wireless E911 Advisory Board. Mr. Ternet reminded the Committee that the wireless emergency enhanced 911 fee is imposed on all wireless users in Indiana and is separate from the enhanced 911 fees imposed by local units.<sup>15</sup> Mr. Ternet reported that the amount of wireless enhanced 911 fees collected has increased as the number of Indiana wireless subscribers has grown from 1,000,000 in 1999 to 3,000,000 in 2004. However, he pointed out that the increase in the wireless 911 fees collected from the growing number of wireless users has not offset the corresponding decrease in local enhanced 911 fees collected from the declining number of wireline customers. Mr. Ternet explained that part of the reason the increase in wireless fees cannot compensate for the decrease in wireline fees is that the wireless fee, which is currently \$0.65 per phone statewide, covers the costs incurred by both wireless providers and PSAPs. However, Mr. Ternet noted that PSAPs still receive the largest portion of the fees collected: from each \$0.65 fee collected, wireless providers receive \$0.25, while PSAPs receive \$0.357.

While acknowledging the funding problems faced by PSAPs, Mr. Ternet suggested that increasing the wireless enhanced 911 fee is not the proper solution. Noting that Indiana has led the nation in the implementation of wireless E911 upgrades, Mr. Ternet suggested that increasing the fees imposed on wireless users could slow the continued expansion of wireless services in the state, especially in rural and other underserved areas.

Representative Stevenson thanked Mr. Ternet and the other interested parties for their testimony. There being no further testimony on the issues assigned to the Committee, the Co-Chairs adjourned the meeting at 4:30 p.m.

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<sup>14</sup>See Exhibit 5.

<sup>15</sup>See *supra* note 10.