

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

LCB File No. R211-03

January 6, 2004

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

AUTHORITY: §§1-2, NRS 703.025, §§3-22, NRS 703.025 and 704.210.

Section 1. NAC 703.251 is hereby amended to read as follows:

703.251 NAC 703.2501 to 703.2711, inclusive, apply to large providers of last resort of basic service providing intrastate service to customers under the jurisdiction of the Commission unless the large provider is regulated pursuant to NAC ~~[704.6832 to 704.6847, inclusive, or]~~ 704.68474 to 704.68498, inclusive.

Sec. 2. NAC 703.27116 is hereby amended to read as follows:

703.27116 The provisions of NAC 703.2501 to 703.2509, inclusive, and 703.27116 to 703.27146, inclusive, apply to small providers of last resort of basic service providing service to customers under the jurisdiction of the Commission unless the small provider is regulated pursuant to ~~[an alternative]~~ a plan of *alternative* regulation adopted in accordance with NAC ~~[704.6832 to 704.6847, inclusive, or]~~ 704.68474 to 704.68498, inclusive.

Sec. 3. NAC 704.0085 is hereby amended to read as follows:

704.0085 “Flexibility of pricing” means flexibility ~~[as authorized pursuant to subsection 2 of NAC 704.6834]~~ to establish and maintain a schedule of rates and charges which contains the minimum and maximum rates for each type of service provided and to change a rate within the approved range pursuant to the procedures of NAC 704.7475 and 704.7477.

Sec. 4. NAC 704.00884 is hereby amended to read as follows:

704.00884 “Telecommunication service” ~~[means a service which provides access to or use of telecommunication facilities and the communications through such facilities. The term does not include information services or cable services.]~~ *has the meaning ascribed to it in section 6 of Senate Bill No. 400 of the 72nd Session of the Nevada Legislature, chapter 479, Statutes of Nevada 2003, at page 3035 (NRS 704.68947).*

Sec. 5. NAC 704.272 is hereby amended to read as follows:

704.272 1. Except as otherwise provided in this section, the provisions of NAC 704.270 to 704.273, inclusive, apply to all public utilities.

2. The provisions of NAC 704.270 to 704.273, inclusive, do not apply to any providers of telecommunication service, except for providers of last resort of basic service.

3. Unless otherwise ordered by the Commission, transactions which relate solely to telecommunication services deemed competitive or nonregulated pursuant to the provisions of NAC 704.6806 to 704.6808, inclusive, ~~[or 704.6832 to 704.6847, inclusive,]~~ are not required to be included in the report required by NAC 704.2725.

4. A public utility whose rates are:

(a) Subject to the jurisdiction of the Commission as set forth in NRS 704.095 and 704.097; or

(b) Subject to the jurisdiction of the Commission and whose annual jurisdictional revenues are less than \$2,000,000,

↪ is required to comply with the provisions of NAC 704.2725 and 704.273 only when it files an application for a change in general rates.

5. Unless otherwise ordered by the Commission, transactions which relate solely to services which have been approved as part of a public utility's tariff are not required to be included in the report required by NAC 704.2725.

6. Transactions between a public utility and an affiliated financial trust are not required to be included in the report required by NAC 704.2725 if the transactions and issuances involving the utility and trust are subject to the jurisdiction of, and have been specifically approved by, another state or federal regulatory agency. If such transactions and issuances are not included in the report required by NAC 704.2725, the report must include, for informational purposes, the information filed with the other regulatory agency for approval of the transactions and issuances.

Sec. 6. NAC 704.68022 is hereby amended to read as follows:

704.68022 1. A provider of last resort of basic service regulated under ~~[an alternative]~~ a plan of *alternative* regulation established in accordance with NAC ~~[704.6832 to 704.6847, inclusive, or]~~ 704.68474 to 704.68498, inclusive:

(a) May change the rates for all services, other than those classified as a basic service, in a manner consistent with the provisions of NAC 704.68474 to 704.68498, inclusive, or 704.7475, as appropriate, without complying with the provisions of NRS 704.100 and 704.110.

(b) May change the terms and conditions applicable to a competitive service without complying with the provisions in NRS 704.070 to 704.120, inclusive.

2. Except as otherwise provided in subsection 3, a competitive provider of telecommunication service:

(a) May provide services, other than those which are classified as a basic service, without complying with the provisions of NRS 704.070 to 704.120, inclusive.

(b) May provide and change the rates for basic service in conformance with the provisions of NAC 704.74945 without complying with the provisions of NRS 704.070 to 704.120, inclusive.

3. A competitive provider of telecommunication service which provides confinement service shall comply with the provisions of NAC 704.7495 to 704.74984, inclusive, for the purposes of the confinement service, except that a competitive provider of telecommunication service need not comply with the provisions of NAC 703.400. As used in this subsection, “confinement service” has the meaning ascribed to in NAC 704.74958.

Sec. 7. NAC 704.68024 is hereby amended to read as follows:

704.68024 1. A provider of telecommunication service subject to the regulation of the Commission must be certificated by the Commission before providing service and must be classified as a provider of last resort of basic service or as a competitive provider of telecommunication service.

2. ~~[Competitive]~~ *A competitive* provider of telecommunication service includes all providers of telecommunication service other than providers of last resort of basic service, including:

- (a) Interexchange carriers.
- (b) Intraexchange carriers.
- (c) Competitive providers of basic service.
- (d) Providers of confinement services.
- (e) Providers of operator services.
- (f) Resellers.

3. A provider of last resort of basic service will be regulated:

(a) Pursuant to those provisions of NRS 704.110 which provide for traditional rate base regulation; or

(b) Pursuant to the provisions of NRS 704.040 which provide for ~~{an alternative}~~ a plan of *alternative* regulation as described in NAC ~~{704.6832 to 704.6847, inclusive, or}~~ 704.68474 to 704.68498, inclusive.

Sec. 8. NAC 704.68056 is hereby amended to read as follows:

704.68056 1. Except as otherwise provided in subsection 2, upon its initial request for money from the Fund for Universal Service, and once every 4 years thereafter, a provider of basic service shall submit sufficient information to demonstrate its level of earnings pursuant to NAC 703.2501 to 703.27146, inclusive, as appropriate.

2. Except as otherwise provided in NAC 704.6805, a provider of telecommunication service does not have to submit information on its earnings or rates if:

(a) The provider is regulated pursuant to ~~{an alternative}~~ a plan of *alternative* regulation pursuant to NAC ~~{704.6832 to 704.6847, inclusive, or}~~ 704.68474 to 704.68498, inclusive;

(b) The provider is requesting a one-time disbursement of money from the Fund for Universal Service to extend or improve basic service; or

(c) The provider is requesting a disbursement of money from the Fund for Universal Service pursuant to NAC 704.68047, 704.680473 or 704.680478.

3. An application for a disbursement of money from the Fund for Universal Service by a small provider of last resort of basic service to maintain affordable rates for basic service must be submitted directly to the Administrator. All other petitions must be submitted to the Commission.

4. An application to the Administrator must be submitted not later than 180 days before the beginning of the calendar year for which the money is being requested. A petition to the

Commission must be submitted 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 a petition submitted to it within 120 days after receiving the petition.

6. The Administrator shall submit his report to the Commission which sets forth the amount of money needed for the Fund 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 Administrator pursuant to this section within 90 days after the date on which the report is filed.

7. The Commission may:

(a) For the initial year of operation of the Fund for Universal Service, specify different deadlines for the filings pursuant to NAC 704.6804 to 704.68056, inclusive; and

(b) Grant a deviation or waiver from the deadlines for the filings pursuant to NAC 704.6804 to 704.68056, inclusive, to the extent it determines that the deviation or waiver is in the public interest.

Sec. 9. NAC 704.68064 is hereby amended to read as follows:

704.68064 1. The Commission will act upon a request filed pursuant to NAC 704.68062 *for reclassification of an existing service which is provided by a provider of last resort of basic service that is not regulated under a plan of alternative regulation pursuant to NAC 704.68474 to 704.68498, inclusive*, within 90 days after ~~it~~ *the request* is filed unless a protest is received from:

(a) The staff of the Commission;

(b) A person given permission to intervene by the Commission;

(c) The Consumer's Advocate; or

(d) The provider of last resort of basic service ~~[who]~~ *that* is providing the service to be ~~[classified-or]~~ reclassified.

↪ If a protest is filed, the Commission will act upon ~~[a]~~ *the* request within 180 days after the date on which the request is filed.

2. The Commission will act upon a request filed pursuant to NAC 704.68062 for reclassification of an existing service which is provided by a provider of last resort of basic service that is regulated under a plan of alternative regulation pursuant to NAC 704.68474 to 704.68498, inclusive, within 60 days after the request is filed unless a protest is received from:

(a) The staff of the Commission;

(b) A person given permission by the Commission to intervene;

(c) The Consumer's Advocate; or

(d) The provider of last resort of basic service that is providing the service to be reclassified.

↪If a protest is filed, the Commission will act upon the request within 120 days after the date on which the request is filed.

3. A protest must be filed on or before the deadline for the filing of protests that is set forth in the notice required to be published pursuant to NAC 703.160.

Sec. 10. NAC 704.68078 is hereby amended to read as follows:

704.68078 A large provider of last resort of basic service which has 50,000 or more access lines, which is regulated pursuant to NAC 703.2501 to ~~[703.2688, inclusive, 703.2691 and]~~ 703.2711, *inclusive*, and which provides a service that has been classified as discretionary, competitive ~~[r]~~ or deregulated shall include with its annual report:

1. If the service has been deregulated and the provider is not regulated according to the terms of ~~[an alternative]~~ a plan of *alternative* regulation as set forth in NAC ~~[704.6832 to 704.6847, inclusive, or]~~ 704.68474 to 704.68498, inclusive:

(a) The direct cost of the service accounted for pursuant to the Uniform System of Accounts; and

(b) The method of determining, and the amount of, the common costs and general overhead expenses allocated, as determined pursuant to the apportionment rules set forth in 47 C.F.R. Part 64, as those rules ~~[exist]~~ *existed* on October 25, 1995.

2. If the service has been reclassified as a competitive or discretionary service, and the provider is not regulated according to the terms of ~~[an alternative]~~ a plan of *alternative* regulation as set forth in NAC ~~[704.6832 to 704.6847, inclusive, or]~~ 704.68474 to 704.68498, inclusive:

(a) The direct cost of and revenue from the service accounted for pursuant to the Uniform System of Accounts as set forth in 47 C.F.R. Part 32; and

(b) The method of determining, and the amount of, the common costs and general overhead expenses allocated to each account of the Uniform System of Accounts as set forth in 47 C.F.R. Part 32.

3. If the service has been reclassified as a competitive or discretionary service, adequate information to verify that the rate charged and the price of each service will recover at least the total service long-run incremental cost associated with that service, consistent with paragraph (e) of subsection 1 of NAC 704.68062.

4. If the service has been reclassified as a competitive or discretionary service and it includes a component classified as an essential service, information sufficient to demonstrate that

the price for the service covers the combined tariffed rates for all essential service components plus the total service long-run incremental cost of any component of the service which is not classified as an essential service, consistent with paragraph (f) of subsection 1 of NAC 704.68062.

5. If the provider is not regulated according to the terms of ~~[an alternative]~~ a plan of *alternative* regulation as set forth in NAC ~~[704.6832 to 704.6847, inclusive, or]~~ 704.68474 to 704.68498, inclusive, adequate information to verify that the sum of the earnings from essential and discretionary services is not subsidizing the earnings from the service which has been classified as competitive or deregulated. For the purposes of this subsection, the fully allocated embedded cost must be used as a basis for calculating earnings.

Sec. 11. NAC 704.68474 is hereby amended to read as follows:

704.68474 As used in NAC 704.68474 to 704.68498, inclusive:

1. ~~["Alternative plan of regulation" means a plan of regulation adopted pursuant to NAC 704.68474 to 704.68498, inclusive, which provides an alternative to rate base regulation for providers of last resort of basic service.~~

~~—2.]~~ "Category of services" means the classification of the services offered by a provider of last resort of basic service as either essential, discretionary, competitive ~~[]~~ or deregulated.

2. *"Plan of alternative regulation" means a plan of regulation adopted pursuant to NAC 704.68474 to 704.68498, inclusive, which provides an alternative to rate base regulation for providers of last resort of basic service.*

Sec. 12. NAC 704.68476 is hereby amended to read as follows:

704.68476 1. A provider of last resort of basic service may apply to be regulated under ~~[an alternative]~~ a plan of *alternative* regulation pursuant to the provisions of NAC 704.68474 to

704.68498, inclusive. The application must be filed with the Commission and accompanied by the following:

(a) A general rate case filed pursuant to NAC 703.2501 to 703.2711, inclusive, or a statement of the results of operations which reflect the revenue requirements of the provider. The statement of the results of operation must be:

(1) In a format specified in statement H as described in NAC 703.2601 or form G as described in NAC 703.27132, or any other similar format;

(2) Concurred in by the staff of the Commission and the Consumer's Advocate; and

(3) Approved by the Commission after an opportunity for comment or a request for a hearing by any interested party.

(b) A description and schedule of the proposed rates and tariffs appropriate for the proposed categories of service *which is similar to the statement* described in NAC 703.2685.

(c) A schedule specifying the proposed category of each service in existence at the time the application is filed.

(d) For those services the provider proposes to classify or reclassify as discretionary or competitive, the information and documentation required pursuant to NAC 704.68062 to classify a service.

(e) For those services which have been previously classified by the Commission as discretionary, competitive or deregulated and for which no change in classification is requested, an exhibit which identifies the services and includes a reference to the order or action pursuant to which the classification was made or approved.

(f) A proposal which sets forth proposed standards to evaluate the quality of essential and discretionary services, including a specific plan by which:

(1) The availability of basic service will be annually evaluated and reported in terms of the percentage of residences and the percentage of businesses that are supplied with basic service in the various geographical areas comprising a provider's service territory, taken in consideration of similar percentages applicable during the most recent annual period before the adoption of the ~~[alternative]~~ plan of *alternative* regulation by the provider, any intervening changes in economic conditions, customer locations, number of providers of telecommunication service and any other relevant factors; and

(2) The reliability of basic service will be annually evaluated and reported in terms of the length of time required to provide the component which includes the dial tone of basic service to residences and businesses in the various geographical areas comprising a provider's service territory, taken in consideration of similar times applicable during the most recent annual period before the adoption of the ~~[alternative]~~ plan of *alternative* regulation by the provider, any intervening changes in the rates of completing calls, times in delays of calls and any other relevant factors.

(g) A statement setting forth the manner in which the provider will monitor and maintain the quality of the essential services which it provides.

(h) A plan setting forth the manner in which the provider will modernize its equipment and facilities and extend or improve basic service during the term of the plan, and the manner in which the provider will monitor and report to the Commission on the implementation and progress of the plan, including a review of the efforts of the provider to modernize its services and facilities during the previous 5 years.

(i) The proposed scope of any change, because of exogenous factors, in rates for other essential services or in the range of rates for discretionary services.

(j) A statement setting forth a proposed schedule for filing the reports required by NAC 704.6849 and a proposed format for the reports.

(k) An explanation of the action that the provider proposes to take during the term of its participation in the plan to ensure that the rates for depreciation and amortization that will be applied during the term of the plan will minimize to the extent feasible any understatement or overstatement of plant balances at the end of the plan.

2. The Commission will act upon an application filed pursuant to this section within 180 days after it is filed.

Sec. 13. NAC 704.68478 is hereby amended to read as follows:

704.68478 1. ~~Except as otherwise provided in subsection 2, the term of an alternative plan of regulation is 5 years.~~ *A provider shall select the duration of the period to be regulated under the plan of alternative regulation pursuant to paragraph (d) of subsection 4 of NRS 704.040.* The provider may, pursuant to NAC 704.68498, request approval to continue its participation in the ~~alternative~~ plan of *alternative* regulation for successive terms.

2. Within 120 days after the issuance of an order by the Commission specifying the terms and conditions of the provider's participation in ~~an alternative~~ *a* plan of *alternative* regulation, *including a successive term of a plan of alternative regulation,* the provider may provide written notification to the Commission ~~electing to shorten the term of its initial participation to 3~~ *selecting a period that is not less than 3 years and not more than 5* years.

Sec. 14. NAC 704.6848 is hereby amended to read as follows:

704.6848 If the Commission authorizes the provider to be regulated in accordance with ~~an alternative~~ *a* plan of *alternative* regulation, the Commission will, as a condition of entry into

such a plan, specify the conditions of entry into that ~~[alternative]~~ plan *of alternative regulation* which:

1. Specify the rate at which each basic service will be capped during the term of the plan.
2. Require the terms and conditions of basic service to be subject to complete tariffing requirements, including conformance with the provisions of NAC 704.395 to 704.421, inclusive, and 704.68028, where applicable.
3. Specify the rates for other essential services and the ~~[range-of]~~ *minimum* rates *that may be charged* for discretionary services ~~[that]~~, *both of which* will become effective at the time of entry into the ~~[alternative]~~ plan of *alternative* regulation.
4. Require the terms and conditions of the other essential and discretionary services to be subject to complete tariffing requirements, including conformance with the provisions of NAC 704.395 to 704.421, inclusive, and 704.68028 where applicable.
5. Authorize the provider to adjust its rates for intrastate switched access, exclusive of the charge for a common carrier line, and its rates for its elements of tariffed cellular interconnection, to the extent that such elements correspond to the rates for interstate access, so that those rates will be in parity with its rates for interstate switched access at the time of entry into the plan.
6. Specify the standards for quality of service which the provider must meet pursuant to paragraph (f) of subsection 1 of NAC 704.68476 during the term of its participation in the ~~[alternative]~~ plan of *alternative* regulation, including the procedures which will govern the mandatory investigation by the Commission if a decrease in the availability or reliability, or both, of basic service occurs under the plan.

7. Specify the modernizations, expansions ~~[]~~ or improvements of the system required as a condition of the provider's participation in the ~~[alternative]~~ plan of *alternative* regulation.
8. Specify the category of service for each of the services offered by the provider at the time of entry into the ~~[alternative]~~ plan of *alternative* regulation if the applicant has requested a change in the classification of a service.
9. Specify any other terms and conditions of the provider's participation in the ~~[alternative]~~ plan of *alternative* regulation.
10. Specify the date on which the provider's entry is approved. The date of actual commencement of the ~~[alternative]~~ plan of *alternative* regulation must be within 60 days after the issuance of an order by the Commission specifying the terms and conditions of the provider's participation in the plan, unless a later date is approved by the Commission.

Sec. 15. NAC 704.68482 is hereby amended to read as follows:

704.68482 1. All rates for basic service will be capped by the Commission pursuant to NAC 704.68474 to 704.68498, inclusive, during the term of the provider's participation in the ~~[alternative]~~ plan of *alternative* regulation. The rate for basic service, and the corresponding cap, may be reduced subject to the following conditions:

(a) The rate for basic service, and the corresponding cap, may be reduced without a hearing by an amount not to exceed 10 percent in any year in which the provider participates in the ~~[alternative]~~ plan of *alternative* regulation. A rate which is reduced in accordance with this paragraph becomes effective 30 days after a tariff is filed by the provider to reduce those rates.

(b) A decrease in the rate for basic service in excess of 10 percent must be accompanied by a showing that the resulting prices appropriately balance the interests of affected customers, competitors of the provider ~~[]~~ and the provider. The Commission may hold a hearing. The

Commission will issue a decision on a request to reduce rates in accordance with this paragraph within 90 days after the date on which the request is received.

2. Except as otherwise provided in subsection 5, the rate for any other essential service, including the rate for switched access and tariffed cellular interconnection, may be changed during the term of the plan subject to the following terms and conditions:

(a) Except as otherwise provided in paragraph (e) , ~~[of this subsection,]~~ a rate for any other essential service may be increased or decreased without a hearing by an amount not to exceed 5 percent in any annual period, to be effective 30 days after the submission of a tariff filing to change those rates.

(b) Except as otherwise provided in paragraph (e) , ~~[of this subsection,]~~ the rate for an individual service may not be increased by more than 20 percent over the 5-year term , *10 percent over the 4-year term* or ~~[, if applicable,]~~ 10 percent over the 3-year term of the ~~[alternative]~~ plan of *alternative* regulation ~~[,]~~ , *as appropriate*.

(c) Any tariff filing which requests a reduction in the rate of any individual service must be accompanied by a demonstration that the rate is not set below the total service long-run incremental cost of the service.

(d) An increase in the rate for any other essential service must be offset with a decrease in the rate for any other essential service such that the provider does not experience a net increase in revenues for its essential services.

(e) If a requested change in a rate is in excess of the limits set forth in ~~[paragraphs]~~ *paragraph* (a) or (b), the request must be accompanied by a showing that the resulting prices appropriately balance the interests of affected customers, competitors of the provider ~~[,]~~ and the

provider. The Commission may hold a hearing and will render a decision on such a filing within 90 days after the date on which the request is received.

3. ~~Except as otherwise provided in subsection 5, the rate for a discretionary service may be changed by the provider within the range of minimum and maximum rates specified by the Commission pursuant to NAC 704.6848, or subsequent tariffed modifications thereto.~~ The rate for discretionary services must be set at a level which exceeds the total service long-run incremental cost for that service.

4. The rates, terms ~~[]~~ and conditions for competitive services may be changed by the provider without authorization from the Commission.

5. The Commission will only consider a change in a rate for a discretionary or other essential service without regard to ~~[subsections]~~ *subsection* 2 or 3 or subsection 3 of NAC 704.6848 if the change in the rate is requested to account for a change in the rate of taxation levied by a local, state ~~[]~~ or federal governmental agency which affects the net income of the provider by 5 percent or more in any annual period. A request for a change in the rate may be made upon application of the provider or upon a petition from any other party. The applicant or petitioner has the burden of demonstrating that the change in the rate is appropriate to reflect the change in the tax rate affecting the provider. The Commission will issue a decision on such an application or petition within 90 days after the date on which the application or petition is filed.

Sec. 16. NAC 704.68488 is hereby amended to read as follows:

704.68488 A provider of last resort of basic service which is authorized to be regulated pursuant to ~~[an alternative]~~ a plan of *alternative* regulation may not recover revenue pursuant to NAC 704.7501 to 704.7591, inclusive, during the term of its participation in the plan.

Sec. 17. NAC 704.6849 is hereby amended to read as follows:

704.6849 1. A provider of last resort of basic service which is authorized by the Commission to be regulated pursuant to ~~an alternative~~ a plan of *alternative* regulation shall submit an annual report to the Commission.

2. The annual report must contain, in separate sections:

(a) Adequate information to allow the Commission to determine whether the provider is using the sum of the revenues from discretionary, competitive ~~and~~ and deregulated services realized by the provider to make an appropriate contribution to the recovery of its total joint and common costs. The information must include:

(1) An analysis which shows that the rate which the provider charges:

(I) Individually for each discretionary service exceeds the individual total service long-run incremental cost of that service; and

(II) Individually for each competitive service is equal to or greater than the total service long-run incremental cost of that service;

(2) An analysis which shows that the revenues which the provider thereby receives:

(I) Collectively from all discretionary services provided by the provider exceed the collective total service long-run incremental cost of all such services;

(II) Collectively from all competitive services provided by the provider are equal to or greater than the collective total service long-run incremental cost of all such services; and

(III) Collectively from all discretionary, competitive ~~and~~ and deregulated services provided by the provider exceed the collective total service long-run incremental cost of all such services; and

(3) Adequate information to verify the total annual joint and common costs of the provider, determined on an embedded-cost basis upon entry into ~~an alternative~~ a plan of

alternative regulation, including updates if there are subsequent material changes in investment and operations.

↳ Nothing in these requirements for the annual report must be interpreted to mean that the Commission is asserting regulatory jurisdiction over deregulated services.

(b) The information and documentation required to be filed with the Commission pursuant to NAC 704.68078.

(c) The information and documentation required to be filed with the Commission pursuant to NAC 704.7483 for Nevada operations, by jurisdiction as set forth in 47 C.F.R. Part 36 as that part ~~[exists]~~ *existed* on October 25, 1995, including adjustments for those items which the Commission had previously ordered to be adjusted. For the purposes of this paragraph, Nevada jurisdictional business includes revenue and cost associated with inside wiring and yellow pages.

(d) The information needed to evaluate the availability and reliability of basic service pursuant to paragraph (f) of subsection 1 of NAC 704.68476.

Sec. 18. NAC 704.68492 is hereby amended to read as follows:

704.68492 A provider that is authorized by the Commission to be regulated pursuant to ~~[an~~ *alternative*] a plan of *alternative* regulation shall maintain separate accounts which comply with the provisions of NAC 704.645 and which enable the provider to return to the system of regulation in place for providers which are not regulated under ~~[an-alternative]~~ a plan of *alternative* regulation.

Sec. 19. NAC 704.68494 is hereby amended to read as follows:

704.68494 1. A provider that is authorized by the Commission to be regulated pursuant to ~~[an-alternative]~~ a plan of *alternative* regulation does not have to file an application to revise its depreciation rates and is not subject to the provisions of NAC 703.2715 to 703.278, inclusive.

2. The provider shall depreciate its investment at a level which is equal to or greater than that allowed by the Commission in its last approved depreciation review.

3. If a provider is required to undergo a full rate review at the end of the initial term of the ~~[alternative]~~ plan of *alternative* regulation pursuant to NAC 704.68496 or 704.68498, the provider shall report the difference between the amount of depreciation expense booked in the 12-month reporting period and the amount that would have been booked using the Commission's last approved rates.

Sec. 20. NAC 704.68496 is hereby amended to read as follows:

704.68496 1. If a provider decides to terminate its participation in ~~[an alternative]~~ a plan of *alternative* regulation at the end of the term of that plan, the provider shall file a request to terminate its participation in the plan with the Commission not later than 180 days before the end of the term of the provider's authorized participation in the plan. Such a request must include:

(a) A general rate review of operations of the provider for the most recent 12 months for which data is available at the time the request is filed. The general rate review must be in the form specified in NAC 703.2501 to 703.2711, inclusive, for large providers of last resort of basic service or NAC 703.2501 to 703.2509, inclusive, and 703.27116 to 703.27146, inclusive, for small providers of last resort of basic service.

(b) A report on the status of the modernizations, expansions ~~[]~~ or improvements of the system which were ordered by the Commission when the provider entered into the ~~[alternative]~~ plan of *alternative* regulation.

(c) A report on the status of the quality of basic and other essential services.

(d) The analysis required by paragraph (a) of subsection 2 of NAC 704.6849.

2. After a review and hearing by the Commission, the Commission will issue an order which:

(a) Specifies the type of regulation which will be applicable to the provider at the end of the term of the ~~alternative~~ plan of *alternative* regulation.

(b) Establishes the rates, terms ~~and~~ and conditions for basic, essential ~~and~~ and discretionary services consistent with the type of regulation which will be applicable to the provider.

(c) If the continued regulation of the provider will be based wholly or partially on the level of its rate base, establishes the level of rate base.

Sec. 21. NAC 704.68498 is hereby amended to read as follows:

704.68498 1. If the provider wants to continue its participation in the ~~alternative~~ plan of *alternative* regulation, the provider shall file a request to continue its participation in the plan with the Commission not later than 180 days before the end of the provider's authorized participation in the plan. Such a request must include:

(a) An analysis of the results of operation of the provider for the most recent 12 months for which data is available at the time of filing.

(b) A report on the status of the modernizations, expansions ~~and~~ or improvements of the system which were ordered by the Commission when the provider entered into ~~an alternative~~ a plan of *alternative* regulation.

(c) An analysis which sets forth the amount of contribution made by the revenues from discretionary, competitive ~~and~~ and deregulated services toward the total joint and common costs of the provider, as determined by paragraph (a) of subsection 2 of NAC 704.6849.

(d) A report on the status of:

(1) The availability of new products and technologies;

(2) Rate levels and rate design; and

(3) The extent of competition,

↳ relative to other jurisdictions.

2. If the provider wants to make an adjustment in basic rates, the provider must include with its request to continue its participation in the plan the filing required by NAC 704.68476.

3. After a review and hearing, the Commission will issue an order which:

(a) Specifies the type of regulation which will be applicable to the provider at the end of the term of the ~~[alternative]~~ plan of *alternative* regulation;

(b) Establishes the rates, terms ~~[,]~~ and conditions for basic, essential ~~[,]~~ and discretionary services consistent with the type of regulation which will be applicable to the provider;

(c) Specifies any additional requirements which must be met to satisfy the terms and conditions applicable to the provider's participation in the ~~[alternative]~~ plan of *alternative* regulation; and

(d) If the continued regulation of the provider will be based wholly or partially on the level of its rate base, establishes the level of rate base.

4. At the time when a provider files its request to continue participation in ~~[an alternative]~~ a plan of *alternative* regulation, any party may seek to modify the terms of the plan, if the plan as modified would be consistent with NAC 704.68474 to 704.68498, inclusive. A party may seek a full rate review pursuant to NAC 703.2501 to 703.27146, inclusive, as appropriate, only if there is a material change, upon renewal, in the terms and conditions of the plan with respect to basic service and if there has been a decrease in the availability and reliability of basic service under the plan. If a decrease in the availability or reliability, or both, of basic service has occurred under the plan, the Commission will institute an investigation into the causes of the decrease

within the context of a full rate review. If no decrease in the availability or reliability, or both, has occurred under the plan, the Commission will not institute a full rate review unless the moving party can demonstrate that harm to the public interest would result if the full rate review is not held.

Sec. 22. NAC 704.6832, 704.68325, 704.6833, 704.6834, 704.6835, 704.6836, 704.6837, 704.6838, 704.6839, 704.684, 704.6841, 704.6842, 704.6843, 704.6844, 704.6845, 704.6846 and 704.6847 are hereby repealed.

TEXT OF REPEALED SECTIONS

704.6832 Definitions. As used in NAC 704.6832 to 704.6847, inclusive, unless the context otherwise requires:

1. “Category of service” means the classification of the services a local exchange company offers as basic, discretionary, competitive, or nonregulated.
2. “Nonregulated service” means a competitive service which is determined by the Commission to be fully exempt from regulation.

704.68325 Applicability. The provisions of NAC 704.6832 to 704.6847, inclusive, apply only to those providers of telecommunication service which, on October 25, 1995, are regulated pursuant to an alternative plan of regulation which was adopted pursuant to NAC 704.6832 to 704.6847, inclusive.

704.6833 Application for regulation under alternative plan.

1. A local exchange company may apply to be regulated under an alternative plan of regulation. Except as otherwise provided in subsection 2, the application must be filed with the Commission and be accompanied by:

- (a) A statement of the proposed category of each service in existence at the time the application is filed;
- (b) A general rate case filed pursuant to the provisions of NAC 703.2501 to 703.2711, inclusive, which establishes the earnings and rates of the company which will apply after the approval of the application;
- (c) A proposed schedule of rates and tariffs appropriate for the proposed categories of service;
- (d) A proposal which sets forth proposed standards for the quality of the basic services;
- (e) A statement setting forth the manner in which the company will monitor and maintain the quality of the basic services;
- (f) The information and documentation required for an application by a company to deregulate a service pursuant to the provisions of NAC 704.7593;
- (g) A statement setting forth a proposed schedule for filing the monthly and annual reports required by NAC 704.6842 and a proposed format for the reports; and
- (h) A plan setting forth the manner in which the company will modernize its equipment and facilities for the 10-year period following the date on which the application is filed and the manner in which the company will monitor and report to the Commission the manner in which the plan will be put into effect.

2. The local exchange company is not required to submit the information and documentation required by paragraph (f) of subsection 1 for a service which:

(a) Is exempt from tariff at the time the application is filed pursuant to NAC 704.7592 to 704.7599, inclusive; or

(b) The company treats as exempt from tariff, but not as totally deregulated, because of federal preemption, a practice of the Commission, Commission action, or state law.

3. The Commission will act upon an application filed pursuant to subsection 1 within 180 days after it is filed.

704.6834 Regulation of local exchange company under alternative plan. If a local exchange company is authorized by the Commission to be regulated under an alternative plan of regulation, the Commission will:

1. Require that a basic service provided by a local exchange company be subject to full regulation.

2. Under appropriate circumstances, allow a local exchange company flexibility of pricing for a discretionary service. The establishment or change of the schedule of minimum and maximum rates or a change in the actual rate charged within the range of approved minimum and maximum rates in the schedule of a local exchange company will be governed by the same requirements and procedures for carriers between local areas of transport and access pursuant to the provisions of NAC 704.7477.

3. Under appropriate circumstances, allow full exemption from tariff and the provisions of NRS 704.070 for a competitive service, but competitive service is subject to the requirements of NAC 704.7598.

4. Under appropriate circumstances, allow full exemption from regulation by the Commission and from the provisions of NRS 704.070 for nonregulated service.

704.6835 Maintenance of separate accounts and quality of service. A local exchange company that is authorized by the Commission to be regulated under an alternative plan of regulation shall:

1. Maintain separate accounts which comply with the provisions of NAC 704.7594 and which enable, if necessary, the company to return to the system of regulation in place for companies which are not regulated under an alternative plan of regulation.

2. Monitor and maintain the quality of the basic service it offers at the established standards.

704.6836 Consideration of certain factors before determining category of service. The Commission will consider the factors set forth in NAC 704.7595 and 704.7596 before determining the category of a service.

704.6837 Procedure for changing category of service.

1. After a hearing upon:

(a) The application of a local exchange company;

(b) A complaint from a competitor or customer of a local exchange company; or

(c) Its own motion,

↪ the Commission will change the category of service if the Commission deems such a change is necessary.

2. A local exchange company may request that the Commission change the category of a service by submitting the information and documentation required pursuant to the provisions of NAC 704.7593 for an application by a company to deregulate a service.

3. The Commission will:

(a) Consider the factors set forth in NAC 704.7595 and 704.7596 before changing the category of a service.

(b) Consider the information and documentation required pursuant to the provisions of NAC 704.7593 for an application by a company to deregulate a service before changing the category of a service.

(c) Act upon an application to change the category of a service within 90 days after it is filed unless a protest is received from:

- (1) The staff of the Commission;
- (2) A person given permission to intervene by the Commission; or
- (3) The Bureau of Consumer Protection within the Office of the Attorney General.

↪ If a protest is filed, the Commission will act upon an application within 180 days after it is filed.

704.6838 Procedure for provision of new service.

1. To provide any new service, a local exchange company must apply to the Commission for approval unless the service has been totally exempted from regulation by the Commission. The application must set forth the category of the service and include all appropriate information required for an application to deregulate a service pursuant to the provisions of NAC 704.7593.

2. If the new service is exempt from regulation by the Commission because the Federal Government has preempted the area, the company shall notify the Commission of the offering and cite the authority for the preemption.

3. The Commission will:

(a) Consider the factors set forth in NAC 704.7595 and 704.7596 in determining whether a local exchange company may provide a new service and the category of the new service.

(b) Act upon an application filed pursuant to subsection 1 within 90 days after it is filed unless a protest is received from:

- (1) The staff of the Commission;
- (2) A person given permission to intervene by the Commission; or
- (3) The Bureau of Consumer Protection within the Office of the Attorney General.

↳ If a protest is filed, the Commission will act upon an application within 180 days after it is filed.

704.6839 Determination of appropriate rates and return on common equity. During the general rate case required to be filed with an application to be regulated under an alternative plan of regulation, the Commission will determine:

1. An appropriate return on common equity for the company; and
2. Appropriate rates to be charged for basic service.

704.684 Adjustment of return on common equity.

1. The Commission will, if deemed appropriate, during a general rate case or review of earnings of a local exchange company that is authorized by the Commission to be regulated under an alternative plan of regulation, adjust the return on common equity of the company, upward or downward, after considering:

(a) Any improvement in the efficiency of the company which was made before the date on which the rate case began;

(b) Any modernization of the company which was made before the date on which the rate case began;

(c) The quality of service offered by the company; or

(d) The generation and sharing of earnings attributable to the actions of the company while under the plan.

2. During the general rate case or review of earnings of the local exchange company, any person or governmental agency may file written comments or provide testimony in support of an adjustment to the return on common equity of the company if the adjustment is based on the considerations set forth in subsection 1.

704.6841 Adjustment of or change in rates.

1. Except as otherwise provided in subsection 2 and NAC 704.6845, a person or governmental agency may seek an adjustment to a rate pursuant to NRS, chapters 703 and 707 of NAC and this chapter.

2. Except as otherwise provided in subsection 3, the rates for basic services will not be increased for at least 5 years above the level established as a result of the application to be regulated under an alternative plan of regulation.

3. A local exchange company that has been authorized by the Commission to be regulated under an alternative plan of regulation, the staff of the Commission or the Bureau of Consumer Protection within the Office of the Attorney General may request a change in the rates for basic services at any time if the request is based on a change in the state or federal tax laws which has a significant effect on the operations of the local exchange company.

704.6842 Annual and monthly reports by local exchange company.

1. A local exchange company that has been authorized by the Commission to be regulated under an alternative plan of regulation shall submit an annual and monthly reports to the Commission which contain adequate information to review the level of the earnings of the company by jurisdiction pursuant to 47 C.F.R. Part 64.

2. The annual report must contain:

(a) Adequate information to verify that the sum of the earnings from basic and discretionary service are not subsidizing the earnings from competitive or nonregulated service.

(b) Adequate information to verify the amount of the earnings of the company, including carrying charges, to be used for the benefit of the ratepayers and a plan setting forth the manner in which such earnings must be used.

(c) The information and documentation required to be filed with the Commission pursuant to NAC 704.7597.

3. The earnings stated in the reports must be based on the historical results of operations at the time of the filing of the annual report. The historical results of operations:

(a) May be adjusted for items which:

(1) The Commission has previously authorized to be adjusted or are included in earnings for accounting purposes but are not included in earnings for rate-making purposes; and

(2) May distort the results of operations.

(b) Must be adjusted for items which the Commission has previously ordered to be adjusted.

4. The Commission, as appropriate, will modify or approve the annual report.

704.6843 Use of excess return on common equity.

1. If the return on common equity stated in the annual report of the local exchange company, as approved by the Commission, is greater than the return on common equity authorized by the Commission, a portion of the excess will be retained by the company and a portion will be considered as support for basic services by the Commission in any proceeding to establish or change the rates of the company.

2. The portion which the company retains after taxes is, if the return on common equity exceeds the authorized rate of return by:

- (a) Zero to 200 basis points, one-half of the excess.
- (b) Two hundred and one to 500 basis points, 40 percent of the excess.
- (c) More than 500 basis points, 25 percent of the excess.

3. The portion which is considered as support for basic services must be used to benefit ratepayers during the next year in a manner determined by the Commission. The Commission will determine whether carrying charges will be applied for any portion of the period beginning on the last day of the year in which the excess accrues and ending on the day on which the excess is disposed.

4. As used in this section, "basis point" means one-hundredth of 1 percent of yield.

704.6844 Filing of general rate case and study required; effective date of adjustment of rates.

1. Unless otherwise directed by the Commission before the date on which filing is required, a local exchange company which is regulated under an alternative plan of regulation shall within 4 1/2 years after the Commission acts upon the application to be regulated under an alternative plan of regulation, file with the Commission:

(a) A general rate case pursuant to the provisions of NAC 703.2501 to 703.2711, inclusive; and

(b) A study which attributes the cost of each service to that service and identifies any category of service the earnings from which subsidize the earnings of any other category of service.

2. If the Commission adjusts the rates of a company as a result of the rate case filed pursuant to subsection 1, the adjustment is effective on the last day of the year which is the 5th year of regulation under an alternative plan of regulation.

704.6845 Limitations on recovery of revenue. A local exchange company which is authorized to be regulated under an alternative plan of regulation shall not recover revenue pursuant to the provisions of NAC 704.7501 to 704.7591, inclusive, except that adjustments may be made if they may be proposed pursuant to NAC 704.7501 to 704.7591, inclusive, during a general proceeding to establish or change its rates pursuant to NAC 703.2501 to 703.2711, inclusive, or a review of earnings.

704.6846 Withdrawal from and termination of participation in alternative plan.

1. Except as otherwise provided in subsection 2, a local exchange company must receive approval from the Commission before withdrawing from an alternative plan of regulation.

2. A local exchange company may withdraw from an alternative plan of regulation by notifying the Commission of its withdrawal within 30 days after it receives the decision of the Commission regarding its application to be regulated under an alternative plan of regulation. The company is subject to the rates established by the Commission when the application to be regulated under an alternative plan of regulation was filed and any other portion of a decision issued by the Commission which applies to a company which has not been authorized to be regulated under an alternative plan of regulation.

3. If necessary, the Commission will terminate the participation of a local exchange company in an alternative plan of regulation after a hearing upon:

- (a) The petition of a person.
- (b) Its own motion following an investigation.

4. The Commission will review all of the investments which the company made while regulated under an alternative plan of regulation and:

- (a) Determine if the investments are prudent; and
- (b) Adjust the rate base of the company, if necessary, during the rate case or review of earnings which immediately follows the withdrawal of the company from an alternative plan of regulation.

704.6847 Action by Commission upon complaints. The Commission will investigate complaints about a local exchange company submitted by any person and, if deemed appropriate, the Commission will adjust the tariffs and rates of the company after a hearing.