

**PROPOSED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

LCB File No. R058-17

September 12, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-4 and 6-10, 703.025, 704.040, 704.210 and 704.6873; §5, NRS 703.025 and 704.210

A REGULATION relating to utilities; requiring certain providers of telecommunication service to affirm that the provider is an eligible telecommunications carrier; setting forth various requirements for certain small-scale providers of last resort to meet before becoming qualified to receive money from the fund to maintain the availability of telephone service; prohibiting certain remittances from occurring 30 days after the last day of the month of the calendar quarter; setting forth various procedures for certain small-scale providers of last resort to meet before receiving money from the fund to maintain the availability of telephone service; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Public Utilities Commission of Nevada to adopt such regulations as the Commission deems necessary for the operation of the Commission and the enforcement of all laws administered by the Commission. (NRS 703.025) Existing law further requires that all telecommunication providers which offer the same or similar service to be subject to fair and impartial regulation to promote adequate, economical and efficient service. (NRS 704.040) Existing law additionally authorizes the Commission to adopt necessary and reasonable regulations governing the procedure, administration and enforcement of provisions that regulate public utilities. (NRS 704.210) Existing law requires the Commission to adopt regulations that require each telecommunication provider providing service to persons with low income and persons in rural, insular and high-cost areas to ensure that such persons have access to telecommunication services and rates that are reasonably comparable to those services and rates available in urban areas. (NRS 704.6873)

Existing regulations require an eligible provider of telecommunication service to submit with its annual report information which demonstrates that the provider has met certain requirements. (NAC 704.680465) **Section 7** of this regulation requires such providers of telecommunication service to submit an affirmation that the provider is an eligible telecommunications carrier with its annual report.

Existing regulations require the monthly basic recurring flat rates for basic service of a small-scale provider of last resort to be reasonably comparable to such rates charged in urban areas in order to qualify for money for certain services. (NAC 704.68048) **Section 8** of this regulation requires the monthly basic recurring flat rates for residential and business basic service to be reasonably comparable to such rates in urban areas. Existing regulations require a small-scale provider of last resort to carry out a plan approved by the Commission to set the monthly basic recurring flat rates for basic service at levels reasonably comparable to such rates in urban areas. (NAC 704.68048) **Section 8** removes this requirement. **Section 8** instead authorizes a small-scale provider of last resort to file to change its rates in certain situations by July 1 of the same year. **Section 8** additionally sets forth the manner by which the Commission will determine a rate to be reasonably comparable.

Section 8 further sets forth procedures for a small-scale provider of last resort to receive money to ensure that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services. The small-scale provider of last resort: (1) must request the money as part of its general rate application; (2) if this request is approved pursuant to **section 2** of this regulation, shall receive the amount of money determined by the Commission pursuant to **section 2** for 5 years; and (3) must make a new request for money as part of a general rate application after the 5 years have passed. **Section 3** of this regulation authorizes a small-scale provider to petition for a waiver of not more than 2 years from the requirement to file a new request with its general rate application after the 5 years have passed. **Section 3** authorizes the Commission to grant such a waiver if certain requirements are met.

Existing regulations set forth that an opposing party who disputes the determination that a small-scale provider of last resort of basic service is qualified to receive money has the burden of demonstrating that a small-scale provider should not receive such money. (NAC 704.68048) **Section 8** sets forth that a small-scale provider of last resort of basic service has the burden of demonstrating that circumstances exist which justify its eligibility to receive money. Existing regulations further set forth that, in order for the small-scale provider of last resort to be eligible to receive money, the level of earnings of a small-scale provider of last resort must be below the rate of return authorized for the small-scale provider by the Commission. (NAC 704.68048) **Section 8** removes this requirement with regard to this money. Existing regulations authorize the Fund Administrator or the Commission and its staff to audit a request for money. (NAC 704.68048) **Section 8** revises this provision to authorize only the Commission and its staff to audit a request for such money.

Existing regulations require the annual assessment for support of the fund to maintain the availability of telephone service to be remitted to the Fund Administrator by a provider of telecommunication service on a quarterly basis. (NAC 704.68054) **Section 9** of this regulation requires such remittance to occur not later than 30 days after the last day of the month in the calendar quarter.

Existing regulations require a small-scale provider of last resort to submit sufficient information to demonstrate its level of earnings. (NAC 704.68056) **Section 10** of this regulation replaces this requirement with alternative filing requirements based upon specified factors.

Sections 5 and 6 of this regulation make conforming changes.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *Upon receiving a request from a small-scale provider of last resort for money from the fund to maintain the availability of telephone service pursuant to paragraph (a) or (c) of subsection 2 of NAC 704.68048, the Commission will determine if the small-scale provider of last resort is qualified to receive money from the fund to maintain the availability of telephone service to ensure that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services pursuant to subsection 3 of NAC 704.68043.*

2. If the Commission determines, based upon the request specified in subsection 1, that the small-scale provider of last resort is qualified, the Commission will:

(a) Approve the request for money from the fund to maintain the availability of telephone service received from a small-scale provider of last resort made pursuant to paragraph (a) or (c) of subsection 2 of NAC 704.68048; and

(b) Pursuant to subsection 3, determine the annual amount of money the small-scale provider of last resort will receive from the fund to maintain the availability of telephone service.

3. In determining the annual amount of money the small-scale provider of last resort will receive pursuant to paragraph (b) of subsection 2, the Commission will not include any amount of money from the fund to maintain the availability of telephone service to compensate a small-scale provider of last resort for any reduction in federal universal service support resulting from a failure of the small-scale provider of last resort to meet any build-out

requirements pursuant to the rules and regulations of the Federal Communications Commission.

Sec. 3. 1. A small-scale provider of last resort that receives money from the fund to maintain the availability of telephone service pursuant to paragraph (b) of subsection 2 of NAC 704.68048 may file with the Commission a petition for a waiver of not more than 2 years from the requirement to file a new request pursuant to paragraph (c) of subsection 2 of NAC 704.68048.

2. The Commission may grant the petition for a waiver filed pursuant to subsection 1 if:
(a) The small-scale provider of last resort meets the requirements in subsection 3; and
(b) The Commission determines, upon receiving the information set forth in subsection 4, that the small-scale provider of last resort is not collecting excess earnings.

3. The small-scale provider of last resort must provide information which demonstrates that the:

(a) Petition for a waiver filed pursuant to subsection 1 is in the public interest; and
(b) Earnings of the small-scale provider of last resort, as calculated pursuant to subsection 1 of NAC 704.68056, is below the rate of return, as calculated by using the return on common equity as determined in NAC 703.27138, authorized for the small-scale provider of last resort by the Commission.

4. For the purposes of the Commission determining if the small-scale provider of last resort is collecting excess earnings, the small-scale provider of last resort must include in its petition for a waiver filed pursuant to subsection 1 the following information:

(a) Any data concerning the annual operating revenue, annual operating expenses and rate base of the small-scale provider of last resort, as provided in the most recent revenue

report filed by the small-scale provider of last resort with the Commission pursuant to NRS 704.035.

(b) Any adjustments made by the Commission in the most recent general rate case of the small-scale provider of last resort.

(c) The rate of return, as calculated by using the return on common equity as determined in NAC 703.27138, on the rate base of the small-scale provider of last resort.

(d) The amount of federal universal service support received by the small-scale provider of last resort for intrastate telecommunication services through the Connect America Cost Model, as governed by 47 C.F.R. § 54.311, or the most recent estimated amount of federal universal service support received by the small-scale provider of last resort for the current year for intrastate telecommunication services through High Cost Loop Support, as governed by 47 C.F.R. §§ 54.1301 to 54.1310, inclusive. Commencing with requests for money from the fund to maintain the availability of telephone service for calendar year 2018 and until the next general rate case of a small-scale provider of last resort, the Commission will determine the amount of federal universal service support received by a small-scale provider of last resort for intrastate telecommunication services through the Connect America Cost Model by multiplying the total amount of support received by the small-scale provider of last resort through the Connect America Cost Model by the ratio of High Cost Loop Support to the combined total of High Cost Loop Support and Interstate Common Line Support, as defined in 47 C.F.R. § 69.2, that were used to compute the amount of disbursement for calendar year 2016 to ensure that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunications services pursuant to subsection 3 of NAC 704.68043.

Sec. 4. 1. A small-scale provider of last resort must include in the adjustment application filed pursuant to paragraph (b) of subsection 2 of NAC 704.68056:

(a) The most recent estimated amount of High Cost Loop Support, as governed by 47 C.F.R. §§ 54.1301 to 54.1310, inclusive, for ensuring that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services the small-scale provider of last resort expects to receive for the upcoming calendar year; and

(b) Financial data that supports the revenue requirement approved by the Commission in the most recent general rate case for the small-scale provider of last resort, or in the disbursement application of the small-scale provider of last resort approved by the Commission for calendar year 2016 funding, whichever is most current.

2. The staff of the Commission shall verify that the adjustment in the amount of money from the fund to maintain the availability of telephone service requested by the small-scale provider of last resort is consistent with any:

(a) Difference between the:

(1) Most recent estimated amount of federal intrastate High Cost Loop Support referenced in paragraph (a) of subsection 1; and

(2) Amount projected in the most recent general rate case of the small-scale provider of last resort; and

(b) Applicable financial adjustments ordered by the Commission in the most recent general rate case of the small-scale provider of last resort.

3. The staff of the Commission shall provide the verification performed pursuant to subsection 2 to the Commission within 30 days after receiving the adjustment application filed pursuant to paragraph (b) of subsection 2 of NAC 704.68056.

Sec. 5. NAC 704.68026 is hereby amended to read as follows:

704.68026 A provider of commercial mobile radio services is exempt from the provisions of this chapter, except that the provisions of NAC 704.6804 to 704.68056, inclusive, *and sections 2, 3 and 4 of this regulation*, and 704.786, 704.7862 and 704.7864 do apply to a provider of commercial mobile radio services.

Sec. 6. NAC 704.6804 is hereby amended to read as follows:

704.6804 As used in NAC 704.6804 to 704.68056, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 704.6804105 to 704.680424, inclusive, have the meanings ascribed to them in those sections.

Sec. 7. NAC 704.680465 is hereby amended to read as follows:

704.680465 A provider of telecommunication service who is designated as an eligible telecommunications carrier shall submit with the annual report required pursuant to NAC 704.7483, ~~information which demonstrates~~ *an affirmation* that the provider has met the requirements set forth in NAC 704.680461 during the year for which the report is submitted.

Sec. 8. NAC 704.68048 is hereby amended to read as follows:

704.68048 1. To qualify for money from the fund to maintain the availability of telephone service to keep basic service rates at an affordable level pursuant to subsections 1 and 2 of NAC 704.68043, a small-scale provider of last resort must meet the following requirements:

(a) Its rates for interstate and intrastate switched access must be in parity, or the small-scale provider of last resort must agree to carry out a plan approved by the Commission designed to achieve parity for those rates within the time specified by the Commission . ~~and~~

(b) Its monthly basic recurring flat rates for *residential and business* basic service must be reasonably comparable , *as determined pursuant to subsection 3*, to rates charged for similar services in urban areas . ~~or the small-scale provider of last resort must agree to carry out a plan approved by the Commission designed to set those rates at levels reasonably comparable to rates charged for similar services in urban areas within the time specified by the Commission.~~ *A small-scale provider of last resort may file to change its rates in accordance with paragraph (g) of subsection 1 of NRS 704.100 with the Commission by July 1 of the same year for which the rates apply.*

2. *To receive money from the fund to maintain the availability of telephone service to ensure that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services pursuant to subsection 3 of NAC 704.68043, a small-scale provider of last resort:*

(a) Must make a request for money from the fund to maintain the availability of telephone service to ensure that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services pursuant to subsection 3 of NAC 704.68043 as part of a general rate application filed pursuant to NRS 704.110;

(b) Except as otherwise provided in section 3 of this regulation, if a request for money from the fund to maintain the availability of telephone service made pursuant to paragraph (a) or (c) is approved pursuant to section 2 of this regulation, will receive the annual amount of

money approved and determined by the Commission pursuant to section 2 of this regulation for 5 years, subject to the provisions of NAC 704.68056; and

(c) After the 5 years referenced in paragraph (b), except as otherwise provided in section 3 of this regulation, must make a request for money from the fund to maintain the availability of telephone service to ensure that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services pursuant to subsection 3 of NAC 704.68043 as a part of a general rate application filed pursuant to NRS 704.110.

3. For the purposes of paragraph (b) of subsection 1, the Commission will determine that a rate is reasonably comparable if the rate was established by the Commission in the most recent general rate case of the small-scale provider of last resort, or the rate is equal to or higher than the rate floor for residential basic service established by the Federal Communications Commission. If the rates of a small-scale provider of last resort do not equal or exceed the rate floor for the residential basic service established by the Federal Communications Commission, the Commission will reduce the annual amount of money received by the small-scale provider of last resort from the fund to maintain the availability of telephone service for which the small-scale provider of last resort would otherwise be authorized to receive by the difference between that amount and the amount of revenue the small-scale provider of last resort would receive if its rates were equal to or exceed the rate floor for the residential basic service established by the Federal Communications Commission.

4. Any disputes regarding the qualification of a small-scale provider of last resort to receive money from the fund to maintain the availability of telephone service will be resolved by the Commission at the request of the Fund Administrator or of any other interested party.

~~{3. If a}~~

5. A small-scale provider of last resort of basic service ~~is qualified pursuant to this section to receive money from the fund to maintain the availability of telephone service, an opposing party who disputes that determination~~ has the burden of demonstrating that ~~the small-scale provider should not be allowed to receive money to support basic service rates.~~

~~4. A small-scale provider of last resort who is qualified pursuant to this section to receive money from the fund to maintain the availability of telephone service shall calculate its overall rate of return by using the common return on equity as determined in NAC 703.27138 and the information relating to the overall rate of return which must be included in an application for a rate change filed pursuant to NAC 703.27132. To be eligible to receive money from the fund pursuant to this section, the level of earnings of the small-scale provider of last resort, as calculated pursuant to subsection 1 of NAC 704.68056, must be below the rate of return authorized for the small-scale provider by the Commission.~~ *circumstances exist which justify its eligibility to receive money from the fund to maintain the availability of telephone service.*

6. A request for money from the fund to maintain the availability of telephone service is subject to audit by the ~~Fund Administrator or the~~ Commission and its staff.

Sec. 9. NAC 704.68054 is hereby amended to read as follows:

704.68054 1. The Commission will make an annual determination of the total amount of money required to support the fund to maintain the availability of telephone service for the next calendar year based on the recommendation of the Fund Administrator and any person given permission to intervene by the Commission. The Commission will then set the assessment based on a percentage rate on anticipated revenues from retail intrastate telecommunication service of all providers of telecommunication service required to recover this amount.

2. The assessment must be remitted to the Fund Administrator by a provider of telecommunication service on a quarterly basis ~~+~~ *not later than 30 days after the last day of the month in the calendar quarter.*

3. Any shortfall or overage in the fund to maintain the availability of telephone service at the end of the calendar year must be carried forward to the following calendar year and used in establishing the rate for that year.

Sec. 10. NAC 704.68056 is hereby amended to read as follows:

704.68056 1. ~~Upon its initial request for money from the fund to maintain the availability of telephone service, and once every 4 years thereafter, a small-scale provider of last resort shall submit sufficient information to demonstrate its level of earnings pursuant to NAC 703.27116 to 703.27146, inclusive, as appropriate.~~ *A small-scale provider of last resort that receives federal universal service support through the Connect America Cost Model, as governed by 47 C.F.R. § 54.311, must receive the annual amount of money from the fund to maintain the availability of telephone service to ensure that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services pursuant to subsection 3 of NAC 704.68043 that is approved and determined by the Commission upon receiving a request pursuant to section 2 of this regulation, or the amount of such money indicated in the disbursement application of the small-scale provider of last resort approved by the Commission for calendar year 2018 funding, whichever is most current, for 5 years pursuant to subsection 2 of NAC 704.68048. To confirm its intent to receive the annual amount of money approved and determined by the Commission, a small-scale provider of last resort must submit a letter to the Fund Administrator and the staff of the Commission not later than June 1 of the year immediately preceding the year for which it is eligible to receive*

the annual amount of money approved and determined by the Commission confirming the intent of the small-scale provider of last resort to receive such money and referring to the order of the Commission approving and determining the amount of money and the length of time such amount of money is to be paid.

2. To receive money from the fund to maintain the availability of telephone service to ensure that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services pursuant to subsection 3 of NAC 704.68043, a small-scale provider of last resort that receives federal universal service support through High Cost Loop Support, as governed by 47 C.F.R. §§ 54.1301 to 54.1310, inclusive, must:

(a) Submit a request for money from the fund to maintain the availability of telephone service with the Fund Administrator and the staff of the Commission not later than June 1 of the year before the calendar year for which money from the fund to maintain the availability of telephone service is requested to be disbursed to the small-scale provider of last resort. Such a request must include the initial estimate, as determined by the small-scale provider of last resort, of the amount of money it will request for the upcoming calendar year. The small-scale provider of last resort must calculate this initial request by considering:

(1) The estimated amount of federal universal service support through High Cost Loop Support that the small-scale provider of last resort expects to receive for the upcoming calendar year for ensuring that persons with low income and persons in rural, insular and high-cost areas have access to available intrastate telecommunication services; and

(2) Financial data that supports the revenue requirement approved by the Commission in the most recent general rate case or in the disbursement application of the small-scale

provider of last resort approved by the Commission for calendar year 2016 funding, whichever is most current.

(b) Pursuant to section 4 of this regulation, subsequently file an adjustment application with the Commission and the Fund Administrator not later than October 15 of the year immediately preceding the calendar year for which money from the fund to maintain the availability of telephone service is requested to be disbursed to the small-scale provider of last resort.

3. A provider of telecommunication service does not have to submit information on its earnings or rates if ~~†~~:

~~—(a) The~~ *the* provider is a competitive supplier ~~†~~;

~~—(b) The provider is requesting a one-time disbursement of money from the fund to maintain the availability of telephone service to extend or improve basic service; or~~

~~—(c) The~~ *or the* provider is requesting a disbursement of money from the fund to maintain the availability of telephone service pursuant to NAC 704.68047 or 704.680473.

~~†3. An application for a disbursement of money from the fund to maintain the availability of telephone service by a small-scale provider of last resort to maintain affordable rates for basic service must be submitted directly to the Fund Administrator. All other applications must be submitted to the Commission.†~~

4. ~~†An application to the Fund Administrator must be submitted not later than 180 days before the beginning of the calendar year for which the money is being requested.†~~ An application to the Commission must be submitted by a competitive supplier not later than 270 days before the beginning of the calendar year for which the money is being requested.

5. The Commission will issue an order which fully or partially approves or denies an application submitted to it within 120 days after receiving the application.

6. The Fund Administrator shall submit a report to the Commission which sets forth the amount of money needed for the fund to maintain the availability of telephone service for the next calendar year and the recommended percentage rate to be assessed on intrastate retail revenues not later than 120 days before the beginning of the next calendar year. The Commission will issue an order regarding the report filed by the Fund Administrator pursuant to this section within 90 days after the date on which the report is filed.

7. The Commission may grant a deviation or waiver from the deadlines for the filings pursuant to NAC 704.6804 to 704.68056, inclusive, *and sections 2, 3 and 4 of this regulation* to the extent it determines that the deviation or waiver is in the public interest.