

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S) CAUSE NO. 45064
TRIENNIAL REVIEW OF THE INDIANA)
UNIVERSAL SERVICE FUND) APPROVED: AUG 29 2018

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

David E. Veleta, Senior Administrative Law Judge

On March 17, 2004, the Indiana Utility Regulatory Commission (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 March 21, 2018, the Commission opened this proceeding for the purpose of initiating the next triennial review of the IUSF and setting forth a preliminary issues list of matters to be reviewed in this proceeding.

On March 24, 2018, the Indiana Exchange Carrier Association, Inc. ("INECA"), 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, Broadwing Communications, LLC, CenturyLink Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., Level 3 Communications, LLC, Level 3 Telecom of Indiana, LLC, and WilTel Communications, LLC, and Frontier North, Inc., Frontier Midstates, Inc., Frontier Communications of Indiana LLC, and Frontier Communications of Thorntown LLC ("Frontier") (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 "undertaken comprehensive and ongoing reform and modernization of the federal Universal Service Fund (the "USF") and intercarrier compensation ("ICC") systems,"¹ "to

¹ *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90; CC Docket No. 01-92, Public Notice, DA 17-863 (WCB Sept. 8, 2017); see *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).

date... has yet to address originating access charges,” and has “released a Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking² on high-cost rate-of-return reform, which includes changes to the existing federal funding mechanisms and addresses further reforms to the USF.” In light of the foregoing, the Settling Parties recommended to the Commission that this triennial review be concluded and the status quo be maintained “as it remains too soon to determine the full impact of the FCC’s comprehensive USF and ICC reform.”

On May 24, 2018, IBTA pre-filed the direct testimony of Alan I. Matsumoto, INECA pre-filed the direct testimony of Chad A. Duval, the direct testimony and exhibits of Larry S. Landis, and INECA’s responses to the Commission’s preliminary issues list.

On May 24, 2018, the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed its notice of intent not to file testimony.

On June 25, 2018, the Commission issued a Docket Entry in this Cause requesting IBTA and INECA file responses providing additional information. On June 28, 2018, IBTA and INECA filed their responses to the June 25, 2018 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 June 29, 2018 in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. INECA, IBTA, Broadband Innovation Group, and the OUCC appeared and were represented by counsel.

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

1. Notice and Jurisdiction. Proper, legal, and timely 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. 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 FCC’s USF and ICC reform.

Mr. Matsumoto explained that IBTA supports the Settlement Agreement because the IUSF remains an important source of funding for recipient carriers in preserving and advancing universal

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (adopted Mar. 14, 2018) (*2018 Rate-of-Return Reform Order and NPRM*).

service. Mr. Matsumoto testified that with the Commission's policy that intrastate access rates mirror corresponding interstate access rates, the IUSF becomes a more important source of intrastate cost recovery in light of the federal and state access revenue reductions resulting from the *USF/ICC Transformation Order*.

Mr. Matsumoto stated maintaining the status quo is important given the uncertainty of the outcome of the FCC's continuing comprehensive reforms of the federal USF and ICC systems to accelerate broadband build-out, transforming the existing USF into a Connect America Fund ("CAF") focused on broadband. Mr. Matsumoto explained the FCC has also implemented reform of federal high cost support for rate-of-return carriers through the Alternative Connect America Cost Model ("ACAM") and that the overall effects of these reforms are not yet fully realized and could dramatically affect intrastate access charges, the IUSF, and intrastate cost recovery for the IUSF recipient carriers.

Mr. Matsumoto testified that given the likelihood that future federal USF and ICC reform activity will affect the intrastate jurisdiction and require this Commission to participate in the reform process, as well as the possible impact of the Commission's IUSF-Broadband Study as required by House Enrolled Act 1065, any consideration of potential modifications to the existing IUSF would be premature and incomplete, at best. Mr. Matsumoto testified that given the outstanding issues on USF and ICC reform and the IUSF-Broadband Study, developing a record for any changes to the IUSF, in anticipation of the outcomes of the federal reform and IUSF-Broadband Study would be an unnecessary consumption of effort and resources on behalf of the Commission and service providers, stating that, at a minimum, any evidence submitted at this point and the associated record would need to be refreshed following future federal USF and ICC reform action.

Thus, Mr. Matsumoto testified that, in furtherance of the interests of regulatory and administrative economy and efficiency, 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 and the Commission's IUSF-Broadband Study to progress.

Mr. Matsumoto also stated: (1) the IUSF is currently meeting the Commission's objectives of preserving and advancing universal service in Indiana, with the IUSF serving as a critical source of intrastate cost recovery to allow recipient carriers to preserve and advance universal service, especially in the higher cost rural areas of the state; (2) as the IUSF recipient carriers have set rates for basic residential and single-line business local exchange service that are consistent with the IUSF benchmark rates as a condition for eligibility to receive IUSF disbursements, universal service is continuing to be made available at rates reasonably comparable to rates for basic residential and single-line business local exchange service in urban areas, and that are just, reasonable, and affordable in Indiana; and (3) based on his experience as the Interexchange Carrier ("IXC") representative on the IUSF Oversight Committee, the operations and administration of the IUSF are adequate and sufficient for contributing and recipient carriers, noting the Oversight Committee continually monitor's the IUSF's financial performance and funding requirements and has taken actions, including arrangement for independent financial audits 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 and preventing customer confusion and disruption. Mr. Matsumoto explained any IUSF modifications would necessitate changes to the IUSF surcharge that is applied on customer bills and that subsequent FCC action on USF or ICC reform could cause those IUSF changes to be unwound. According to Mr. Matsumoto, any IUSF changes made now in anticipation of future USF and ICC activity or the results of the IUSF-Broadband Study could create conditions of wildly fluctuating customer bills with service providers hard-pressed to explain the changes. In addition, he stated, IUSF surcharge modifications would cause providers to incur implementation labor and expenses.

Mr. Matsumoto noted that the Settling Parties represent large and rural ILECs, Competitive Local Exchange Carriers (“CLEC”), Interexchange Carriers (“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.

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 further provided IBTA’s responses to the Commission’s issues as set forth in the Commission’s March 21, 2018 Order in this Cause. In response to the question whether there are any FCC policies still in process that could impact the IUSF or IUSF recipients, Mr. Matsumoto referenced his prior testimony regarding continuing USF and ICC reform that remain unresolved, *e.g.*, federal USF contributions reform, originating switched access charges, and support for areas deemed “extremely high-cost” that eligible telecommunications carriers have continuing obligations to serve.

As to the Commission’s inquiry as to whether the IUSF should move to a method similar to the FCC in determining “high cost areas” where support is directed, Mr. Matsumoto stated IBTA does not believe the IUSF should be converted to support broadband services based on the costs and the availability of broadband service at the census block level.

Responsive to the Commission’s inquiry as to whether the IUSF should require VoIP providers to contribute to the IUSF, Mr. Matsumoto stated, for purposes of the Settlement Agreement, IBTA advocates no changes to the providers who must contribute to the IUSF and that parties may provide comments on IUSF contribution sources in the IUSF-Broadband Study.

To the Commission’s questions whether the IUSF should support the deployment of broadband in geographic areas that lack access to broadband services to whichever providers are willing to deploy broadband in those areas and how the IUSF could coordinate with the Office of Community and Rural Affairs, Mr. Matsumoto stated the IUSF was designed to help mitigate the revenue effects of federal access charge reform that are mirrored for intrastate purposes and to ensure that local exchange services rates for IUSF recipients are reasonably comparable to urban rates and just, reasonable, and affordable; thus, IBTA does not believe the IUSF should be converted to support broadband services and made available to other providers that would deploy broadband in unserved areas.

In answer to the Commission's question regarding the discontinuance of the requirement of a mandatory pass through of the IUSF surcharge on retail customer bills, Mr. Matsumoto testified the mandatory pass through of the IUSF surcharge on retail customer bills has worked effectively in generating IUSF funding and that IBTA does not recommend any changes. In reply to the Commission's question whether future IUSF qualifications tests be changed to mirror the FCC's rate-of-return, Mr. Matsumoto stated the IUSF is an important funding source for IBTA members and IBTA does not recommend any changes to the rate-of-return that is included in the IUSF qualifications tests and that for the most recent qualifications test, some of IBTA's members reported negative rates of return.

Further, in response to the following requests in the Commission's June 25, 2018 Docket Entry's questions,³ Mr. Matsumoto explained that IBTA does not believe there would be any hardship per se, but recommended all IUSF provisions remain intact, consistent with the Settlement Agreement, with no changes to the IUSF supported services definition, and suggested that if the Commission wanted to consider a definition of supported services for IUSF recipients that is different from the existing IUSF definition, it would not be through this triennial review, but a future proceeding.

Lastly, Mr. Matsumoto responded to the Commission's June 25, 2018 Docket Entry requesting further details as to Mr. Matsumoto's statement in his direct testimony that the creation of the broadband grant program and the Commission's report on IUSF and broadband deployment could have major implications on the IUSF and a comprehensive study of these topics necessitates a wide-ranging investigation beyond the scope of the IUSF triennial review proceeding. Mr. Matsumoto explained the IUSF was never designed to support broadband, so consideration of a broadband grant program that could potentially be funded through the IUSF would fundamentally alter the purpose, scope, and intended use of the IUSF. This would necessitate a wide-ranging investigation of the IUSF, regarding how and where broadband support should be made available, which entities would be eligible to receive support, the funding mechanism for broadband support, and how contributions are to be recovered. Further, administration of the IUSF would need to be examined since the contract with the Independent Third-Party Administrator of the IUSF reflects the operations and administration of the IUSF as it exists today.

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 advancing 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

³ (i) "[S]ince the IUSF currently requires all IUSF recipients to be ETCs and ETCs are subject to the federal definition of supported services, what hardship is imposed by having the IUSF reflect current standards for supported networks?"; and (ii) "Mr. Matsumoto states in his testimony on page 18, lines 13-16, seems to indicate that supported services in 47 CFR 54.101 could be reviewed at such a time an RLEC relinquishes its ETC designation and a new ETC seeks IUSF. Please explain further."

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, the 2018 IUSF surcharge increase, and extension of the contract of the third party administrator 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 and ACAM, portions of which are treated as intrastate revenue in the determination of IUSF.

Mr. Duval stated that of major consideration by the FCC at this time is the overall budget for high-cost support for rate-of-return carriers, which has a direct and meaningful impact on the IUSF. As a result of these ongoing reforms and their potential impacts on the IUSF, Mr. Duval testified the Settling Parties recommend that the Commission approve the Settlement Agreement to maintain the status quo until the next triennial review, scheduled for 2021, which will 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.

Mr. Duval testified that he performed an analysis that demonstrated a significant and growing reduction in federal high-cost loop support, which is designed to help recover the intrastate portion of costs associated with the provision of local loops in the highest cost areas of Indiana. Mr. Duval's analysis demonstrated that an estimated 65% of the total IUSF is being used just to make up for reductions in federal high-cost loop support, signifying the importance of the IUSF in maintaining rates that are just, reasonable, and affordable for customers served by the INECA member companies.

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 or ACAM 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, such as the IUSF. Mr. Duval acknowledged that increases in federal support could provide additional funding for intrastate costs, but stated there is no way of knowing for certain until the FCC completes its ongoing reforms of federal high-cost support.

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 and only make changes to this vital program once there is greater certainty of support available from the FCC.

Mr. Duval testified that he performed an analysis of 24 INECA member companies that are recipients of IUSF support and who were able to provide five years of historical intrastate switched access minutes of use for the years 2013 through 2017, which demonstrated that intrastate originating switched access minutes of use are in significant decline, with an average annual reduction of more than 8% per year that translates to lost intrastate revenue for INECA member companies. A similar analysis performed by Mr. Duval showed that intrastate switched access revenue requirements are in decline, but not at the same pace as intrastate switched access minutes of use. Mr. Duval stated this

is concerning because intrastate switched access minutes of use, and therefore the revenues derived from those minutes, are declining faster than the associated revenue requirement, leaving a greater portion of the costs to be recovered from sources other than per minute of use access charges.

Another analysis performed by Mr. Duval indicates INECA member companies are earning rates of return that are lower than the rate of return cap in Indiana. Specifically, of the 25 companies analyzed, only one was found to be earning more than the rate of return cap of 11.50% based on a five-year average, and the remaining 24 companies earned less than 11.50% on average, including 10 companies that had negative rates of return for the five-year period.

Mr. Duval testified that Commission approval of the Settlement Agreement would serve the public interest as: (1) it would prevent devotion of time and resources on an extended proceeding regarding issues that would likely need to be revisited when the FCC completes its reforms of originating switched access and federal universal service funding; and (2) carriers that serve high cost areas would have sufficient financial resources to ensure that rates are just, reasonable, and affordable.

Further, Mr. Duval explained 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.

INECA offered into evidence the direct pre-filed testimony of Larry S. Landis. Mr. Landis further provided responses on behalf of INECA to the Commission's issues list as set forth in the Commission's March 21, 2018 Order in this Cause.

Mr. Landis, in response to the Commission's question whether it should conform to the FCC's current definition of supported services, testified that doing so would be premature and could lead to the abandonment of universal service and ultimately cutoff service to those in rural areas.

Mr. Landis testified IUSF funding should not be utilized to underwrite broadband build out, noting that the cost of operation in the service areas of the rural local exchange carriers is a multiple of the cost of delivering service in urban, suburban, and even exurban areas and stating the revenue provided by USF, IUSF, and ICC is necessary if the rural providers are to remain solvent, let alone profitable. Mr. Landis testified that most of INECA's members are currently operating at significantly below their nominally authorized rate of return and some are currently losing money. Because of this, Mr. Landis testified: (1) it cannot be expected that the FCC re-evaluate its broadband policies, and (2) the State of Indiana needs to find an alternate mechanism other than IUSF to fund the capital expenditures to complete broadband build out.

In answer to the question from the Commission whether the method of directing support should be modified so that "high cost areas" are defined at the census block level rather than on the basis of the incumbent local exchange carrier's service territory, Mr. Landis stated that, while IUSF could be distributed on a more granular basis than the total service territory, it should be done based on network logic rather than arbitrary political designations (census tracts).

Responsive to the Commission's question whether the IUSF should emulate the FCC in disbursement of funds to support build out by willing providers, Mr. Landis testified the focus of the

IUSF should be on assuring a reasonable return to rural local exchange carriers that meet qualifying test requirements.

Regarding the Commission's inquiry as to whether it should adopt the ratemaking process outlined in the FCC's rate of return order (FCC 16-37 released March 30, 2016) transitioning the rate of return to 9.75%, Mr. Landis stated that at a time when the remaining unserved areas will be the most difficult and costly to build out, and when actions of the FCC in the last five years have created a climate of greater instability and uncertainty than at any time in a generation, it makes little sense to reduce the proposed rate of return solely based on the FCC's actions, and concluded that the rate-of-return should not be adjusted below the authorized rate of return set in simpler, more stable, and more predictable times.

3. Commission Discussion and Findings.

A. Commission's Triennial Review of 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.

The IUSF is funded by mandatory contributions from all telecommunications carriers that provide intrastate retail telecommunications service in Indiana. The Commission is generally aware that there has been a steady decline of billed intrastate retail telecommunications revenue.⁴ In Attachment 2 to the 2017 Annual Report on the IUSF, the neutral third-party administrator of the fund, Solix, Inc., showed that billed intrastate retail telecommunications revenue declined from \$3.97 billion in 2008 to \$1.6 billion in 2017.⁵ To counter this decline, the IUSF surcharge has been increased repeatedly.⁶ In 2012, the IUSF Oversight Committee recommended that the IUSF maintain a \$2 million reserve, or approximately two months of operation.⁷ However, since 2015, the IUSF has been unable to achieve this recommended reserve despite increasing the surcharge. In April, 2016, the balance dipped to less than the one month's disbursements. The first quarter 2018 Statement of Fund Performance prepared by Solix shows an ending Cash/Cash Investment fund balance of \$1.377 million.⁸

In the last triennial review in Cause No. 44681, which concluded in early 2016, the settling parties also recommended the Commission issue an Order concluding the triennial review and maintaining the status quo with respect to the IUSF. The Commission issued questions regarding the outlook and sustainability of the IUSF given the testimony submitted by the OUCC regarding declining telecommunications revenues. In its response to the Commission's questions, the IBTA and

⁴ To the extent deemed necessary, the Commission takes administrative notice of the documents discussed herein and previously filed with the Commission.

⁵ Solix, 2017 Annual Report of the Indiana Universal Service Fund, (February 15, 2018).

⁶ Cause No. 42144-S3, Order (February 22, 2012); Cause No. 42144-S3, Docket Entry (January 9, 2015); Cause No. 42144-S3, Docket Entry (December 1, 2015); Cause No. 42144-S3, Docket Entry (October 24, 2016).

⁷ Prefiled Direct Testimony of Alan I. Matsumoto, Cause No. 42144-S3, (January 27, 2012).

⁸ Cause No. 42144-S3, IUSF Oversight Committee Report to the Commission, (May 15, 2018).

INECA (“Joint Intervenor”) responded that “IUSF assessable revenues have been in decline for years as a result of customer migration to services that are not assessable and a general reduction in intrastate telecommunications revenues, and the IUSF has remained sustainable throughout.... Despite the unanticipated reduction in assessable revenues this year, a return to the prior annual trend in the rate of decline in assessable revenues is reasonably expected and, thus, the Joint Intervenor anticipate the IUSF should remain sustainable over the next two to three years.”⁹ Since the previous triennial review was concluded, the IUSF surcharge has been increased three more times. In addition, the fact that the IUSF is losing revenues due to customer migration to services that are not assessable indicates the funding mechanism is no longer competitively neutral as intended in the 2004 Order creating the fund.

B. Settlement Agreement. IBTA and INECA recommend the Commission issue an Order concluding the IUSF Triennial Review and making no changes to the IUSF. 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, Chad A. Duval, and Larry S. Landis 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, IBTA and INECA recommend the Commission maintain the status quo for the IUSF, at this time. There has been no opposition to the Settlement Agreement or the testimony filed on behalf of IBTA and INECA. Further, the OUCC did not file any testimony or otherwise participate in this proceeding.

C. Conclusion. The Commission is aware of the uncertainty surrounding federal USF and ICC reform, which is not likely to be resolved in the near future. Because of the uncertainty at the federal level, determining the appropriate changes to be made to the IUSF is 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 be an efficient 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. However, there are real issues with the sustainability of the fund over the long term. Thus, 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 2021, 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, independent of federal action. For example, as Mr. Matsumoto noted in his testimony, “[i]n the 2017 session, the Indiana General Assembly enacted House Enrolled Act (“HEA”) 1065 and it establishes a program for broadband grants for unserved areas and requires the Commission to study the IUSF and broadband deployment and issue a final report to the Interim Study Committee on Energy, Utilities, and Telecommunications by October 1, 2018.” Thus, the landscape of the IUSF may change in the future. 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 approve the attached Settlement Agreement because we agree that it is appropriate to maintain the status quo of the IUSF at this time.

⁹ Cause No. 44681, Response to Docket Entry, (December 30, 2015).

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

1. Consistent with the findings above, the Commission approves the attached Settlement Agreement which maintains the status quo of the IUSF at this time.
2. The Commission hereby concludes the 2018 IUSF Triennial Review.
3. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, AND ZIEGNER CONCUR; KREVDA NOT PARTICIPATING; OBER ABSENT:

APPROVED: **AUG 29 2018**

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



Mary M. Becerra
Secretary of the Commission

SETTLEMENT AGREEMENT

(Cause No. 45064)

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. 45064, is entered into this 24th day of May, 2018, by and among the duly authorized representatives of the Indiana Exchange Carrier Association, Inc. ("INECA"), 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, Broadwing Communications, LLC, CenturyLink Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., Level 3 Communications, LLC, Level 3 Telecom of Indiana, LLC, and WilTel Communications, LLC (collectively "CenturyLink"), and Frontier North, Inc., Frontier Midstates, Inc., Frontier Communications of Indiana LLC, and Frontier Communications of Thorntown LLC (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 that 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;¹

WHEREAS, on March 21, 2018, in furtherance of the aforementioned review process, the Commission issued an Order in Cause No. 45064, scheduling a prehearing conference and technical conference in order to discuss a procedural schedule for the current triennial review. On March 21, 2018, the scheduled prehearing conference and technical conference was held, and on April 25, 2018, the Commission issued a prehearing conference order controlling the subsequent course of the proceeding;

¹ *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 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).

WHEREAS, the Federal Communications Commission (the “FCC”) has undertaken comprehensive and ongoing reform and modernization of the federal Universal Service Fund (the “USF”) and intercarrier compensation (“ICC”) systems;² to date, the FCC has yet to address originating access charges;

WHEREAS, on March 23, 2018, the FCC released a Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking on high-cost rate-of-return reform,³ which includes changes to the existing federal funding mechanisms and addresses further reforms to the USF; and

WHEREAS, the outstanding issues that the FCC has yet to act on related to USF and ICC reform 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. As it remains too soon to determine the full impact of the FCC’s comprehensive USF and ICC reform, the Commission should issue an Order concluding this triennial review and maintaining the status quo with respect to the IUSF.
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.

² *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90; CC Docket No. 01-92, Public Notice, DA 17-863 (WCB Sept. 8, 2017); *see 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).

³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (adopted Mar. 14, 2018) (*2018 Rate-of-Return Reform Order and NPRM*).

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.

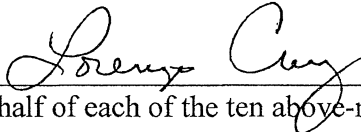
11. This Settlement Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

12. 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 Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the day and year above written.

**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
BROADWING COMMUNICATIONS, LLC
CENTURYLINK COMMUNICATIONS, LLC
GLOBAL CROSSING LOCAL SERVICES, INC.
GLOBAL CROSSING TELECOMMUNICATIONS, INC.
LEVEL 3 COMMUNICATIONS, LLC
LEVEL 3 TELECOM OF INDIANA, LLC
WILTEL COMMUNICATIONS, LLC**

By: 
On behalf of each of the ten above-named entities

Name: Lorenzo Cruz

Title: Director – State Regulatory and Legislative Affairs

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the day and year above written.

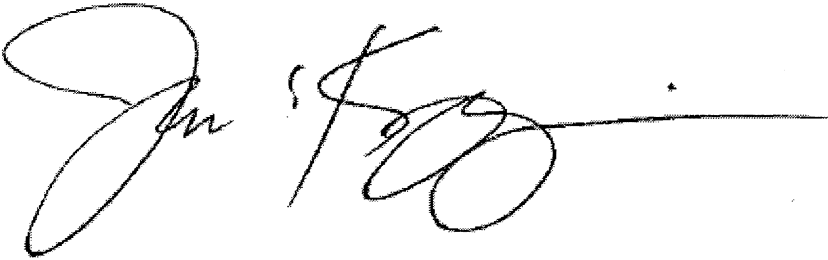
INDIANA EXCHANGE CARRIER ASSOCIATION, INC.

By: 
On behalf of the INECA Members

Name: Alan Terrell
Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the day and year above written.

INDIANA BROADBAND AND TECHNOLOGY ASSOCIATION, INC.

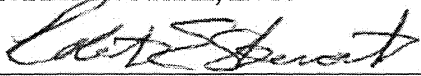
A handwritten signature in black ink, appearing to read 'John Koppin', followed by a horizontal line extending to the right.

By _____

Name: John Koppin
Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the day and year above written.

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

By: 
On behalf of each of the four above-named entities

Name: Robert E. Stewart

Title: State Director – Government and External Affairs