

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

LCB File No. R187-05

Effective December 29, 2005

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

AUTHORITY: §§1-8, NRS 703.025, 704.040, 704.210, 704.6873 and 710.140.

A REGULATION relating to telecommunications; requiring a county telephone line or system to participate in the fund to maintain the availability of telephone service administered by the Public Utilities Commission of Nevada; providing the criteria for a county-owned telephone system to qualify for disbursement of money from the fund; and providing other matters properly relating thereto.

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

Sec. 2. *“County telephone line or system” means a telephone line or system which is purchased, acquired or constructed by a county and controlled and managed by the board of county commissioners of that county pursuant to NRS 710.140.*

Sec. 3. *“Provider of telecommunication services” means a provider of telecommunication services that:*

- 1. Has obtained from the Commission a certificate of public convenience and necessity;*
- or*
- 2. Is a county telephone line or system.*

Sec. 4. 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 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC

704.68041 to 704.680424, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 704.68044 is hereby amended to read as follows:

704.68044 The Administrator of the Fund for Universal Service shall:

1. Conduct periodic audits of contributors to the Fund for Universal Service to ensure that the correct payments are being remitted by the providers of telecommunication service.
2. Verify the qualifications of an applicant who requests support from the Fund for Universal Service.
3. Collect assessments from each provider of telecommunication service ~~[certificated by the Commission]~~ and deposit that money into the Fund for Universal Service.
4. Disburse money from the Fund for Universal Service to providers of telecommunication service who qualify for funding in accordance with NAC 704.6804 to 704.68056, inclusive, *and sections 2 and 3 of this regulation* and with applicable orders of the Commission.
5. Prepare an annual report of all activities of the Fund for Universal Service including:
 - (a) The total annual payments into the Fund from each ~~[certificated]~~ provider of telecommunication service; and
 - (b) An itemization of all disbursements from the Fund to each qualified provider of telecommunication service.
6. Prepare and submit a request to the Commission to collect money for and disburse money from the Fund, which includes:
 - (a) The estimated amount of money required to support the Fund for the following year; and

(b) The percentage rate which must be applied to the intrastate retail revenues of all of the providers of telecommunication service, to raise the estimated amount of money required, as reported in paragraph (a) . ~~[of this subsection.]~~

Sec. 6. NAC 704.68046 is hereby amended to read as follows:

704.68046 To qualify for a disbursement of money from the Fund for Universal Service:

1. Except as otherwise provided in subsection 2, if the disbursement of money is for the purposes set forth in subsections 1 to 4, inclusive, of NAC 704.68043, the provider of telecommunication service must:

(a) Be an eligible telecommunications carrier; and

(b) Unless otherwise specifically authorized by the Commission, average its rates for basic service in a manner that is consistent with NAC 704.68085 within the service area in which it is designated as an eligible telecommunications carrier.

2. If the disbursement of money is:

(a) For the purpose set forth in subsection 4 of NAC 704.68043; and

(b) Intended specifically to support the provision of access to an Internet service provider pursuant to the provisions of 47 C.F.R. § 54.621,

↪ the provider of telecommunication service is not required to be an eligible telecommunications carrier, but must have a certificate of public convenience and necessity issued by the Commission ~~[;]~~ *or be a county telephone line or system.*

3. If the disbursement of money is for the purpose set forth in subsection 5 of NAC 704.68043, the provider of telecommunication service must:

(a) Hold a certificate of public convenience and necessity issued by the Commission ~~[;]~~ *or be a county telephone line or system;*

(b) Meet the requirements for eligibility set forth in 47 C.F.R. § 54.501; and

(c) Provide services described in 47 C.F.R. § 54.502 at discounted rates pursuant to NAC 704.680469.

Sec. 7. NAC 704.680461 is hereby amended to read as follows:

704.680461 1. A provider of telecommunication service who seeks designation as an eligible telecommunications carrier must file with the Commission an application in which the provider affirms that it:

(a) Holds a certificate of public convenience and necessity issued by the Commission that authorizes the provider of telecommunication service to provide basic service ~~in~~ *or is a county telephone line or system.*

(b) Unless otherwise specifically authorized by the Commission pursuant to NAC 704.680462, offers the services described in 47 C.F.R. § 54.101 throughout the service area for which the provider of telecommunication service seeks designation as an eligible telecommunications carrier. Such services must be provided at rates and in accordance with terms that are nondiscriminatory and may be provided by the provider of telecommunication service using:

(1) Its own facilities, which may include, without limitation, facilities obtained as unbundled network elements from another provider of telecommunication services; or

(2) A combination of its own facilities and resale of the services of another provider of telecommunication service.

(c) At least once every 3 months, advertises throughout the service area for which the provider of telecommunication service seeks designation as an eligible telecommunications carrier the availability of the services described in 47 C.F.R. § 54.101 and the rates and charges

applicable to those services through prominent presentation in one or more forms of media of general distribution, including, without limitation, newspapers, television or radio.

2. The Commission will issue an order approving or denying an application filed pursuant to subsection 1 within 90 days after receipt of the application.

Sec. 8. 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 for Universal Service for the next calendar year based on the recommendation of the 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 ~~certificated~~ providers of telecommunication service required to recover this amount.

2. The assessment must be remitted to the Administrator by a provider of telecommunication service on a quarterly basis.

3. Any shortfall or overage in the Fund for Universal 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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R187-05**

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. R187-05 which pertain to chapter 704 of the Nevada Administrative Code on December 12, 2005.

Notice date: 10/13/2005
Hearing date: 11/28/2005

Date of adoption by agency: 12/12/2005
Filing date: 12/29/2005

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

This matter involves an investigation into and development of proposed revisions to NAC 704 regarding changes to the Public Utilities Commission's ("Commission's") regulations as a result of Senate Bill ("S.B.") 210 passed during the 73rd Regular Session of the Nevada Legislature regarding applicable regulation of county-owned telephone systems concerning the Nevada Universal Service Fund ("NUSF"). A Request for Comments was issued on August 15, 2005. A combined Notice of Intent to Amend/Repeal Regulations, Notice of Workshop, and Notice of Hearing was issued on October 13, 2005. The foregoing notices were published in the Elko Daily Free Press, Las Vegas Review Journal, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notices were mailed to county clerks, county libraries and all persons who requested inclusion on the Commission's service list.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed workshop and hearing held on November 28, 2005: The Regulatory Operation's Staff of the Commission ("Staff"), Nevada Bell Telephone Company, d/b/a SBC Nevada ("SBC"), and Churchill County Telephone, d/b/a CC Communications ("Churchill") discussed the LCB draft of the proposed regulation. SBC supported the LCB draft of the proposed regulation with two points of clarification: (1) If Churchill County wants to extend its service outside of its service area it would file for a Certificate of Public Convenience and Necessity ("CPC"), become a Competitive Local Exchange Carrier, and be subject to the service provider complaint process specified in NAC 704.68035; and (2) If Churchill wants to receive NUSF for its in-county operations, then it would file an application and the Commission would have authority to investigate and audit the request. Churchill supported the LCB draft of the proposed regulation with the clarification that if Churchill offers a service outside of its service territory that does not require a CPC by a private company, then Churchill would not have to get a CPC either. Staff supported the LCB draft of the proposed regulation.

A copy of the summary may be obtained by calling the Commission at (775) 684-6101 or (702) 486-7210, or by writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

2. **The number of persons who**
 - (a) **Attended the workshop:**
November 28, 2005: 7
 - (b) **Testified at the workshop:**
November 28, 2005: 4
 - (c) **Attended the hearing:**
November 28, 2005: 6
 - (d) **Testified at the hearing:**
November 28, 2005: 3
 - (e) **Submitted to the agency written comments:**

Written Comments were submitted to the Commission by Staff, SBC, and Churchill.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by notices placed in the newspapers mentioned in the response to question #1 above, by direct mailings to interested persons on the Commission's mailing list and by posting of notices at county libraries, courthouses and the Commission's website.

Appearances were made at the foregoing workshop and hearing by interested persons, including Staff, SBC, and Churchill.

Written responses were received as set forth in the response to question 2(e) above.

Written comments were filed with the Commission on September 16, 2005.

The proposed regulations make various additions and deletions to the Commission's regulations regarding applicable regulation of county-owned telephone systems concerning the NUSF. The additions and deletions to the Commission's regulations are to clarify that a county-owned telephone system must collect and be eligible to receive NUSF assessments and funds under the same terms and conditions as a public utility subject to subsection 7 of Nevada Revised Statute 704.040. SBC's written comments recommended changes to the Commission's proposed regulation issued on October 13, 2005, clarifying that the Commission would have authority to review a NUSF application submitted by a county-owned telephone system, and if a county-owned telephone system wants to operate outside of its county then its operations are subject to the same requirements as another certified telecommunication service provider. Churchill's written comments recommended changes to the Commission's proposed regulation clarifying that a county-owned telephone system must pay into the NUSF and may receive disbursements from the fund under the same terms and conditions as any public utility.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

All of the participants supported the LCB draft of the proposed regulation and did not propose any changes.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both intermediate and long-term effects.**

The Commission has found that the regulation does not impose a direct and significant burden upon businesses in Nevada based on the following facts: The only entity that would be directly impacted by the proposed regulation is Churchill. Churchill is participating in this proceeding and filed comments. However, Churchill does not meet the definition of a small business since it is a not-for-profit entity. Accordingly, the Commission determined that the proposed regulation will not impose a direct and significant economic burden upon the majority of small businesses nor will it directly restrict the formation, operation or expansion of a small business.

The proposed regulation will not have an adverse economic effect upon the public. However, the proposed regulation may have a beneficial economic effect on Churchill's customers in that, if Churchill receives NUSF support, it will help maintain affordable rates.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The Commission does not believe there will be any additional cost to the Commission to enforce the adopted regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Commission is not aware of any overlap or duplication by this regulation of any regulation of any other local, state or federal government agencies.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Commission is not aware of any provision in this regulation that is more stringent than a federal regulation which regulates the same activity.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The Commission does not believe that the regulation provides for a new fee, or increases an existing fee. However, the NUSF assessment may increase if Churchill starts receiving support from the fund. The NUSF is administered for the State of Nevada by contract through an outside third party.

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Investigation and rulemaking regarding applicable)
regulation of county-owned telephone systems)
concerning the Universal Service Fund.)
_____)

Docket No. 05-7046

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on December 12, 2005.

PRESENT: Chairman Donald L. Soderberg
Commissioner Carl B. Linvill
Commissioner Jo Ann P. Kelly
Commission Secretary Crystal Jackson

ORDER ADOPTING REGULATIONS AS PERMANENT

The Public Utilities Commission of Nevada (“Commission”) makes the following findings of fact and conclusions of law:

1. On July 27, 2005, the Commission voted to open an investigation and rulemaking docket to consider changes to the Commission's regulations as a result of Senate Bill (“S.B.”) 210 passed during the 73rd Regular Session of the Nevada Legislature regarding applicable regulation of county-owned telephone systems concerning the Universal Service Fund. This matter has been designated by the Commission as Docket No. 05-7046.

2. This matter is being conducted by the Commission pursuant to the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code, Chapters 233B, 703, and 704.

3. The Commission issued a public notice of this matter in accordance with state law and the Commission’s Rules of Practice and Procedure.

4. On October 13, 2005, the Commission delivered the proposed regulations to the Legislative Counsel Bureau.

5. On November 9, 2005, the Commission voted, pursuant to NRS 233B.0608, to accept the Regulatory Operations Staff of the Commission’s (“Staff”) recommendation and find that the proposed temporary regulations do not: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

6. A duly noticed workshop and hearing were held on November 28, 2005.

7. Appearances were made at the foregoing workshop and hearing by interested persons, including Staff; Nevada Bell Telephone, d/b/a SBC Nevada; and Churchill County Telephone, d/b/a CC Communications.

8. The Commission finds that it is in the public interest to adopt the proposed regulations attached hereto and incorporated herein as Attachment 1.

THEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. The proposed regulations, attached hereto and incorporated herein as Attachment 1, are ADOPTED AS PERMANENT.

2. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting or issuance of the Order.

By the Commission,

DONALD L. SODERBERG, Chairman

CARL B. LINVILL, Commissioner

JO ANN P. KELLY, Commissioner

Attest: _____
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL)