

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

LCB File No. R040-08

Effective September 18, 2008

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

AUTHORITY: §§1-3, NRS 703.025, 704.210 and 704.330; §§4-7 and 11-19, NRS 703.025 and 704.210; §§8-10, NRS 703.025, 704.210, 704.68865 and 704.68885.

A REGULATION relating to telecommunications; providing for a competitive supplier who is a provider of last resort to change the boundaries of its service area; providing for a competitive supplier who is a provider of last resort to discontinue basic network service; revising the conditions under which a fee may be charged for payment to a utility; revising the requirements for a competitive supplier to apply for a certificate of public convenience and necessity; repealing provisions regarding a provider who may own or control the content of information traveling through its transmission lines; and providing other matters properly relating thereto.

Section 1. Chapter 703 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *If a competitive supplier that is a provider of last resort has complied with the requirements of paragraph (a) of subsection 9 of NRS 704.330, the competitive supplier may file an application to change the boundaries of its service area pursuant to paragraph (b) of subsection 9 of NRS 704.330.*

2. *In addition to the general filing requirements set forth in NAC 703.530 to 703.577, inclusive, 703.610 and 703.615, an application filed pursuant to subsection 1 must contain the following information:*

(a) All the names under which the competitive supplier conducts business in this State;

(b) A description of the boundaries of the current service area;

- (c) A map depicting the boundaries of the current service area;*
- (d) A description of the proposed changes to the boundaries of the current service area;*
- (e) A map depicting the proposed changes to the boundaries of the current service area, which must distinguish between the current service area and the proposed changes to the current service area;*
- (f) The competitive supplier's basis for changing the boundaries of the current service area; and*
- (g) A statement that:*
 - (1) The application does not involve a discontinuance of basic network service; or*
 - (2) The application does involve a discontinuance of basic network service pursuant to an order of the Commission, cited by docket number, pursuant to section 10 of this regulation.*

Sec. 3. *An application filed pursuant to section 2 of this regulation will be deemed approved if the Commission does not act on the application within 120 days after the date the application is filed with the Commission.*

Sec. 4. NAC 703.180 is hereby amended to read as follows:

703.180 In the case of a small-scale provider of last resort that is not ~~regulated as~~ a competitive supplier, in addition to all other applicable requirements of NAC 703.175, an application must include the estimated number of customers and the estimated revenue to be recovered from those customers by the small-scale provider of last resort for the first 5 years of operation.

Sec. 5. NAC 703.2501 is hereby amended to read as follows:

703.2501 As used in NAC 703.2501 to 703.27146, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 703.2502 to 703.25036, inclusive, have the meanings ascribed to them in those sections.

Sec. 6. NAC 703.2508 is hereby amended to read as follows:

703.2508 1. Except as otherwise provided in subsection 6, if a public utility that provides telecommunication services proposes to increase its annual gross revenue by at least 10 percent or by more than \$50,000, it must submit a master document for the request of data, together with answers to the questions contained in the document, to:

- (a) The Consumer's Advocate; and
- (b) The staff of the Commission assigned to regulatory operations.

2. The public utility must:

(a) Submit the master document for the request of data, together with the answers, on the same date as it files the application for adjustments in rates.

(b) Complete as much of the answers to the questions in the master document as possible given the available data and any agreements for the confidentiality of information which have been executed.

3. Except as otherwise provided in this subsection, the master document for the request of data must be submitted in the illustrative format required by the Commission. The illustrative format for a particular master document for the request of data may be changed if the Consumer's Advocate, the staff of the Commission and the public utility agree to the change. The illustrative format for the master document for the request of data may be obtained at the offices of the Commission.

4. The following entities may request the Commission to change the illustrative format for the master document for the request of data:

- (a) The Consumer's Advocate;
- (b) The staff of the Commission; or
- (c) The public utility which proposes to increase its annual gross revenue by at least 10 percent or by more than \$50,000.

5. Any changes which the Commission makes to the illustrative format for the master document for the request of data do not apply to a master document for the request of data submitted by a public utility that provides telecommunication services within 90 days after the Commission approves the changes.

6. A small-scale provider of last resort ~~[that is not regulated as a competitive supplier]~~ which submits an application for a change of rate in accordance with NAC 703.27116 to 703.27146, inclusive, does not have to submit a master document as required by this section.

Sec. 7. NAC 703.27116 is hereby amended to read as follows:

703.27116 The provisions of NAC ~~[703.2501 to 703.2509, inclusive, and section 10 of LCB File No. R136-07, which was adopted by the Public Utilities Commission of Nevada and which was filed with the Secretary of State on January 30, 2008, and]~~ 703.27116 to 703.27146, inclusive, apply to small-scale providers of last resort ~~[]~~ *that are not competitive suppliers.*

Sec. 8. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 9 and 10 of this regulation.

Sec. 9. 1. *If a competitive supplier that is a provider of last resort seeks to permanently discontinue providing basic network service pursuant to paragraph (b) of subsection 2 of NRS*

704.68885, that competitive supplier must file an application with the Commission, except in cases where:

(a) The competitive supplier terminates basic network service to a customer on a particular property; and

(b) The termination is not intended to be a permanent termination for that particular property.

2. In addition to the general filing requirements set forth in NAC 703.530 to 703.577, inclusive, 703.610 and 703.615, an application must contain the following information:

(a) All the names under which the competitive supplier conducts business in this State;

(b) A complete description of:

(1) The competitive supplier's entire service area, if it seeks to discontinue basic network service throughout its entire service area;

(2) The portion of the competitive supplier's service area in which the competitive supplier seeks to discontinue basic network service, if it seeks to discontinue such service only in a portion of its service area; or

(3) A single development of a multitenant residential property, if the competitive supplier seeks to discontinue basic network service only at that single development;

(c) The number of current customers of basic network service and associated line counts, by customer class and exchange, in the area in which the competitive supplier seeks to discontinue the service;

(d) The type of facilities deployed by the competitive supplier to serve existing customers in each exchange for which service may be discontinued and whether such facilities will continue to be owned by the competitive supplier;

(e) The number of current customers of the competitive supplier who receive Lifeline service in the area in which the competitive supplier seeks to discontinue basic network service;

(f) Identification of any discontinuance, reduction or impairment of service applications pursuant to Federal Communications Commission rules which have been made or are anticipated by the competitive supplier;

(g) The competitive supplier's basis for discontinuing basic network service;

(h) A copy of the written notification provided or to be provided to all customers potentially affected by the discontinuation; and

(i) Any other information which will assist the Commission in evaluating whether it is in the public interest for the Commission to allow the competitive supplier to discontinue basic network service.

3. The notification described in paragraph (h) of subsection 2 must:

(a) Inform customers that the competitive supplier is seeking authorization from the Commission to discontinue basic network service;

(b) Be sent to customers not later than the first business day following the filing of the application, and the method of transmission must be by:

(1) United States mail, postage prepaid, to those customers who receive bills by United States mail; and

(2) United States mail or electronic mail to those customers who receive notification of bills by electronic means; and

(c) Contain identical information for each customer regardless of the method of transmission.

4. As used in this section, “single development of a multitenant residential property” means an apartment complex, condominium complex or residential subdivision.

Sec. 10. *1. If the Commission issues an order granting authorization to discontinue basic network service pursuant to section 9 of this regulation and paragraph (b) of subsection 2 of NRS 704.68885, the competitive supplier that is a provider of last resort may discontinue such service only to the extent specified in the Commission’s order.*

2. A competitive supplier that is a provider of last resort may discontinue basic network service not earlier than 30 days following the date of issuance of the order which grants authorization to discontinue basic network service.

Sec. 11. NAC 704.404 is hereby amended to read as follows:

704.404 The provisions of NAC 704.395 to 704.421, inclusive:

1. Apply to telephone service furnished to residential customers by a telecommunication provider which provides basic service.

2. Provide guidance to a small-scale provider of last resort *that is not a competitive supplier and* which provides service through less than 10,000 access lines regarding the scope and substance of the issues which must be addressed in the tariffs that must be filed with the Commission.

Sec. 12. NAC 704.4125 is hereby amended to read as follows:

704.4125 1. A bill for service issued by a utility is due:

(a) Upon deposit of the bill with the United States Postal Service for delivery to the customer by first-class mail; or

(b) In the case of delivery by other means, upon delivery of the bill to the billing address of the customer.

2. A customer may pay the bill:

(a) Unless there is reason to believe that he has defrauded, is defrauding or intends to defraud the utility, or other good cause exists, by depositing payment with the United States Postal Service for delivery to the utility by first-class mail;

(b) By making payment at the business office of the utility; or

(c) By making payment to any person authorized by the utility to accept payment.

3. Except as otherwise provided in this subsection, the date a bill is past due may not be earlier than 15 days after its issuance. If the last day for payment before the past due date falls on a Sunday, legal holiday or any other day on which the office of a utility used for the payment of bills is closed, the last day for payment is the next business day. Payment of a bill by first-class mail is timely if the payment is received by the utility not more than 3 days after the past due date.

4. A utility may charge a customer a fee, as set forth in its tariff, for:

(a) The return of an unpaid check.

(b) The late payment of a bill.

(c) The use of a credit card to make a payment to the utility ~~[-The utility]~~, *except a small-scale provider of last resort that is not a competitive supplier* shall not charge ~~[the]~~ a customer a fee for the use of a credit card to make a payment to the ~~[utility]~~ *small-scale provider of last resort that is not a competitive supplier* or enter into an agreement with a third-party credit card service which charges ~~[the]~~ a customer such a fee, unless the fee has been reviewed and approved by the Commission.

Sec. 13. NAC 704.6806 is hereby amended to read as follows:

704.6806 1. The provisions of NAC 704.6806 to 704.68076, inclusive, apply to any exchange of a small-scale provider of last resort that is not ~~[regulated as]~~ a competitive supplier.

2. The provisions of NAC 704.6806 to 704.68076, inclusive, do not apply to a competitive supplier.

Sec. 14. NAC 704.68085 is hereby amended to read as follows:

704.68085 1. The rates charged for intrastate interexchange toll service by a telecommunication provider ~~[that is not a competitive supplier]~~ must be geographically averaged throughout each LATA, or within such other smaller geographic area as the Commission deems appropriate to balance the interest of all customers and providers.

2. The rates charged for essential and discretionary services by a small-scale provider of last resort ~~[that is not regulated as a competitive supplier]~~ must be geographically averaged throughout the provider's service territory, or within such other smaller geographic area as the Commission deems appropriate to balance the interests of all customers and providers.

3. Any person may file an application with the Commission which requests that the rates charged for ~~[a]~~ intrastate interexchange toll service by a small-scale provider of last resort ~~[that is not regulated as a competitive supplier]~~ be geographically averaged pursuant to subsection 1 or 2 within a geographic area which is smaller than the LATA in which the service is provided.

4. The applicant has the burden of demonstrating that the request for the deviation balances the interest of all customers and providers, and will not, if approved, unfairly and unreasonably impede competition. The application must:

(a) Fully identify and describe the service, including all of the information set forth in subsection 1 of NAC 704.68062;

(b) Specify the rate for the service and provide all facts necessary to support the appropriateness of the proposed rates, including those facts enumerated in subsection 5; and

(c) Specify the relevant market area of the service, in terms of the specific geographic boundaries, for the proposed deviation.

5. To determine whether an application filed pursuant to subsection 3 should be approved the Commission will consider, in balancing the interests of all customers and providers:

(a) The cost of providing the service in the proposed smaller geographic area;

(b) The extent to which actual or potential competition, or both actual and potential competition, exists for the service in the proposed smaller geographic area, including the price charged by actual competitors or the price which may be charged by a potential competitor for the service; and

(c) Any other factors deemed to be relevant by the Commission.

6. The provisions of this section do not apply to a competitive supplier.

Sec. 15. NAC 704.7472 is hereby amended to read as follows:

704.7472 1. An application for a certificate of public convenience and necessity filed by a competitive supplier must contain all the following information, either in the application or as exhibits attached to it:

(a) The type of service, if any, presently being provided by the applicant, or being proposed to be provided by the applicant, and a general description of the service.

(b) The most recent annual financial statements of the applicant or, if annual financial statements are not available, financial statements of the most recent quarterly period.

(c) A copy of the certificate issued by the Secretary of State which acknowledges that the competitive supplier has filed its articles of incorporation with the Secretary of State.

(d) Proof that a performance bond has been obtained in an amount which is sufficient to cover deposits and advance payments paid by customers.

(e) The toll-free telephone number that the customers will be given for contacting the competitive supplier regarding the establishment of service, complaints, and queries about service and billing, and all other customer service matters.

(f) Facts sufficient to establish that the competitive supplier possesses the necessary technical capability to provide the proposed service.

(g) If the competitive supplier is doing business or intends to do business in this State under an assumed or fictitious name:

(1) A copy of each certificate that the competitive supplier has filed or intends to file pursuant to chapter 602 of NRS with the county clerk of each county in which the competitive supplier is doing business or intends to do business; or

(2) A statement that conforms to the requirements of NRS 602.020, if the competitive supplier is not otherwise subject to the provisions of chapter 602 of NRS.

(h) The areas to be served, including, without limitation, an identification of the certificated service areas served by a small-scale provider of last resort.

2. The provisions of NRS 704.330, 704.350 and 704.370 apply to any such application.

3. As used in this section, “advance payment” means the money paid by a customer to a competitive supplier for a service which the customer has not yet received, including payments for telecommunication debit card services.

Sec. 16. Section 10 of LCB File No. R136-07, which was adopted by the Public Utilities Commission of Nevada and which was filed with the Secretary of State on January 30, 2008, is hereby amended to read as follows:

Sec. 10. The provisions of NAC 703.2501 to 703.2509, inclusive, and section 10 of ~~this regulation,~~ *LCB File No. R136-07, which was adopted by the Public Utilities Commission of Nevada and filed with the Secretary of State on January 30, 2008*, apply to:

1. A general rate case application filed by a small-scale provider of last resort ~~that is~~ *not a competitive supplier*, except as otherwise provided in NAC 703.2501 to 703.2509, inclusive, and section 10 of ~~this regulation,~~ *LCB File No. R136-07, which was adopted by the Public Utilities Commission of Nevada and filed with the Secretary of State on January 30, 2008*; and

2. A general rate case application pursuant to subparagraph (2) of paragraph (b) of subsection 2 of NRS 704.68877 filed by a competitive supplier before January 1, 2012, to increase the rates or pricing of basic network services as set forth in the tariffs of the competitive supplier that were in effect on January 1, 2007.

Sec. 17. Section 48 of LCB File No. R136-07, which was adopted by the Public Utilities Commission of Nevada and which was filed with the Secretary of State on January 30, 2008, is hereby amended to read as follows:

Sec. 48. The provisions of NAC ~~704.4245~~ *704.4247* to 704.42478, inclusive, do not apply to a competitive supplier.

Sec. 18. Section 50 of LCB File No. R136-07, which was adopted by the Public Utilities Commission of Nevada and which was filed with the Secretary of State on January 30, 2008, is hereby amended to read as follows:

Sec. 50. 1. Except as otherwise provided in subsection 2, the provisions of NAC 704.689 to 704.6897, inclusive, apply ~~only~~ to small-scale providers of last resort ~~that are~~ *not competitive suppliers*.

2. The provisions of NAC 704.68906, 704.68913 and 704.6897 apply to competitive suppliers.

Sec. 19. NAC 704.4245 is hereby repealed.

TEXT OF REPEALED SECTION

704.4245 Limitations on ownership and control of certain information by provider of basic service.

1. Except as otherwise provided in subsection 2, a small-scale provider of last resort that is not a competitive supplier shall not own or control the content of the information traveling through its transmission lines.

2. The Commission will authorize a provider of basic network service to own or control the content of the information traveling through its transmission lines if the Commission determines, after a hearing, that the provider will not impede competition by its control of the local network.

3. A provider of basic network service may apply in writing to the Commission for permission to own or control the content of the information traveling through its transmission lines.

4. The Commission will act upon such an application within 90 days after it is filed unless a protest is received from:

- (a) The staff of the Commission;
- (b) A person given permission to intervene by the Commission; or

(c) The Bureau of Consumer Protection within the Office of the Attorney General.

↪ If such a protest is received, the Commission will act upon an application within 180 days after its receipt.

5. As used in this section, “own or control”:

(a) Includes any interest in the content of information which the provider has, or has caused to be, authored, produced, originated, collected, compiled, edited, categorized or indexed.

(b) Does not include an interest in information needed:

(1) To operate the telecommunications network.

(2) For services such as time information, weather information, the announcement of emergency information or directory assistance whereby a person obtains a telephone number and an address only.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R040-08

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. R040-08 which pertain to chapter 704 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

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

Copies of the proposed regulations, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail to persons who were known to have an interest in the subject of telecommunications as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Public Utilities Commission of Nevada ("PUCN"), <http://pucweb1.state.nv.us/PUCN/>, mailed to all county libraries in Nevada, published in the following newspapers:

Elko Daily Free Press
Las Vegas Review Journal
Nevada Appeal
Reno Gazette Journal
Tonopah Times-Bonanza

and posted at the following locations:

Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701

Public Utilities Commission
101 Convention Center Drive, Suite 250
Las Vegas, Nevada 89109

First Judicial District Court
885 East Musser Street
Carson City, Nevada 89701

Second Judicial District Court
75 Court Street
Reno, Nevada 89501

Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

The Phase III proposed regulations establish procedures for a competitive supplier who is a provider of last resort to change the boundaries of its service area and to discontinue basic network service. The proposed regulations also make other minor revisions to NAC Chapters 703 and 704 that were not included in Phase I.

Some participants were opposed to filing a map depicting the proposed changes to the boundaries of the current service area with contrasting colors used to show the current service area and the proposed changes to the current service area. Some participants proposed removing the term “business” from Section 9 concerning the discontinuance of basic network service furnished to residential customers. Other participants recommended that the Commission adopt regulations regarding the duplication of service in areas served by small scale providers of last resort.

A copy of the transcript of the proceedings is available for review at the PUCN’s website at <http://pucweb1.state.nv.us/PUCN> and at the offices of the PUCN, 1150 East William Street, Carson City, Nevada 89701 and 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

2. **The number of persons who:**
 - (a) **Attended each hearing:** May 23, 2008 - 16
 - (b) **Testified at each hearing:** May 23, 2008 - 8
 - (c) **Submitted to the agency written comments:** 13
3. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question #1.

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.**

The permanent regulations were adopted on June 4, 2008. They were revised to remove the requirement that the maps depicting the proposed boundary changes be in color, but rather the map will “distinguish between” the current boundary and the proposed changes. The revisions also remove the term “business” from Section 9 of the proposed regulation because basic network service is only a residential service. Lastly, the revisions adopt a new requirement for a competitive supplier to identify the areas to be served, including the certificated service areas served by a small-scale provider of last resort, in an application for a certificate of public convenience and necessity.

5. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
 - (a) **Both adverse and beneficial effects; and**
 - (b) **Both immediate and long-term effects.**

(a) Both adverse and beneficial effects:

The proposed regulations will have beneficial immediate and long-term economic effects on the businesses that they are to regulate and on the public by creating a regulatory scheme intended to promote more competition in the local telephone market. Many of the new or revised regulations may benefit the public and small businesses who are customers of telecommunication providers. For instance, they may see more competitive pricing and additional services being offered as a result of the competitive environment that A.B. 518 was meant to foster.

(b) Both immediate and long-term effects:

See Item # 5(a).

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

There is no additional cost to the agency for enforcement of these regulations.

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.

These regulations do not overlap or duplicate any federal, state, or local regulations.

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

N/A

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.

N/A

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The PUCN has determined that the proposed regulations do not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination, the PUCN adopted the findings of the Regulatory Operations Staff, which conducted a Delphi Method exercise to determine the impacts. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts.