

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS-NAC 408
Informational Statement
LCB File No. R155-18

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 408

1. A clear and concise explanation of the need for the adopted regulation.

A Regulation relating to statewide telecommunications; setting forth requirements for certain agreements between a telecommunications provider and the Department of Transportation regarding access to certain rights-of-way; setting forth requirements for compensation between a telecommunications provider and the Department for such access; and providing other matters properly relating thereto. This regulation is needed to propagate, through public-private partnerships, increased broadband connectivity in rural and underserved areas of the state. This connectivity will provide benefits to education, telemedicine, public and traveler information, rural tourism, and job growth.

2. 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.

(a) Copies of the proposed regulation, notice of intent to act upon a regulation and notice of workshop and hearing were sent by US mail email / email to persons who were known to have an interest in the subjects of noticing, or who specifically requested said noticing and information. These documents were made available at the website of the Nevada Department of Transportation, www.nevadadot.com/pubinvolvement/meetings/ In addition, copies of these notices and proposed regulations were posted at the offices of the Nevada Department of Transportation as follows:

Nevada Department of Transportation
District I Office,
123 E. Washington Ave,
Las Vegas, NV 89125,

Nevada Department of Transportation
District II Office,
310 Galletti Way,
Sparks, NV 89431

Nevada Department of Transportation
District III Office,
1951 Idaho St.
Elko, NV 89801

Nevada Department of Transportation,
Headquarters
1263 S. Stewart Street,
Carson City, NV 89712

Nevada Department of Transportation,
Tonopah Maintenance Station,
805 Erie Main,
Tonopah, NV 89049

Nevada Department of Transportation,
Winnemucca Maintenance Station
725 West 4th St.
Winnemucca, NV 89446

Nevada Department of Transportation,
Ely Maintenance Station
1401 Ave. F
Ely, NV 89301

Also posted at the following locations:

Washoe County Courthouse
75 Court St.
Reno, NV 89520

Clark County Courthouse
200 South Third St.
Las Vegas, NV 89155

Grant Sawyer State Office Building
555 E. Washington Ave.
Las Vegas, NV 89101

Nevada State Library
100 S. Stewart St.
Carson City, NV 89712

A Workshop was held in Nevada on: October 25, 2018 in Carson City with video-conferencing to Elko and Las Vegas (persons were present at all sites). A Hearing was held in Nevada on November 28, 2018 in Carson City, with video-conferencing to Las Vegas (persons were present at all sites).

Public Comment

- a. On October 25, 2018, public comments were heard in Carson City NV during the Workshop.

i. Commenter asked the following questions:

1. “The agreement as you are describing it here, will this be an online process that providers will access through the State website, or is this envisioned to be a manual paper process?”

Answer from NDOT:

“At this point it will be a manual process, we will negotiate, discuss the potential with you, draw documents on our side and discuss those options, then enter into an agreement.”

2. “So my second question which dovetails into that is obviously these are the processes and procedures that you are trying to define for the agreement, but the agreement itself, will we have an opportunity as providers to have input to what that agreement looks like? And I say this as like the FCC, for instance, has many forms that we fill out for them, and they always have a period where there is change where we have an opportunity to get some type of input so that the agreement itself structurally is as appropriate as it can be initially.”

Answer from NDOT:

“We will sit down and discuss any verbiage that you wanted inserted there, we would be negotiating that with you during the contract draw-up process. As far as your contacts during that process, that’s going to be myself primarily, and also it will be in the slide a little later, but my manager is an available contact to get that process started”.

Expanded answers from NDOT:

“For the agreement we have developed a shell in conjunction with the department’s agreement services section, as well as the Attorney General. So, we have developed a sort of starting point, and when a company wants to discuss some kind of opportunities for sharing or trading, we can. And we can actually share that agreement, that shell agreement, and then it’s on a case-by-case basis discussing what the nature of that trade is, what those exchanges might be, and then adjusting it accordingly. We do have some limitations on some of the standard language that needs to be included from the Department’s perspective, but overall, it’s a shell that can effectively accommodate the specifics of each individual’s situation. And I would envision depending on who is interested in working with us, these kinds of discussions can begin with in-person meetings certainly, it can be over the telephone, and the process of finalizing the agreement can happen electronically through email and sending it back and forth, DocuSign and all those sorts of things. When it comes time for the encroachment permit, the Department has an established encroachment permit process, so we would be following that process with each of these Districts in the State once the agreement is in place, and the encroachment permit can begin.”

“Just to add to the first part of your question, we do envision a portion of NDOT’s website dedicated to this infrastructure sharing process with all the documents listed, reservation forms, agreement shells, and expand that as we get further into the program. Maybe some mapping of areas of interest to ours or areas where we do have spare facilities as well.”

ii. Commenter asked the following questions:

1. “So, under number 4 where you are saying the agreement may be terminated by either party not less than 30 days, does that mean we can ask for more than a 30-day termination right per agreement?”

Answer from NDOT:

“Yes, just not less than 30 days on the notice”

2. “But that would be negotiable at that time?”

Answer from NDOT:

“Yes”

iii. Commenter asked the following questions:

1. “Do you have a dig once-every-five-year policy?”

Answer from NDOT:

“Yes, that is our preference”.

iv. Commenter asked the following questions:

1. “As far as the fees, is this going to be an ongoing like recurring fee, or is it going to be a lump sum fee, or can it be both? I guess I’m just concerned about entering into a contract where the costs are unknown”.

Answer from NDOT:

“The fees will be known when the agreement is negotiated and then executed. The costs and the fees will be outlined and specified within that agreement. So, the terms of the agreement will be identified up front before whatever party enters into that agreement. So, you will know what the costs are. The way this program is set up, it can be, they could be paid at once in advance, or they can be paid on an annual basis. We haven’t got to this part yet, but there’s a component of this effort that allows for balance sheets, and so what could happen is we could engage in an agreement with a telecommunications provider, and that would be, then it could be that that firm owed us, you know, the trade value that was identified was a million dollars, and so we would put that on the books, and then we would move along. And then later on perhaps the Department wanted to partner with that firm, and we would say well, we would like to do ‘X’. We would agree upon a value, enter into an agreement, and then that value could be subtracted from that balance. And later on in the regulations, it talks about truing up every so often and those kinds of things. But it would be flexible. To answer your question, there could be some flexibility. It could be paid annually, the cost for the entire term of the agreement could be paid up front, and those details would be identified and agreed upon at the outset of the agreement.

2. “I guess one of the questions I have is when it relates to the term, is it like a three-year term, five-year term? Because typically when we put fiber in, we are concerned, you know, we put it in, and once we put it in, the costs are all paid for. So, if we have this ongoing cost, and we are worried about NDOT changing the terms on us every year, how are we protected from things like that?”

Answer from NDOT:

“The regulation states, and we will get to that later on, that these agreements can be for a maximum of 30 years. So, we would look at entering into a long-term agreement of that nature, and the specific amount of years associated with that agreement would be negotiated with the telecommunications provider at that time. So, I think that addresses your concern, I hope it does.”

v. Commenter asked the following question:

1. “Do we need to include ‘community antenna television company’ sometimes and not other times I guess is what I’m saying? For uniformity can that be wrapped up in the telecommunications definition earlier on in the NAC just for uniformity?”

Answer from NDOT:

“We have been working with the LCB to develop these regulation changes. They are the ones who look at the existing regulations and determine what needs to be added or changed. We can certainly bring that question up with LCB, and they can give us an answer. I suspect it’s defined. It’s based on what was previously in the regs and what is already defined in certain areas, but it’s worth double checking.”

vi.: Commenter asked the following question:

1. “In your original graph you extended the comment period beyond the hearing date of November 1 to November 9. Are you extending that comment period beyond the November 28 adjusted hearing?”

Answer from NDOT:

“No. The comments are due by November 27 in order to incorporate them at the hearing, which will be the final hearing. So, November 27 will be the last, the last comments that we will accept and then incorporate it into the hearing. And the posting of the hearing notice will be on Monday to start the 30-day notice period as required.”

Public Comment

(b) On November 28, 2018, public comments were heard in Carson City NV during the Public Hearing.

i. Commenter asked the following question:

1. “I just have one question, are the regulations that are here the same as the ones that were at the Workshop?”

Answer from NDOT:

“Yes, yes they are.”

NOTE: All commentary from previous Workshop conducted on 10/25/18 was reviewed once again during the Hearing on 11/28/18. The following was an answer to the last question posed at the Workshop on 10/25/18 which was “Do we need to include ‘community antenna television company’ sometimes and not other times I guess is what I’m saying? For uniformity can that be wrapped up in the telecommunications definition earlier on in the NAC just for uniformity?”

NDOT Answer at time of Workshop on October 25, 2018:

“We have been working with the LCB to develop these regulation changes. They are the ones who look at the existing regulations and determine what needs to be added or changed. We can certainly bring that question up with LCB, and they can give us an answer. I suspect it’s defined. It’s based on what was previously in the regs and what is already defined in certain areas, but it’s worth double checking.”

NDOT follow up answer on November 28, 2018 at Public Hearing:

“The follow up associated with this question has since been verified, and the language is appropriate as is.”

3. The number of persons who:

Attended each hearing/workshop:

- a. October 25, 2018 - 8 attendees from the public in Carson City, 1 attendee from the public in Elko, 5 attendees from the public in Las Vegas; 8 attendees from NDOT.
- b. November 28, 2018 – 4 attendees from the public in Carson City, 3 attendees from the public in Las Vegas, 5 attendees from NDOT.

Testified at each hearing/workshop:

- a. October 25, 2018, 4 attendees
- b. November 28, 2018, 1 attendee

Submitted to agency written comments:

- a. November 27, 2018

Letter received from John R. Visconi on behalf of Verizon NorCal Small Cell Strategy Division. This letter contained suggested adjustments to proposed regulations. It contained language that was specific to the deployment of small cell technology and cited FCC order pertaining to fees deemed to be reasonable for small cell facilities located in the right-of-way.

Response from NDOT:

We held a conference call with the relevant Verizon contacts on December 4, 2018, and also a subsequent meeting with their representatives in Carson City to discuss possible infrastructure sharing options on Monday, January 14 2018. During these meetings we relayed that our proposed regulations pertained to the subject of infrastructure sharing, and not specifically to small cell wireless technology. The adjustments to the language were not necessary, and costs/fees and other details would be negotiated during any agreement process.

4. For each person identified in preceding item number 3, the following information was provided to NDOT at workshops / hearings:

(a) October 25, 2018 Workshop – Names of public speaking attendees:

- i. Mike Eifert, Telecommunications Association - P.O. Box 34449, Reno, NV 89533, 775-827-0191 Nevada
- ii. Danna Diamond, Verizon – 295 Parkshore Dr., Folsom CA 916-628-3071
- iii. Brad Lyon, MVT – 1120 N. Moapa Valley Blvd., 702-397-2117
- iv. Kevin Maxwell, NDOT Old Hot Springs Rd, Carson City 775-888-7087

Name of public attendees:

- i. Cameron Francis – 2000 Sunset Rd., Lake Point UT 84074 435-837-6000
- ii. Wayne Pustovh – CC Communications 775-423-7171

- iii. Hans Meyer – City of Reno 1 E. 1st St, Reno, NV 775-334-3333
- iv. Ken Adams – 505 E King St 775-684-5806
- v. David Collier – AT&T – 5250 S. Virginia St, Reno, NV
- vi. Linda Stinar – Centurylink – 6700 Via Austi Pkwy, Las Vegas, NV 89119 702-244-7318
- vii. Anne Milkovich / NSHE 4505 S. Maryland Pkwy 702-720-3313
- viii. Tom Nieva 4505 S. Maryland Pkwy 702-720-3303
- ix. Cindi Chang NOE 702-486-7952

(b) November 28, 2018 Hearing – Names of public speaking attendees:

- i. David Collier AT&T 5250 S Virginia St, Reno NV 775-333-3986

Name of public attendees:

- i. Joel Kaufmann 775-790-1631
- ii. Brian Reed 775-722-8716
- iii. Shelly Capurro - Kaempfer Crowell 775-722-1986
- iv. Tanya Friese - Crown Castle 602-677-0957 tanya.friese@crowncastle.com
- v. Mark Morris – Crown Castle 602-722-4707 mark.morris@crowncastle.com
- vi. Misty Grimmer – Cox – 1021 Hassett Ave, LV NV misty@theterrargroup.com

5. 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.

This regulation has no required effect on businesses as participation is optional, however NDOT sent mailers and emails to potential telecommunications provider/partners, answered any questions at the workshop and hearings, and provided options to obtain copies of all related materials and transcripts via email or telephone contact requests, or with copies provided at the workshop/hearing. The attendance was minimal but included several members of the target industry audience. There were no written responses received and all verbal responses were positive, showing interest in the program and inquiring about guidelines for participation. No further requests for copies of the materials have been received up to this point but will be made available upon request. This was indicated in the information packets provided at the Workshop and Hearing, on the notices posted at State facilities, and those that were mailed out.

6. 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 regulations were adopted by NDOT as originally written, no changes were necessary as they applied simply to defining the methodology to be employed while interfacing with the private sector for the purpose of developing partnership agreements involving infrastructure-sharing opportunities, which present mutually beneficial options for both the public and private sectors.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

Adverse and beneficial effects:

Businesses – There is no anticipated adverse effect on telecommunications firms in Nevada. There is however the potential for benefit to private sector businesses with respect to potentially reducing costs normally incurred in the expansion of their respective operations, along with additional opportunities to grow their customer bases.

Public – There will be no adverse effect on the State, due to the fact that we will only enter into agreements which benefit the public good, those benefits potentially coming in the form of reduced or eliminated costs for expansion of public safety, improvements via upgraded technology at less or possibly no cost, and in general the possibilities for expansion of broadband into rural areas of the State currently underserved, or perhaps not served at all.

Immediate and long-term effects –

Businesses - Immediate effect for business is a new avenue becoming available for expanding their facility presence. Long term effect is just as promising throughout different areas of the State.

Public – Immediate effect for the State would be perhaps some marginally increased costs associated with placement of some additional infrastructure during planned construction projects for the purposes of providing facilities available for trade agreements, but these costs are likely to be offset by the potential for trade agreements with existing infrastructure or via savings realized on joint-construction agreements. Long-term effect is the potential for significant cost savings to the State over many years as has been realized in other States operating infrastructure sharing programs.

8. The estimated cost to the agency for enforcement of the proposed regulation.

There is no expected additional expense associated with managing this program or the associated regulations, as agreements are voluntarily entered into, and managed by existing personnel. If the program becomes successful and grows considerably statewide, there could potentially be a need to increase personnel associated with managing the program, but these costs would by that point be offset in realized financial benefits resulting from infrastructure-sharing agreements.

9. A description of any regulation of other State or governmental agencies which the regulation overlaps or duplicates, and statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the federal agency.

The regulation does not overlap or duplicate any existing State or governmental agency regulations. In addition, the same applies to any federal agency regulations, this regulation is specific to infrastructure-sharing within NDOT right-of-way.

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

This regulation does not include provisions more stringent than current federal guidelines, in fact it is in line with current FCC regulations encouraging telecommunications infrastructure

sharing for the purpose of broadband expansion in rural areas, competitive safeguards, and cost savings.

11. 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.

There are no new fees associated with this regulation, and no increase to any existing fees. The program regulation simply provides for reciprocal compensation associated with in-kind infrastructure trading.

12. If the proposed regulation is likely to impose a direct and significant 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 small business?

The regulation does not negatively impact small business. Participation in the associated program is entirely voluntary, competitively neutral and non-discriminatory.