

IC 8-1-29.5

Chapter 29.5. Enforcement Remedies for Prohibited Actions by Telecommunications Service Providers and Video Service Providers

IC 8-1-29.5-1

Application of chapter

Sec. 1. This chapter applies to a provider and a certificate holder.
As added by P.L.27-2006, SEC.53.

IC 8-1-29.5-2

Application of definitions

Sec. 2. Except as otherwise provided, the definitions in IC 8-1-2.6 apply throughout this chapter.
As added by P.L.27-2006, SEC.53.

IC 8-1-29.5-3

"Certificate holder"

Sec. 3. As used in this chapter, "certificate holder" refers to a person holding a certificate of franchise authority issued under IC 8-1-34-17.
As added by P.L.27-2006, SEC.53.

IC 8-1-29.5-4

"Commission"

Sec. 4. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.
As added by P.L.27-2006, SEC.53.

IC 8-1-29.5-5

"Customer"

Sec. 5. As used in this chapter, "customer", with respect to a provider, refers to either of the following:

- (1) A residential customer.
- (2) A business customer.

As added by P.L.27-2006, SEC.53.

IC 8-1-29.5-6

Service complaints; investigation by commission; enforcement remedies; civil penalties; enforcement by attorney general; right to appeal

Sec. 6. (a) If:

- (1) ten (10) or more customers of a provider or a certificate holder;
- (2) the utility consumer counselor; or
- (3) any class satisfying the standing requirements of IC 8-1-2-54;

files a verified complaint with the commission alleging that a service over which the commission has jurisdiction that is provided by a provider or a certificate holder is unsafe, unjustly discriminatory, or

inadequate, or that any service cannot be obtained, the commission may investigate the complaint as the commission considers appropriate. The commission shall conduct an investigation under this section on an expedited basis.

(b) If, after notice and an opportunity for hearing, the commission determines from an investigation conducted under subsection (a) that a service over which the commission has jurisdiction that is provided by a provider or a certificate holder is unsafe, unjustly discriminatory, or inadequate, or that any service cannot be obtained, the commission may do any of the following:

(1) Issue an order directing the provider or the certificate holder to cease and desist from any action resulting in unsafe, unjustly discriminatory, or inadequate service.

(2) Mandate corrective action.

(3) Revoke or modify the terms of:

(A) an indeterminate permit;

(B) a certificate of territorial authority;

(C) a certificate of franchise authority issued under IC 8-1-34; or

(D) another license or authorization;

issued to the provider or the certificate holder by the commission.

(4) Impose a civil penalty of not more than ten thousand dollars (\$10,000) per offense, if the offense involves any of the following:

(A) A willful disregard, as evidenced by a continuing pattern of conduct, by the provider or the certificate holder of its obligation to remedy the offense after the provider or the certificate holder becomes aware of the offense.

(B) Repeated errors in bills issued to one (1) or more customer classes, if the errors:

(i) represent intentional misconduct or an act of fraud by the provider or the certificate holder or by any officer, accountant, or agent of the provider or the certificate holder; or

(ii) demonstrate, by a continuing pattern of conduct, a willful disregard by the provider or the certificate holder of its obligation to remedy the errors after the provider or the certificate holder becomes aware of the errors.

Subject to section 7(a)(1) of this chapter, for purposes of this subdivision, a single act, omission, occurrence, or event that results in multiple complaints being filed under subsection (a) constitutes a single offense and is not subject to more than one (1) civil penalty. The commission may not consider each day that a particular act, omission, occurrence, or event continues to be a separate offense.

(c) A matter resolved through voluntary mediation is not subject to any of the remedies allowed under subsection (b).

(d) A provider or a certificate holder may not be subject to both:

(1) a civil penalty or order of the commission under this section;

and

(2) a penalty or remedy agreed to in a commission approved settlement agreement;

for the same offense. If the commission has approved a settlement agreement under IC 8-1-2.6 that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties or remedies provided in this section do not apply to those instances of noncompliance during the life of the settlement agreement.

(e) The attorney general may bring an action in the name of the state to enforce any action taken by the commission under subsection (b), including the collection of an unpaid civil penalty imposed by the commission.

(f) The following are subject to appeal by a provider under IC 8-1-3:

(1) A determination by the commission under this section that a service is unsafe, unjustly discriminatory, or inadequate, or that a service cannot be obtained.

(2) The appropriateness of any action taken by the commission under subsection (b)(1) through (b)(3).

(3) The appropriateness of:

(A) the imposition of a civil penalty by the commission under subsection (b)(4); or

(B) the amount of the penalty imposed.

Upon the motion of a provider or a certificate holder, the commission shall stay the effect or enforceability of an order or penalty under this section pending an appeal, subject to the provider or the certificate holder posting a bond that complies with Rule 18 of the Indiana Rules of Appellate Procedure.

As added by P.L.27-2006, SEC.53.

IC 8-1-29.5-7

Factors commission may consider in imposing civil penalty; waiver of civil penalty; use of civil penalties collected

Sec. 7. (a) In imposing a civil penalty under section 6(b)(4) of this chapter, the commission may consider the following factors:

(1) The duration and gravity of the offense, including the number of customers affected.

(2) Economic benefits accrued by the provider or certificate holder as a result of the offense.

(3) The amount of a civil penalty that will deter future offenses by the provider or certificate holder.

(4) The market share of the provider or certificate holder in the affected service areas.

(5) Good faith of the provider or certificate holder in attempting to remedy the offense after receiving notification of the offense.

(b) If the commission waives a civil penalty for any offense described in section 6(b)(4) of this chapter, the commission must make a written finding as to why it is waiving the civil penalty. The commission may waive a civil penalty under section 6(b)(4) of this

chapter if the commission finds that the offense is the result of any of the following:

- (1) Technological infeasibility.
- (2) An act of God.
- (3) A defect in, or prohibited use of, customer provided equipment.
- (4) A negligent act of a customer.
- (5) An emergency situation.
- (6) Unavoidable casualty.

(c) The secretary of the commission shall direct a civil penalty imposed and collected under section 6(b)(4) of this chapter as follows:

- (1) A civil penalty imposed for an offense that directly affects retail customers must be refunded directly to the customers of the provider or certificate holder in the form of credits on customer bills.
- (2) A civil penalty imposed for an offense not described in subdivision (1) must be deposited into an account designated by the Indiana economic development corporation for use by the corporation in making loans or grants to broadband developers and operators under the Indiana broadband development program established by IC 8-1-33-15.

As added by P.L.27-2006, SEC.53. Amended by P.L.162-2007, SEC.29.