

## Chapter 704 of NAC

### ADOPTED TEMPORARY REGULATION OF THE PUBLIC UTILITIES COMMISSION OF NEVADA

LCB File No. T004-16

(Filed with the Secretary of State on May 31, 2017)

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

**Section 1.** NAC 704.68044 is hereby amended to read as follows:

NAC 704.68044 Duties of Fund Administrator.

The Fund Administrator shall:

1. Conduct periodic audits of contributors to the fund to maintain the availability of telephone service to ensure that the correct payments are being remitted by persons providing intrastate telecommunication service or the functional equivalent of such service through any form of telephony technology, unless the levy and collection of an assessment with regard to a particular form of technology is prohibited by federal law.
2. Verify the qualifications of an applicant who requests support from the fund to maintain the availability of telephone service.
3. Collect assessments from all persons providing intrastate telecommunication service or the functional equivalent of such service through any form of telephony technology, unless the levy and collection of an assessment with regard to a particular form of technology is prohibited by federal law and deposit that money into the fund to maintain the availability of telephone service.
4. Disburse money from the fund to maintain the availability of telephone service to eligible telecommunications carriers who qualify for funding in accordance with NAC 704.6804 to 704.68056, inclusive ~~and~~; *Sections 2 to 3 and 5, of this Regulation, inclusive;* and with applicable orders of the Commission.
5. Prepare a quarterly report of all activities of the fund to maintain the availability of telephone service, including:
  - (a) The total quarterly and year-to-date payments into the fund to maintain the availability of telephone service from all persons who provide telecommunication service or the functional equivalent of such service through any form of telephony technology, unless the levy and collection of an assessment with regard to a particular form of technology is prohibited by federal law;
  - (b) An itemization of all disbursements from the fund to maintain the availability of telephone service to each qualified eligible telecommunications carrier; and
  - (c) The results of any audits of contributors conducted pursuant to subsection 1.
6. Prepare and submit a request to the Commission to collect money for and disburse money from the fund to maintain the availability of telephone service, which includes:
  - (a) The estimated amount of money required to support the fund to maintain the availability of telephone service for the following year; and
  - (b) The percentage rate which must be applied to the revenue sources identified in the list intrastate retail revenues derived from telecommunication service of all of the providers of

intrastate telecommunication service or the functional equivalent of such service through any form of telephony technology, unless the levy and collection of an assessment with regard to a particular form of technology is prohibited by federal law to raise the estimated amount of money required, as reported in paragraph (a).

**Section 2.** NAC 704.680465 is hereby amended to read as follows:

NAC 704.680465 Designation as eligible telecommunications carrier: Information to be filed with annual report.

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

**Section 3.** NAC 704.68048 is hereby amended to read as follows:

NAC 704.68048 Qualification of small-scale provider of last resort for disbursement from fund; disputes regarding qualification; required return on common equity; audit.

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

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

(b) Its monthly basic recurring flat rates for **residential and business** basic service must be reasonably comparable to rates charged for similar services in urban areas. ~~or the small-scale provider of last resort must agree to carry out a plan approved by the Commission designed to set those rates at levels reasonably comparable to rates charged for similar services in urban areas within the time specified by the Commission.~~ **A rate will be deemed reasonably comparable if it was established by the Commission in the small-scale provider of last resort's most recent general rate case, or it is equal to or higher than the residential basic rate floor established by the Federal Communications Commission. Small-scale providers of last resort may file to change their rates in accordance with NRS 704.100(1)(g) with the Commission by July 1 of the same year.**

**If a small-scale provider of last resort's rates do not equal or exceed the minimum threshold set forth in paragraph (b), the Commission will reduce the annual amount of money for which the small-scale provider of last resort would otherwise be authorized to receive by the difference between that amount and the amount of revenue the small-scale provider of last resort would receive if its rates met the minimum threshold set forth in paragraph (b).**

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

3. ~~If a~~ **A** small-scale provider of last resort of basic service ~~is qualified pursuant to this section to receive money from the fund to maintain the availability of telephone service, an opposing party who disputes that determination~~ has the burden of demonstrating that ~~the small-scale provider should not be allowed to receive money to support basic service rates~~ **circumstances exist which justify its eligibility to receive money from the fund to maintain the availability of telephone service.**

4. ~~{A small-scale provider of last resort who is qualified pursuant to this section to receive money from the fund to maintain the availability of telephone service shall calculate its overall rate of return by using the common return on equity as determined in NAC 703.27138 and the information relating to the overall rate of return which must be included in an application for a rate change filed pursuant to NAC 703.27132. To be eligible to receive money from the fund pursuant to this section, the level of earnings of the small-scale provider of last resort, as calculated pursuant to subsection 1 of NAC 704.68056, must be below the rate of return authorized for the small-scale provider by the Commission.}~~ *A small-scale provider of last resort's request for monetary support for rural, insular, or high-cost areas pursuant to NAC 704.68043(3) from the fund to maintain the availability of telephone service, which was not subject to the disbursement calculation for 2016 funding, must be made as a component of a general rate case filed pursuant to NRS 704.110. Pursuant to such a request, the Commission will determine whether the small-scale provider of last resort is qualified to receive monetary support from the fund to maintain the availability of telephone service, and if qualified, the annual amount of support to be provided. In determining the annual amount of support, the Commission shall not include any amount of support to compensate for reductions in Federal Universal Service support resulting from a failure to meet build-out commitments under Federal Communications Commission rules or regulations. The small-scale provider of last resort shall receive the amount of approved annual monetary support for a period of five years, except as provided in Subsection 5 of this Section, subject to the provisions of NAC 704.68056. Except as provided in Subsection 5 of this Section, requests for support for rural, insular, or high-cost areas pursuant to NAC 704.68043(3) from the fund to maintain the availability of telephone service after the fifth year of eligibility must be made as part of a general rate case application filed pursuant to NRS 704.110.*

5. *A small-scale provider of last resort may seek a waiver of up to two years of the requirement to file a general rate case to receive subsequent monetary support for rural, insular, or high-cost areas pursuant to NAC 704.68043(3) from the fund to maintain the availability of telephone service by filing a petition with the Commission. The small-scale provider of last resort must demonstrate that the waiver is in the public interest and that the small-scale provider of last resort is not earning more than its authorized rate of return. The small-scale provider of last resort shall include in its petition the following information to be used in determining whether it is collecting excess earnings: annual operating revenue, expense, and rate base data as provided in its most recent annual report filed with the Commission pursuant to NRS 704.035; adjustments to reflect applicable Commission determinations in the small-scale provider of last resort's last general rate case; the rate of return on rate base utilizing the most recent return on equity filed by the staff of the Commission pursuant to NAC 703.27138; and the intrastate portion of the annual federal Universal Service Fund support amount for a small-scale provider of last resort that receives federal support under the Connect America Cost Model or the most recent estimated intrastate portion of federal support for the current year for a small-scale provider of last resort that receives federal support under the High Cost Loop Support method. Starting with requests for 2018 funding disbursements and until the small-scale provider of last resort's next rate case, the intrastate portion of federal funding under the Connect America Fund Cost Model shall be computed by multiplying the small-scale provider of last resort's Connect America Fund Cost Model funding by the ratio of High Cost Loop Support to the combined total of High cost Loop Support and Interstate Common Line Support used to compute the 2016 disbursement*

*amount for rural, insular, or high-cost areas pursuant to NAC 704.68043(3). In a rate case, the intrastate component of Connect America Fund Cost Model funding shall be determined and applied to disbursement calculations under NAC 704.68043(3) until the small-scale provider of last resort's next rate case.*

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

**Section 4.** NAC 704.68054 is hereby amended to read as follows:

NAC 704.68054 Assessment for support of fund.

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

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

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

**Section 5.** NAC 704.68056 is hereby amended to read as follows:

NAC 704.68056 Procedure for disbursement from fund; report of Fund Administrator regarding assessment for fund; deviation from or waiver of deadlines for filings.

1. ~~Upon its initial request for money from the fund to maintain the availability of telephone service, and once every 4 years thereafter, a small-scale provider of last resort shall submit sufficient information to demonstrate its level of earnings pursuant to NAC 703.27116 to 703.27146, inclusive, as appropriate.~~ *A small-scale provider of last resort that receives federal Universal Service Fund support under the Connect America Cost Model shall receive the Commission-approved annual amount of monetary support for rural, insular, or high-cost areas pursuant to NAC 704.68043(3) determined in the last general rate case or its disbursement application approved for 2018 funding, whichever is most current, for a period of five years except to the extent a waiver is granted pursuant to Section 3(5). In order to confirm its intent to receive the approved annual amount of monetary support, a small-scale provider of last resort shall submit a letter to the Fund Administrator and the staff of the Commission no later than June 1 of each year prior to the year for which it is eligible to receive monetary support confirming its intent to receive such support and referring to the Commission order approving the amount of support and the duration of such support.*

2. *A small-scale provider of last resort that receives federal Universal Service Support under the High Cost Loop Support mechanism must submit an initial request for disbursement with the Fund Administrator and the staff of the Commission not later than June 1 of the year prior to the calendar year for which monetary support will be disbursed. The initial request must include the small-scale provider of last resort's initial estimate of the adjusted amount of support it will request for the upcoming calendar year considering the estimated amount of Federal High Cost Loop Support for intrastate operations it expects to*

*receive for the upcoming calendar year and financial data supporting the revenue requirement approved in its last general rate case or in the disbursement application approved for 2016 funding, whichever is most current. The small-scale provider of last resort must subsequently file an adjustment application with the Commission not later than October 15 of the year prior to the calendar year for which monetary support will be disbursed. The small-scale provider of last resort shall include in its application the most recent estimated amount of Federal High Cost Loop Support for intrastate operations it expects to receive for the upcoming calendar year and financial data supporting the revenue requirement approved in its last general rate case or in the disbursement application approved for 2016 funding, whichever is most current. The small-scale provider of last resort must also send the filing to the Fund Administrator at the same time it makes the filing with the Commission. The staff of the Commission shall verify that the adjusted disbursement amount requested by the small-scale provider of last resort is consistent with any difference between the most recent estimated amount of federal intrastate High Cost Loop Support funding in provided in the application and the amount projected in the small-scale provider of last resort's last general rate case and that the adjusted disbursement amount is consistent with any applicable Commission-ordered financial adjustments in the small-scale provider's last general rate case. The staff of the Commission shall provide its analysis to the Commission within 30 days of receipt of the Application.*

~~2~~ 3. A provider of telecommunication service does not have to submit information on its earnings or rates if:

(a) The provider is a competitive supplier;

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

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

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

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

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

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

7. The Commission may grant a deviation or waiver from the deadlines for the filings pursuant to NAC 704.6804 to 704.68056, inclusive, to the extent it determines that the deviation or waiver is in the public interest.