

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S) CAUSE NO. 44681
TRIENNIAL REVIEW OF THE INDIANA)
UNIVERSAL SERVICE FUND) APPROVED:

FEB 24 2016

ORDER OF THE COMMISSION

BY THE COMMISSION:

David E. Ziegner, Commissioner

David E. Veleta, Administrative Law Judge

On March 17, 2004, the Commission issued an Order in Cause No. 42144 which, among other things, required the Commission to undertake a triennial review of the Indiana Universal Service Fund ("IUSF"). The purpose and scope of the triennial review is to: 1) ensure the operations of the IUSF are meeting the Commission's objectives of preserving and advancing universal service in Indiana; 2) ensure that universal service is continuing to be made available at rates that are just, reasonable and affordable and reasonably comparable to rates for basic residential and single line business local exchange service in urban areas; 3) ensure that the processes, funding levels, size, operation and administration of the IUSF remain adequate and sufficient; and 4) review the operation of IUSF relative to the federal universal service fund as may be appropriate.

On September 30, 2015, the Commission opened this proceeding for the purpose of initiating the next triennial review of the IUSF.

On October 27, 2015, the Indiana Exchange Carrier Association, Inc. ("INECA") filed its Petition to Intervene in this Cause, and on November 13, 2015, the Indiana Broadband and Technology Association, Inc. ("IBTA") filed its Petition to Intervene in this Cause. The Presiding Officers, having reviewed such petitions, determined that both INECA and IBTA have substantial interests in the subject matter of this proceeding and issued a Docket Entry in this Cause on November 23, 2015, granting INECA and IBTA's Petitions to Intervene.

On November 17, 2015, INECA, the IBTA, United Telephone Company of Indiana, Inc. d/b/a Century Link, CenturyTel of Central Indiana, Inc. d/b/a CenturyLink, CenturyTel of Odon, Inc. d/b/a Century Link, Frontier Communications of Indiana LLC, Frontier Communications of Thorntown LLC, Frontier Midstates, Inc. and Frontier North, Inc. (collectively, the "Settling Parties") filed the Joint Submission of Settlement Agreement (the "Settlement Agreement") in this Cause. The Settlement Agreement stated, among other things, that "the Federal Communications Commission (the "FCC") has adopted comprehensive reforms of the federal Universal Service Fund (the "USF") and intercarrier compensation ("ICC") systems to accelerate broadband build-out, transforming the existing USF into a new Connect America Fund ["CAF"] focused on broadband, the full impact of which is not yet realized,"¹ such that the Settling Parties recommended to the

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663 (2011) (USF/ICC Transformation Order), aff'd sub nom, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

Commission that this triennial review be concluded and the status quo be maintained “because it is still too soon to determine the full impact of the FCC’s comprehensive USF and ICC reform.”

On November 17, 2015, the IBTA pre-filed the direct testimony of Alan I. Matsumoto, INECA pre-filed the direct testimony of Chad A. Duval, and the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed the direct testimony of Senior Analyst Ronald L. Keen. On December 10, 2015, the IBTA pre-filed the responsive testimony of Alan I. Matsumoto.

On December 22, 2015, the Presiding Officers, having reviewed the Settlement Agreement, issued a Docket Entry in this Cause requesting the Settling Parties file responses providing additional information. On December 30, 2015, INECA and IBTA filed their responses to the December 22, 2015 Docket Entry, and on December 31, 2015, Smithville Communications, Inc. filed its response to the December 22, 2015 Docket Entry.

Pursuant to notice and as provided for in 170 IAC 1-1.1-15, proof of which was incorporated into the record by reference and placed in the official files of the Commission, the Commission convened an evidentiary hearing in this Cause at 9:30 a.m. on January 14, 2016 in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The INECA, the IBTA, and the OUCC appeared and were represented by counsel. No members of the general public appeared or sought to testify at the evidentiary hearing.

The Commission, based upon the applicable law and the evidence of record, now finds as follows:

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. The Commission also has jurisdiction pursuant to Indiana Code § 8-1-2.6-13(d)(5). Thus, the Commission has jurisdiction over the subject matter of this Cause.

2. **Evidence Presented.**

A. **IBTA.** The IBTA offered the direct and responsive pre-filed testimony of Alan I. Matsumoto. Mr. Matsumoto testified that the Settling Parties: (1) agree the IUSF is currently accomplishing the Commission’s objectives of preserving and advancing universal service within the State of Indiana and that the day to day operation and administration of the IUSF is adequate and efficient for contributing and recipient carriers; and (2) recommend the Commission issue an Order concluding its IUSF Triennial Review and maintaining the status quo with respect to the IUSF, because it is still too soon to determine the full impact of the federal FCC and ICC reform on the IUSF.

Mr. Matsumoto explained that the IBTA supports the Settlement Agreement because the full impact of the FCC’s comprehensive reforms of the federal USF and ICC systems to accelerate broadband build-out are not yet fully realized. Mr. Matsumoto testified that, given the outstanding issues on federal USF and ICC reform, developing a record regarding the IUSF at this time would be an unnecessary consumption of effort and resources on behalf of the Commission and communications service providers. Thus, Mr. Matsumoto testified that, in furtherance of the interests of regulatory and administrative economy and efficiency, the IBTA supports the consensus

reached in the Settlement Agreement to preserve the status quo for the IUSF at this time to allow the FCC's USF and ICC reform proceedings to progress.

Mr. Matsumoto testified that concluding the IUSF Triennial Review would not foreclose any changes to the IUSF prior to the Commission's next triennial review. He indicated that with the Commission's continued authority over universal service, any party could raise an IUSF issue with its representative on the IUSF Oversight Committee. He stated if a party is not satisfied with issue resolution by the IUSF Oversight Committee, it could still address its concerns directly with the Commission through a petition, and the Commission would determine whether any IUSF changes are warranted.

Mr. Matsumoto also testified that, based on his experience as the Interexchange Carrier ("IXC") representative on the IUSF Oversight Committee, he was of the opinion and belief that the operations and administration of the IUSF are adequate and sufficient for contributing and recipient carriers. Mr. Matsumoto noted the Oversight Committee has taken actions, including arrangement for an independent financial audit of the IUSF, to ensure the administration of the IUSF is proper and meeting the needs of contributing and recipient carriers.

Mr. Matsumoto testified further to the public interest benefits that would accrue if the Commission were to approve the Settlement Agreement, namely: avoiding the incurrence of administrative and regulatory burdens and costs with few discernible benefits given the regulatory uncertainty of future federal USF and ICC activity.

Mr. Matsumoto noted that the Settling Parties represent large and rural ILEC, Competitive Local Exchange Carrier ("CLEC"), Interexchange Carrier ("IXC"), and wireless carrier business interests. He indicated these diverse interests reflect the composition of the IUSF Oversight Committee and all agree that the Commission should preserve the status quo for the IUSF at this time.

B. INECA. INECA offered into evidence the direct pre-filed testimony of Chad A. Duval. Mr. Duval testified that the Settling Parties support maintaining the status quo for the current IUSF in order to allow time for the FCC to complete its ongoing review and reform of the federal USF and ICC and allow the Commission the ability to fully weigh the impacts of such reforms on the IUSF.

Mr. Duval explained the IUSF is currently meeting the Commission's objectives of preserving and enhancing universal service in the State of Indiana, as evidenced by the availability of high quality telecommunications services throughout the state. Mr. Duval testified that universal service in Indiana continues to be provided at just, reasonable and affordable rates, consistent with those provided in urban areas as a result of the ongoing application of the IUSF benchmark rate, and that the processes, funding levels, size and operation and administration of the IUSF remain adequate and sufficient, as documented in the annual audit of the fund.

Mr. Duval testified further that the amount of IUSF that the Settling Parties require is highly dependent on sources of revenue that are impacted by the actions of the FCC, including both intercarrier compensation and federal universal service funding. Mr. Duval explained that the FCC continues to review potential reforms of originating switched access services (including intrastate

rates) and the associated CAF ICC support, as well as federal high cost loop support for rate-of-return carriers, which is treated as intrastate revenue in the determination of IUSF.

Mr. Duval explained that recovery of intrastate costs is a joint proposition between the FCC and the Commission, noting that intrastate costs are recovered through the combination of local rates, intrastate switched and special access rates, federal high cost loop support, federal CAF ICC support, and the IUSF. Mr. Duval testified that to the extent that the FCC continues to make significant reforms to federal universal service support, reductions in federal support could shift more of the intrastate cost recovery burden to rate payers in Indiana, or other methods of ensuring universal service. As a result of these ongoing reforms and their potential impacts on the IUSF, Mr. Duval explained that the Settling Parties recommend that the Commission maintain the status quo until the next triennial review to allow the FCC the time necessary to complete its ongoing reforms, and the Commission the ability to fully weigh the impacts of such reforms on the IUSF.

Further, Mr. Duval explains that continuing the IUSF under the status quo will not preclude any changes to the IUSF prior to the Commission's next triennial review as any interested party may bring issues before the IUSF Oversight Committee or the Commission at any point prior to the next triennial review if it believes that changes to the IUSF are necessary.

C. OUCC. The OUCC offered the direct testimony of Senior Analyst Ronald L. Keen, which discussed and described the changing landscape of telecommunications service, and Indiana consumers' pronounced and steady movement away from traditional landline-based public switched telephone network ("PSTN") service to internet-based, advanced and wireless telecommunications services. Mr. Keen also acknowledged the underlying purpose of the triennial reviews of the IUSF required under the 2004 Order approving the IUSF in Cause No. 42144.

Mr. Keen stated that the IUSF is one of several tools developed to keep telecommunications rates reasonable and affordable in less densely populated, rural areas in Indiana under the assumption that the availability of telecommunications services at fair, reasonable, affordable and reasonably comparable rates throughout the state would increase Indiana's telecommunications penetration rate. Mr. Keen explained that in today's largely deregulated Indiana retail telecommunications service industry, there is limited data available that would permit the OUCC to develop an informed opinion on whether current rates for different services are just, reasonable and affordable or whether rates charged in rural service areas are reasonably comparable to rates for basic residential and single-line business local exchange service in more densely-populated urban areas. Mr. Keen further discussed that, at this time, Indiana's benchmark appears appropriate, but indicated that the telephone penetration rate data the OUCC relied on in the past to verify the affordability of basic local service may be impacted by the increased availability of free or dramatically discounted Lifeline-only eligible telecommunications carrier service offerings. Mr. Keen suggested that periodic reviews of rates and demographic changes could be useful in determining and that based on the quarterly reports of the third-party administrator of the IUSF, Solix, Inc., and the monthly meetings of the IUSF Oversight Committee, the operation and activities of Solix, Inc. and the IUSF Oversight Committee have been efficient and effective at managing the IUSF.

Mr. Keen testified that the OUCC continues to believe it is likely the FCC will order major changes to the federal USF sometime in the near future, and that there is a possibility, as a result of those changes, that the level of federal high cost support Indiana's rural ILEC's currently receive

could change, with the additional potential for pronounced effects on Indiana's current rural communications service providers and their customers. Mr. Keen explained that, because of the uncertainty of the exact direction and timing of federal reforms, the OUCC recommends the Commission delay significant changes to the IUSF until the future of the federal USF is clearer and more certain.

3. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition of Ind., Inc. v. Public Service Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

The IBTA and INECA recommend the Commission issue an Order concluding the IUSF Triennial Review. The basis for this recommendation is the continued lack of clarity surrounding the final outcome and implementation of the FCC’s USF and ICC review and reform. The pre-filed direct testimony of Alan I. Matsumoto and Chad A. Duval and other evidence establish that the impact of federal USF and ICC reform on the IUSF is currently not known and that concluding the current Triennial Review would allow time for such impact to be made known. All of the Settling Parties agree that, until there is greater certainty at the federal level concerning universal service, no changes to the IUSF should be made. Thus, the IBTA and INECA recommend the Commission maintain the status quo for the IUSF, at this time. The OUCC recommends the Commission delay significant changes to the IUSF until the future of the federal USF is clearer and more certain. There has been no opposition to the Settlement Agreement or the testimony filed on behalf of IBTA, INECA, or the OUCC.

The Commission, having reviewed the recommendations of the IBTA, INECA, and the OUCC, finds considerable merit in the recommendations. The Commission is aware of the substantial amount of uncertainty surrounding federal USF and ICC reform, which is not likely to be resolved imminently. Because of the uncertainty at the federal level, determining the appropriate changes to be made to the IUSF is extremely difficult. In addition, making changes now to the IUSF that may or may not be consistent with the final outcome of such federal reform, would not only be speculative, but also not a judicious use of the Commission’s resources. Thus, in order to avoid potential inconsistencies between the changes at the federal level and the IUSF, the most reasonable solution is to wait for resolution of the issues at the federal level.

In addition, as noted by Mr. Matsumoto and Mr. Duval, our conclusion of this IUSF Triennial Review does not foreclose the Commission from making any changes to the IUSF prior to the next Triennial Review should the Commission determine it appropriate to do so. Therefore, although the next Triennial Review is not scheduled to begin until 2018, the Commission may consider future changes to the IUSF before the next Triennial Review, once the FCC completes its ongoing review and reform of the federal USF and ICC, or in the event certain other developments impacting IUSF may occur. In addition, we note that the parties continue to retain the right to raise any issue that may arise prior to the next Triennial Review with the IUSF Oversight Committee or the Commission. Therefore, we conclude that the status quo for the IUSF shall be maintained at this time.

Accordingly, we hereby approve the recommendations to maintain the status quo of the IUSF at this time as described in the Settlement Agreement.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Commission hereby approves the Settlement Agreement.
2. The Commission hereby concludes the 2015 IUSF Triennial Review.
3. This Order shall be effective on and after the date of its approval.

STEPHAN, MAYS-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: FEB 24 2016

I hereby certify that the above is a true and correct copy of the order as approved.



Shala M. Coe
Acting Secretary to the Commission

SETTLEMENT AGREEMENT

(Cause No. 44681)

This Settlement Agreement, with regard to the Indiana Utility Regulatory Commission's (the "Commission") triennial review of the Indiana Universal Service Fund (the "IUSF") in Cause No. 44681, is entered into this 17th day of November, 2015, by and among the duly authorized representatives of the Indiana Exchange Carrier Association, Inc. ("INECA")¹, the Indiana Broadband and Technology Association, Inc. ("IBTA"), United Telephone Company of Indiana, Inc. d/b/a CenturyLink, CenturyTel of Central Indiana, Inc. d/b/a CenturyLink, CenturyTel of Odon, Inc. d/b/a CenturyLink, Frontier Communications of Indiana LLC, Frontier Communications of Thorntown LLC, Frontier Midstates, Inc. and Frontier North, Inc. (each individually referred to as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, on March 17, 2004, the Commission issued an Order in Cause No. 42144 in which it approved a settlement agreement creating the IUSF. Among other things, the approved settlement agreement contained a requirement for a triennial review of the IUSF before the Commission. As stated in the settlement agreement, the purpose and scope of the triennial review is to: 1) ensure the operations of the IUSF are meeting the Commission's objectives of preserving and advancing universal service in Indiana; 2) ensure that universal service is continuing to be made available at rates that are just, reasonable and affordable and reasonably comparable to rates for basic residential and single line business local exchange service in urban areas; 3) ensure that the processes, funding levels, size, operation and administration of the IUSF remain adequate and sufficient; and 4) review the operation of IUSF relative to the federal universal service fund as may be appropriate;²

¹ INECA's membership includes: Bloomingdale Home Telephone Company, Inc.; Citizens Telephone Corporation; Clay County Rural Telephone Cooperative, Inc. d/b/a/ Endeavor Communications; Craigville Telephone Company, Inc.; Daviess-Martin Rural Telephone Corp.; Enhanced Telecommunications Corp.; Geetingsville Telephone Company; Ligonier Telephone Co., Inc.; Monon Telephone Company, Inc.; Mulberry Co-op Telephone Co., Inc.; New Lisbon Telephone Co., Inc.; New Paris Telephone, Inc.; Ninestar Connect; Northeastern Indiana Telephone, Co.; Perry-Spencer Rural Telephone Cooperative, Inc.; Pulaski-White Rural Telephone Cooperative, Inc.; Rochester Telephone Company, Inc.; Southeastern Indiana Rural Telephone Cooperative, Inc.; Smithville Telephone Company, Inc.; Swayzee Telephone Company, Inc.; TDS Telecom Companies (Camden Telephone Company, Inc., Communications Corporation of Indiana, Communications Corporation of Southern Indiana, Home Telephone Company of Pittsboro, Inc., Home Telephone Company of Waldron, Inc., The Merchants and Farmers Telephone Co., S & W Telephone Company, Inc., Tipton Telephone Company, Inc., Tri-County Telephone Company, Inc., West Point Telephone Company, Inc.); Washington County Rural Electric Telephone Cooperative, Inc.; and Yeoman Telephone Company, Inc. (collectively, the "INECA Members").

² *In the Matter of the Investigation on the Commission's Own Motion Under Indiana Code § 8-1-2-72, into Any and All Matters Related to the Commission's Mirroring Policy Articulated in Cause No. 40785 and the Effects of the FCC'S MAG Order on Such Policy, Access Charge*

WHEREAS, on September 30, 2015, in furtherance of the aforementioned review process, the Commission issued an Order in Cause No. 44681, scheduling a prehearing conference and technical conference in order to develop an issues list and to discuss a procedural schedule for this triennial review. On October 21, 2015, the scheduled prehearing conference and technical conference was held, and on October 28, 2015, the Commission issued a prehearing conference order controlling the subsequent course of the proceeding;

WHEREAS, the Federal Communications Commission (the "FCC") has adopted comprehensive reforms of the federal Universal Service Fund (the "USF") and intercarrier compensation ("ICC") systems to accelerate broadband build-out, transforming the existing USF into a new Connect America Fund focused on broadband, the full impact of which is not yet realized;³ and

WHEREAS, there are still outstanding issues that the FCC has yet to act on related to USF and ICC reform that will impact the IUSF and the Commission's current triennial review investigation.

NOW, THEREFORE, subject to the conditions set forth in this Settlement Agreement, including approval by the Commission of this Settlement Agreement, and in consideration of the mutual promises contained herein, the Parties have agreed as follows:

1. The terms of the recitals set forth above are hereby incorporated into and made a part of the Settlement Agreement.
2. The IUSF is currently accomplishing the Commission's objectives of preserving and advancing universal service within the State of Indiana and the day to day operation and administration of the IUSF is adequate and efficient for contributing carriers and fund recipients.
3. To recommend that the Commission issue an Order concluding this triennial review and maintaining the status quo with respect to the IUSF, because it is still too soon to determine the full impact of the FCC's comprehensive USF and ICC reform.
4. INECA, acting on behalf of the INECA Members, and IBTA shall support this Settlement Agreement before the Commission through the submission of supporting testimony. The remaining Parties agree not to oppose the supporting testimony.
5. Parties reserve the right to raise any issue prior to the next triennial review with the IUSF Oversight Committee or the Commission.

Reform, Universal Service Reform, and High Cost or Universal Service Funding Mechanisms Relative to Telephone and Telecommunications Services Within the State of Indiana, Cause No. 42144 (Ind. Util. Reg. Comm'n Mar. 17, 2004).

³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

6. Neither the making of the Settlement Agreement nor any of its provisions shall constitute in any respect an admission by any Party in this or any other litigation or proceeding. Neither the making of this Settlement Agreement (nor the execution of any of the other documents or pleadings required to effectuate its provisions), nor the provisions thereof, nor the supporting testimony, nor the entry by the Commission of an Order approving this Settlement Agreement, shall establish any principles or precedent applicable to Commission proceedings other than this triennial review.

7. The Parties acknowledge and stipulate that they have agreed to execute this Settlement Agreement after thorough bargaining and negotiating. This Settlement Agreement represents the final, mutually agreed upon compromise of the matters set forth herein. It is the intention of each Party to settle, and each Party does fully settle, the matters set forth in this Settlement Agreement.

8. The Parties agree that this Settlement Agreement will not contravene or supersede the provisions of any Settlement Agreement entered into under Cause No. 42144 and related sub-dockets.

9. This Settlement Agreement is conditioned upon and subject to approval by the Commission in its entirety, without any change or condition that is unacceptable to any of the Parties to this Settlement Agreement.

10. This Settlement Agreement is made and entered into in the State of Indiana and shall be in all respects enforced and governed by the laws of the State of Indiana.

11. Should any provision of this Settlement Agreement be declared and determined by the Commission or any court to be illegal or invalid, the enforceability of its remaining parts, terms or provisions shall be unaffected thereby, and said illegal or invalid parts, terms or provisions shall be deemed not to be part of the Settlement Agreement. It is the intent of the Parties that the provisions of this Settlement Agreement shall not be construed against the drafter, but shall be construed as if all Parties had equal authority and input into the negotiation and drafting of this Settlement Agreement.

[Signature Page Follows]

[Signature Page to Settlement Agreement]

Each signatory below represents that he or she is duly authorized to bind the applicable Party or Parties in the manner and extent set forth in this Settlement Agreement.

ACCEPTED and AGREED this 17th day of November, 2015.

INDIANA EXCHANGE CARRIER ASSOCIATION, INC.

By: *Brian A. Haggerty*
On behalf of the INECA Members

Title: *President*

INDIANA BROADBAND AND TECHNOLOGY ASSOCIATION, INC.

By: *J. K. [Signature]*
Title: *President*

UNITED TELEPHONE COMPANY OF INDIANA, INC. D/B/A CENTURYLINK
CENTURYTEL OF CENTRAL INDIANA, INC. D/B/A CENTURYLINK
CENTURYTEL OF ODOM, INC. D/B/A CENTURYLINK

By: *Lorena Cruz*
On behalf of each of the three above-named entities

Title: *Director Regional Government Affairs*

FRONTIER COMMUNICATIONS OF INDIANA LLC
FRONTIER COMMUNICATIONS OF THORNTOWN LLC
FRONTIER MIDSTATES, INC.
FRONTIER NORTH, INC.

By: *A. Blis*
On behalf of each of the four above-named entities

Title: *VP, Regulatory Affairs*