

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

LCB File No. R191-07

December 19, 2007

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

AUTHORITY: §§1-13, NRS 703.025, 704.210 and 704.6878; §§14-16, NRS 703.025 and 704.210.

A REGULATION relating to telecommunications; providing a definition of “multitenant landlord”; providing for a request and notice for per se relief from the obligations of a provider of last resort; providing for a request and petition for a waiver from the obligations of a provider of last resort; providing for a waiver proceeding in regard to the obligations of a provider of last resort; providing for a notification by a multitenant landlord in relation to an order from a waiver proceeding; providing for the discontinuation of service by a person who replaced a provider of last resort; providing for a reinstatement proceeding for the reinstatement of a provider of last resort; providing for the payment of any costs from one party to another relating to facilities or equipment, as determined in a reinstatement proceeding; providing for requests for additional time relating to the reinstatement of a provider of last resort; revising the requirements for and list of providers of last resort; 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 to 13, inclusive, of this regulation.

Sec. 2. 1. *“Multitenant landlord” means any:*

- (a) Developer, operator or owner of any multitenant business or residential property, including, without limitation, an apartment complex, condominium complex, office complex, office park or residential subdivision;*
- (b) Condominium association; or*
- (c) Homeowners’ association.*

2. The term does not include the developer or owner of a single-family residence if that developer or owner makes decisions on utility installations for that single-family residence only.

Sec. 3. 1. An incumbent local exchange carrier that is a provider of last resort may request per se relief to be excused from all obligations as a provider of last resort in regard to a certain property if:

(a) The multitenant landlord of the property:

(1) During the construction phase of the property:

(I) Permits any person other than the incumbent local exchange carrier to install facilities or equipment to provide basic network service or business line service; and

(II) Legally or physically prohibits the incumbent local exchange carrier from installing his own facilities or equipment for basic network service or business line service; or

(2) Collects mandatory rent, fees or dues from the occupants or tenants of the property for the provision of basic network service or business line service by a person other than the incumbent local exchange carrier; and

(b) A person other than the incumbent local exchange carrier will provide basic network service or business line service to the property.

2. As used in this section, “legally or physically prohibits the incumbent local exchange carrier from installing his own facilities or equipment for basic network service or business line service” includes:

(a) Preventing or failing to deliver access to the property, including, without limitation, providing suitable rights-of-way or easements, for the incumbent local exchange carrier to install his facilities or equipment; or

(b) Prior to any trenching done for basic network service or business line service, not requesting from the incumbent local exchange carrier plans, specifications, engineering drawings, designs or information relating to costs and advances to be paid by the multitenant landlord for related facilities or equipment.

Sec. 4. 1. *An incumbent local exchange carrier that is a provider of last resort and wishes to request per se relief pursuant to section 3 of this regulation must file a notice for per se relief with the Commission and must concurrently serve the notice to:*

(a) The Regulatory Operations Staff of the Commission;
(b) The multitenant landlord of the property; and
(c) If known, the person other than the incumbent local exchange carrier who will provide basic network service or business line service to the property.

2. The notice must contain the following information:

(a) The name, address and telephone number of the incumbent local exchange carrier that is the provider of last resort;

(b) The name, address and telephone number of the multitenant landlord;

(c) A description of the property;

(d) A statement explaining why the incumbent local exchange carrier qualifies for per se relief and any supporting documents; and

(e) If known, the name, address and telephone number of the person who will provide basic network service or business line service to the property or, if unknown, an explanation of why this information is unavailable.

3. After a notice for per se relief is filed with the Commission, a protest to the notice for per se relief may be filed with the Commission within 14 days by any affected party, including,

without limitation, the Regulatory Operations Staff of the Commission, the Bureau of Consumer Protection of the Office of the Attorney General and the person cited by the incumbent local exchange carrier as the person who will provide basic network service or business line service to the property.

4. The Regulatory Operations Staff of the Commission will file a protest to a notice for per se relief if the Staff cannot confirm the material facts in the notice for per se relief or if the Staff cannot confirm that a new person will provide basic network service or business line service to the property.

5. If no protests are filed with the Commission in regard to a notice for per se relief within 14 days after the notice for per se relief is filed, or if the Commission does not schedule a waiver proceeding as required pursuant to subsection 6, per se relief is deemed granted.

6. If a protest is filed with the Commission in regard to a notice for per se relief within 14 days after the notice for per se relief is filed, the Commission will, within 30 days after the protest is filed, schedule a waiver proceeding as described in section 7 of this regulation.

Sec. 5. 1. *Except as otherwise provided in subsection 2, an incumbent local exchange carrier that is a provider of last resort may request a waiver of its obligations as a provider of last resort in regard to a certain property.*

2. An incumbent local exchange carrier that is a provider of last resort may not request a waiver of its obligations as a provider of last resort in regard to a certain property if the incumbent local exchange carrier has a pending request for per se relief in regard to the same property.

Sec. 6. 1. *An incumbent local exchange carrier that wishes to request a waiver of its obligations pursuant to section 5 of this regulation must file a petition for waiver with the Commission and must concurrently serve the notice to:*

- (a) The Regulatory Operations Staff of the Commission;*
- (b) The multitenant landlord of the property; and*
- (c) If known, the person other than the incumbent local exchange carrier who will provide basic network service or business line service to the property.*

2. *The petition must include, without limitation, the following information:*

- (a) The name, address and telephone number of the incumbent local exchange carrier that is the provider of last resort;*
- (b) The name, address and telephone number of the multitenant landlord;*
- (c) A description of the property;*
- (d) A statement explaining why the incumbent local exchange carrier qualifies for a waiver and any supporting documents; and*
- (e) If known, the name, address and telephone number of the person who will provide basic network service or business line service to the property or, if unknown, an explanation of why this information is unavailable.*

Sec. 7. 1. *After a petition for waiver is filed with the Commission pursuant to section 6 of this regulation or a protest to a notice for per se relief is filed pursuant to section 4 of this regulation, the Commission will schedule a waiver proceeding and will issue an order regarding the petition within 90 days of the filing of the petition for waiver or the filing of the protest.*

2. *If the order grants the petition for waiver or grants per se relief, the order must require that the person who will provide basic network service or business line service to the property shall:*

(a) Adhere to the requirements of section 9 of this regulation; and

(b) Maintain with the Commission a current address, telephone number and any other requested contact information.

3. *If the order denies the petition for waiver or denies per se relief, all affected parties shall comply with the order.*

Sec. 8. 1. *A multitenant landlord must notify in writing all occupants and tenants of the property, and any subsequent multitenant landlord of the property, of certain facilities, equipment and payment information if:*

(a) An order denying a petition for waiver or denying per se relief is made pursuant to section 7 of this regulation;

(b) The incumbent local exchange carrier that is the provider of last resort does not have certain facilities or equipment installed on the property because the multitenant landlord has not complied with the applicable laws and regulations regarding underground facilities or equipment; and

(c) The relevant trenches on the property are already closed.

2. *As used in this section, “certain facilities, equipment and payment information” means information which states that:*

(a) The incumbent local exchange carrier who is the provider of last resort does not have facilities or equipment installed on the property;

(b) In the event that an occupant or a tenant, the multitenant landlord or a subsequent multitenant landlord requests basic network service or business line service from the incumbent local exchange carrier, the occupant or tenant, multitenant landlord or subsequent multitenant landlord may be required to pay special construction charges for the installation of facilities or equipment before the incumbent local exchange carrier can provide such service; and

(c) After all issues relating to construction charges have been settled, the incumbent local exchange carrier may require 180 days, or more if permitted by the Commission, to install the facilities or equipment.

Sec. 9. 1. *If a person provides basic network service or business line service to a property after an incumbent local exchange carrier is relieved of his provider of last resort obligations, the person may not discontinue service without, at least 180 days before the date of discontinuation:*

(a) Filing a notice of discontinuation with the Commission; and

(b) Providing copies of the notice to the occupants and tenants of the property, the incumbent local exchange carrier and the multitenant landlord of the property.

2. *A notice of discontinuation must contain the following information:*

(a) The character and nature of the discontinuance of service;

(b) The date of the discontinuation of service;

(c) The contact information for the person filing the notice, including, without limitation:

(1) The name, address and business telephone number of the person; and

(2) At least one toll-free customer service telephone number which is active at the time the notice is sent and is maintained by the person to facilitate the continuation of service and the transition of occupants and tenants to new service;

(d) The name, address and telephone number of the multitenant landlord;

(e) A description of the property; and

(f) Whether or not the person or the multitenant landlord:

(1) Has made arrangements for the incumbent local exchange carrier to resume provider of last resort obligations to the property; or

(2) Has made arrangements for a person other than the incumbent local exchange carrier to provide replacement service to the property.

Sec. 10. *Upon receipt of a notice of discontinuation or evidence of possible discontinuation of basic network service or business line service to a property, the Commission:*

1. May hold a reinstatement proceeding if no arrangements have been made for replacement service to the property; and

2. May issue an interim order that ensures continuous service to the property.

Sec. 11. *1. During a reinstatement proceeding, the Commission will examine the manner in which the incumbent local exchange carrier that is the provider of last resort shall provide replacement basic network service or business line service to the property.*

2. During a reinstatement proceeding, the Commission will determine, without limitation:

(a) The amount of money necessary to compensate for the cost that the incumbent local exchange carrier will incur to place facilities and equipment at the property, while taking into consideration, without limitation, the amount necessary to install or retrofit any facilities or

equipment, to cut or trench sidewalks and streets and to restore roads, sidewalks, block walls or landscapes to original conditions;

(b) Whether any existing facilities or equipment may be given or made available to the incumbent local exchange carrier and whether the incumbent local exchange carrier must accordingly compensate the person discontinuing service; and

(c) A reasonable period of time for the construction, retrofitting or installation of necessary facilities and equipment by the incumbent local exchange carrier based upon evidence provided by the incumbent local exchange carrier.

3. During a reinstatement proceeding, the Commission will, when making determinations:

(a) Take into consideration any relevant use of alternative technology by the person who is discontinuing service; and

(b) Allow the incumbent local exchange carrier to use alternative technology to satisfy any relevant obligations as a provider of last resort.

4. The Commission will not:

(a) Commence the reasonable period of time that an incumbent local exchange carrier has for the construction, retrofitting or installation of necessary facilities and equipment until:

(1) The incumbent local exchange carrier has been conveyed any compensation due pursuant to section 12 of this regulation; and

(2) The multitenant landlord of the property provides to the incumbent local exchange carrier the access necessary to install facilities and equipment, including, without limitation, providing any necessary easements; and

(b) Reinstate an incumbent local exchange carrier if the multitenant landlord of the property does not provide to the incumbent local exchange carrier the access necessary to both install and maintain facilities and equipment, including, without limitation, providing any necessary easements.

Sec. 12. *If the Commission determines during a reinstatement proceeding that a person who is discontinuing basic network service or business line service or an incumbent local exchange carrier should compensate the other for certain costs, the compensation may be conveyed by:*

- 1. Carrying out a payment schedule approved by the Commission, along with the posting of a bond in a manner approved by the Commission; or*
- 2. Paying the full amount of compensation within 30 days.*

Sec. 13. *After a reinstatement proceeding, an incumbent local exchange carrier may request more time for the construction, retrofitting or installation of necessary facilities and equipment by written request to the Commission.*

Sec. 14. NAC 704.005 is hereby amended to read as follows:

704.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 704.0052 to 704.009, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 15. NAC 704.6802 is hereby amended to read as follows:

704.6802 1. The following companies or their successors are designated as providers of last resort and shall provide basic service to all current and future subscribers within their respective service territories, as defined in tariffs on file with the Commission on December 1, 1995:

- (a) ~~[ALLTEL Nevada, Inc.;~~ *Beehive Telephone Co., Inc., Nevada;*
- (b) ~~[Beehive Telephone Company, Inc.;~~ *Central Telephone Company, d.b.a. Embarq
Central Telephone Company;*
- (c) ~~[Central Telephone Company;~~ *CenturyTel of the Gem State, Inc., d.b.a. CenturyTel;*
- (d) ~~[Contel of California, Inc., d.b.a. Contel of Nevada;~~ *Citizens Telecommunications
Company of Nevada, d.b.a. Frontier Communications of Nevada;*
- (e) Filer Mutual Telephone Company;
- (f) ~~[Gem States Utilities Corporation;~~ *Lincoln County Telephone System, Inc.;*
- (g) ~~[Humboldt Telephone Company;~~ *Moapa Valley Telephone Company;*
- (h) ~~[Lincoln County Telephone System, Inc.;~~ *Nevada Bell Telephone Company, d.b.a.
AT&T Nevada and AT&T Wholesale;*
- (i) ~~[Moapa Valley Telephone Company;~~ *Oregon-Idaho Utilities, Inc., d.b.a. Humboldt
Telephone Company;*
- (j) ~~[Nevada Bell;~~ *Rio Virgin Telephone Company, d.b.a. Rio Virgin Telephone &
Cablevision;*
- (k) ~~[Rio Virgin Telephone Company; and]~~ *Rural Telephone Company; and*
- (l) ~~[Rural Telephone Company.]~~ *Verizon California Inc., d.b.a. Verizon Nevada.*

2. Unless otherwise authorized by the Commission, Nevada Bell *Telephone Company, d.b.a. AT&T Nevada and AT&T Wholesale*, or its successor is designated as the provider of last resort for intrastate interexchange toll services within the northern LATA, designated as LATA 720, and shall provide those services between all points of origination and termination within the LATA, unless the service both originates and terminates within the service territory of a

company, other than Nevada Bell ~~[-]~~ *Telephone Company, d.b.a. AT&T Nevada and AT&T Wholesale*, listed in subsection 1.

3. Unless otherwise authorized by the Commission, Central Telephone Company, *d.b.a. Embarq Central Telephone Company* or its successor is designated as the provider of last resort for intrastate interexchange toll services within the southern LATA, designated as LATA 721, and shall provide those services between all points of origination and termination within the LATA, unless the service both originates and terminates within the service territory of a company, other than Central Telephone Company, *d.b.a. Embarq Central Telephone Company*, listed in subsection 1.

4. The companies identified in subsection 1, other than Nevada Bell *Telephone Company, d.b.a. AT&T Nevada and AT&T Wholesale*, and Central Telephone Company, *d.b.a. Embarq Central Telephone Company*, are designated as the providers of last resort for intrastate interexchange toll service within their respective service territories, as defined in tariffs on file with the Commission on ~~[December 1, 1995,]~~ *January 1, 2007*, and shall provide those services between all points of origination and termination within those territories.

Sec. 16. NAC 704.68098 is hereby repealed.

TEXT OF REPEALED SECTION

704.68098 Exclusive rights to owner or developer of property or subdivision prohibited.

1. A provider of telecommunication service may not obtain the exclusive rights from a developer or owner of property to provide facilities required to offer basic service to subscribers occupying that property or a subdivision thereof.

2. As used in this section, “subscriber” has the meaning ascribed to it in NAC 704.7521.