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To:	Comments, Urc
Cc:	Joni Hart; Heline, Beth E.
Subject:	Comments from Indiana Broadband Innovation Group
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The attached letter is offered in response to IURC GAO 2018-3.

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June 15, 2018

VIA EMAIL TO URCComments@urc.IN.gov

IURC General Counsel
Indiana Utility Regulatory Commission
101 W. Washington St., Suite 1500 E
Indianapolis, IN 46204

RE: IUSF-Broadband Study

Dear ~~Ms. Heline~~ Betty:

I am writing on behalf of my client, the Indiana Broadband Innovation Group ("IBIG"), formerly known as the Indiana Cable Telecommunications Association. IBIG is an association of large and small communications services providers doing business in Indiana, primarily but by no means exclusively consisting of cable-based services. IBIG's members' facilities consist of over 40,000 miles of fiber-rich plant in Indiana passing more than 2 million Hoosier homes, and they are well-positioned to continue expanding such service to more Hoosiers.

IBIG appreciates the opportunity to offer its comments to the staff of the Indiana Utility Regulatory Commission ("Commission") as it studies issues relating to the Indiana Universal Service Fund ("IUSF") and broadband deployment and then reports to the Indiana General Assembly's Interim Study Committee on Energy, Utilities, and Telecommunications the results of this study later this year. This letter first provides some general observations about these subjects, then addresses IBIG's comments to track the five study topics identified in Appendix A of the Commission's General Administrative Order 2018-3 issued on May 16, 2018 ("GAO").

General Observations

The Commission has been tasked with studying the issue of broadband deployment. But as the Commission notes in its GAO, it is expressly prohibited by statute from exercising any jurisdiction over the provision of broadband service. This prohibition reflects Indiana lawmakers' reasoned and appropriate conclusion that such services are most efficiently provided to Hoosiers by businesses such as IBIG's members in response to customer demand as part of the competitive broadband marketplace. Such considerations are more true today than ever, as costs of technology and equipment trend lower while the critical mass of broadband customers expands, allowing greater efficiencies and wider broadband deployment into more places, including unserved areas. Without question Indiana residents and businesses have more choices available for broadband service today than more than a decade ago when Indiana's legislature adopted the prohibition on Commission regulation as part of Ind. Code § 8-1-2.6-1.1. IBIG respectfully suggests that even the most well-intentioned expansion of Commission jurisdiction over broadband service could stifle the robust growth in service and choice among providers to which Hoosiers have become increasingly accustomed.

With respect to the IUSF, the current structure reflects its origins in the context of a comprehensive settlement of the Commission's proceeding, Cause No. 42144, in response to changes at the federal level in voice service rates and reform of access charges. Some states such as Indiana adopted their own universal service funds while others did not. Rather than having any express authority to do so, the Commission invoked its "broad discretion to develop regulatory procedures or generic standards" in support of universal telephone service. See March 17, 2004 Order in IURC Cause No. 42144 at 32. Then as now, the IUSF provides a subsidy to carriers providing voice service in areas deemed to be "high cost." The IUSF did not contemplate the subsidization of broadband services. Moreover, IBIG believes that the IUSF would be an unwieldy mechanism for providing broadband subsidies.

No study about broadband service in Indiana can ignore the adoption by the Indiana General Assembly earlier this year of House Enrolled Act 1065, Public Law 177. That law establishes a comprehensive structure for funding the expansion of broadband to unserved areas of the state to be administered by the Office of Community and Rural Affairs. This law establishes standards for transmission speeds and prioritizes areas eligible to receive broadband grants. Inserting the Commission into this mix would be, at best, premature, and could lead to confusing or even inconsistent standards and processes not only in comparison with this nascent state program, but also in comparison with existing and anticipated federal subsidy programs targeting the same unserved areas.

<u>GAO Topic #1</u>: **The types of service on which the IUSF surcharge is imposed.**

At this time IBIG supports maintaining the status quo of the IUSF, and is opposed to any expansion of the services on which the IUSF surcharge is imposed. As a threshold matter, the Commission is presumably well aware that it currently lacks statutory authority to impose the IUSF on VoIP providers. See. Ind. Code § 8-1-2.6-1.1(4). If, however, Indiana law is amended to expand the contribution base to other voice service providers, it should be done so in a competitively neutral manner and include VoIP and wireless. Moreover, any mandated contributions should enable the provider or its affiliate to participate in any and all other state programs subsidizing the same type of service, and should treat as intrastate for IUSF support purposes the same revenues that they treat as intrastate under the FCC's federal USF contribution rules.

GAO Topic #2: **The types of service for which disbursements from the IUSF may be used.**

Currently the IUSF supports the provision of local exchange telephone service provided by high-cost Eligible Telecommunications Carriers ("ETCs") to end-user customers. At this time, IBIG supports the continuance of this structure and is opposed to expanding the IUSF to subsidize any additional types of service.

GAO Topic #3: **The eligibility requirements for service providers to receive disbursements from the IUSF.**

Here again, at this time IBIG supports maintaining the status quo with respect to the eligibility requirements for service providers to receive disbursements from the IUSF. That means limiting IUSF subsidies to cover only the remaining revenue shortfall that would continue to be sustained after high-cost ETCs have increased their service rates to the benchmark rates. This also presumes that recipients have passed a qualification test comparing their three-year average net operating income to a net operating income cap.

GAO Topic #4: **Broadband deployment (expansion and improvement of access to broadband).**

IBIG does not support an expansion of the IUSF to include support for broadband services. Even though state law does not today permit IUSF support for non-telecommunications services, IBIG comments as follows:

First, transitioning the IUSF to support broadband would be premature and duplicative of ongoing broadband deployment support at the federal level, including, for example, from the Connect America Fund ("CAF") and Rural Utilities Service programs.

Second, state broadband support, should it be provided, should be strictly limited to areas that are truly unserved and not subject to a commitment by a broadband service provider to extend service under another federal or state program. Further, census blocks where unsubsidized competitors are present should not be eligible for broadband support. Competitive carriers cannot compete on equal footing with incumbent carriers that receive subsidies to deploy competitive services like broadband.

Third, carriers are already receiving federal high-cost support in amounts sufficient to advance Indiana's broadband deployment goals. In the ten years prior to April, 2018, ILECs in Indiana have received just short of $1 billion -- $929,200,685 to be exact – in federal high-cost support. Some of Indiana largest ILECs – AT&T, CenturyLink and Frontier – are collectively receiving an annual subsidy of more than $51 million for a period of six years in CAF Phase II model based support specifically for broadband deployment. The FCC premised this support on the reasonable, forward-looking costs of deploying broadband in high-cost areas. Even smaller rate-of-return regulated ILECs in Indiana are collectively receiving annual support of more than $3.5 million for a period of ten years from the Alternative Connect American Fund (A-CAM) to support broadband deployment. Even if ILECs reject model-based support, they continue to receive federal high-cost support from various sources, including high-cost loop support, CAF broadband loop support, CAF intercarrier compensation, and, if eligible, frozen high-cost support. Therefore, no state fund should step-in to assume the cost burden of providing subsidies.

In addition, the FCC CAF Phase II reverse auction will begin in July 2018, and carriers will be eligible for additional funding for deployment to high-cost areas where price cap carriers declined model-based support. Further, more funds for Phase III of this same federal broadband support program are expected to be released in 2019. Only after these auctions have occurred will the extent of any residual need for additional subsidies from state mechanisms become apparent.

Finally, state broadband subsidies should be available to all carriers through competitive bidding processes with strict standards for accountability, and be limited to areas where broadband service is not already available from unsubsidized providers or where a commitment to extend service has not already been demonstrated.

GAO Topic #5. **Any other matter concerning universal service reform that the Commission considers appropriate.**

IBIG is not aware of any additional matters that the Commission has indicated it wishes to add to the above list of topics. Nor does IBIG wish to suggest any such additional germane topics at this time, but it respectfully reserves its option to comment on additional topics subsequently identified by the Commission or other commenters.

Thank you for your consideration of IBIG's views on these important subjects. Either I or IBIG's Executive Director Joni Hart would be happy to respond to any follow up inquiry from the Commissioners or staff, or to otherwise facilitate further dialogue between the staff and any of our members. Ms. Hart's telephone number is (317) 237-2287 and her email address is jhart@broadbandig.org.

Sincerely,

Stoll Keenon Ogden PLLC

Clayton C. Miller

CCM:lkv