

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

LCB File No. R186-97

December 16, 1997

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

AUTHORITY: §§1-5, NRS 703.150; §§6-12, NRS 704.210.

Section 1. Chapter 703 of NAC is hereby amended by adding thereto a new section to read as follows:

The commission will grant or deny, in whole or in part, an application filed pursuant to NAC 703.430 to 703.443, inclusive, within 120 days after the date on which the application is filed.

Sec. 2. NAC 703.115 is hereby amended to read as follows:

703.115 The commission will and presiding officer shall [permit] *allow* deviation from the provisions of this chapter if:

1. The deviation would not adversely affect the substantial interests of the parties; [and]
2. Good cause for the deviation appears [.] ; *and*
3. *The person requesting the deviation provides a specific reference to each provision of this chapter from which deviation is requested.*

Sec. 3. NAC 703.430 is hereby amended to read as follows:

703.430 The provisions of NAC 703.430 to 703.440, inclusive, *and section 1 of this regulation*, apply to an application filed by a privately owned public utility organized under the

laws of, and operating in the state, for an order by the commission authorizing the issuance of a security, as defined in NRS 704.322, or the assumption of an obligation as a guarantor, endorser, surety or otherwise, with respect to any security of any other person, firm or corporation.

Sec. 4. NAC 703.540 is hereby amended to read as follows:

703.540 1. A pleading praying for affirmative relief, other than an application, motion, answer or complaint, must be styled a “petition.”

2. If the subject of any desired relief is not readily apparent or specifically covered by the provisions of this chapter, a petition seeking that relief and stating the reasons relied upon may be filed. The petition will be handled in the same manner as other petitions.

3. If the commission does not grant, deny or set a petition for further proceedings within [90] 60 days after the date on which the petition is received by the commission, the petition shall be deemed denied.

4. If the commission sets a petition for further proceedings, the commission will grant or deny the petition within 120 days after the date on which the commission set the petition for further proceedings.

Sec. 5. NAC 703.555 is hereby amended to read as follows:

703.555 1. Any party of record against whom a motion is directed may file a response to the motion. A response must be in writing unless made during a hearing. If made during a hearing, a response may be written or oral.

2. A [written] response *that is required to be in writing pursuant to subsection 1* must be:

(a) Served upon each party of record.

(b) Filed with the commission no later than 7 days after receipt of service of the motion, unless otherwise directed by the presiding officer.

3. *A party of record who:*

(a) *Directs a motion against another party of record; and*

(b) *Receives a response to that motion pursuant to subsection 1,*

may file a reply to the response. A reply filed pursuant to this subsection must be in writing unless made during a hearing. If made during a hearing, a reply may be written or oral. If a party to whom this subsection applies decides not to file a reply to the response, that party shall notify the commission of the decision so that the commission may decide the motion on the basis of the pleadings which have already been filed.

4. *A reply that is required to be in writing pursuant to subsection 3 must be:*

(a) *Served upon each party of record.*

(b) *Filed with the commission no later than 7 days after receipt of service of the response, unless otherwise directed by the presiding officer.*

5. *If a party of record files a reply to a response pursuant to subsection 3, the commission will consider only those portions of the reply that address directly matters set forth in the response.*

Sec. 6. NAC 704.68062 is hereby amended to read as follows:

704.68062 1. Any person may [apply to] *request that* the commission [to] classify a new service or [to] classify or reclassify an existing service, *which is* provided by a provider of last resort of basic service, as essential, discretionary, competitive, or deregulated. *Such a request must be filed with the commission in the form of an application or a letter of advice.* The service to be classified or reclassified must be provided in a market whose size is no smaller than a wire center, and no larger than the entire area of service of the provider. The [applicant] *requester* has the burden of demonstrating that the classification or reclassification will not unfairly or

unreasonably impede competition. Except as otherwise provided in subsection 2, the

[application] request must:

(a) Fully identify and describe the service proposed to be classified or reclassified, including , *without limitation*, the:

(1) Technical and common names of the service;

(2) Number of units of the service currently provided within the market for which classification or reclassification is sought;

(3) Facilities and equipment used in providing the service;

(4) Nature and extent of the market in which the service is or will be provided, including , *without limitation*, the type of subscribers for that service, the source of revenues for that service and the geographic regions in which the service is or will be provided; and

(5) Current price which a subscriber is charged for that service.

(b) Specify the proposed classification of the service and provide all facts necessary to support that classification including , *without limitation*, facts to support the findings required in NAC 704.68068 to 704.68076, inclusive, as appropriate.

(c) Specify the specific market area for which the classification or reclassification is being sought.

(d) Specify a method of accounting for the service to be classified or reclassified which satisfies the requirements of NAC 704.68492 for large providers of last resort of basic service or NAC 704.68066 for small providers of last resort of basic service, as appropriate.

(e) For a service proposed to be reclassified as competitive or discretionary which does not include a component classified, or proposed to be classified as an essential service, provide an

analysis which demonstrates that the price which the reclassified service will recover is equal to or greater than the total service long-run incremental cost associated with that service.

(f) If the [application] *request* proposes to reclassify a service as a competitive or discretionary service that includes a component classified, or proposed to be classified, as an essential service, provide information sufficient to demonstrate that the price for the service covers the combined tariffed rates for all components of the service classified, or proposed to be classified, as an essential service plus the total service long-run incremental cost of those components which are not classified, or proposed to be classified, as an essential service. If there is a substantial difference in cost between providing a component of essential service to a competitor and providing the same component to itself, the provider may, upon the approval of the commission, impute the cost of providing that essential service to itself to reflect the difference in cost. The provider may make such an imputation upon a clear and convincing demonstration to the commission:

- (1) Of the existence and substantiality of the difference in cost;
- (2) That the difference in cost is not the result of discriminatory and preferential treatment in the design of its network for the provision of essential service components; and
- (3) That the imputation of the cost will not unfairly or unreasonably impede competition.

(g) If the [application] *request* proposes to classify a service as a discretionary service, show that the cost which is incurred directly and indirectly from the provision of each unit of that service, including , *without limitation*, the price of components for essential services as described in paragraph (f) of this subsection, where appropriate, have been used to establish the minimum price which must be charged for each unit of service.

(h) If the [application] request proposes to classify a service as a competitive or deregulated service, include a plan which sets forth the procedures which the provider will use for the protection, use, sharing, and issuance of information regarding its competitors and customers and the services they request or receive. The procedures must include:

(1) The terms and conditions governing access by the provider and other persons to that information if the information is used to promote or provide competitive services; and

(2) The manner in which the provider will obtain authorization from the customer to release the information.

(i) If the [application] request proposes to classify a service as a deregulated service, include the information and documentation which must be filed with the annual report pursuant to subsection 1 of NAC 704.68078.

(j) If the [application] request proposes to classify a service as a discretionary or competitive service, include the information and documentation which must be filed pursuant to subsection 2 of NAC 704.68078 if the provider is a large provider of last resort of basic service with 50,000 or more access lines, or pursuant to NAC 704.68072 if the provider is a large provider of last resort of basic service with less than 50,000 access lines or a small provider of last resort of basic service.

(k) Include plans which set forth safeguards to ensure that the provider will not unfairly or unreasonably impede competition.

(l) If the [application] request proposes to classify a service as a discretionary service, specify the proposed minimum and maximum rates to be charged if the [application] request to classify the service as discretionary is approved.

2. [An application] *A request* to classify a service that is filed by a person other than the provider of the service is exempt from the requirements set forth in paragraphs (d) to (k), inclusive, of subsection 1.

3. As used in this section [, “wire”] :

(a) *“Letter of advice” means the document that is required to accompany a tariff sheet transmitted to the commission pursuant to NAC 703.390.*

(b) *“Wire center” means the geographic area encompassing all customers who may be served from a building which contains one or more central offices of a provider of last resort of basic service. A wire center is part of an exchange.*

Sec. 7. NAC 704.68064 is hereby amended to read as follows:

704.68064 *1.* The commission will act upon [an application] *a request* filed pursuant to NAC 704.68062 within 90 days after it is filed unless a protest is received from:

[1.] (a) The staff of the commission;

[2.] (b) A person given permission to intervene by the commission;

[3.] (c) The advocate for customers of public utilities; or

[4.] (d) The provider of last resort of basic service who is providing the service to be classified or reclassified.

If a protest is filed, the commission will act upon [an application] *a request* within 180 days after the date on which the [application] *request* is filed.

2. A protest must be filed on or before the deadline for the filing of protests that is set forth in the notice required to be published pursuant to NAC 703.160.

Sec. 8. NAC 704.6807 is hereby amended to read as follows:

704.6807 1. [An applicant] *A person* who requests *that* the commission [to] classify a service as competitive shall file the following information:

(a) The number of alternative providers of the service, or a comparable service, available in the relevant geographic market;

(b) The percentage of the households or businesses, or both, in the relevant geographic market which have the service, or a comparable service, available from alternative providers; and

(c) The percentage of the market share of the relevant geographic market held by alternative providers of the service and comparable services.

2. To determine if a service may be classified as competitive, the commission will consider the following factors:

(a) Whether a comparable service is available;

(b) Whether subscribers of the service to be classified as deregulated may reasonably obtain that service from a provider other than a regulated provider of the service;

(c) The ability of the regulated provider to determine or control the price of the service;

(d) The prices, terms, conditions, and availability of similar competitive and alternative services;

(e) The need for approval by the commission of the price of the service to be classified as deregulated;

(f) The ability of other providers of the service to enter the market to provide the service;

(g) The likelihood that other providers of the service will enter the market;

(h) The suitability of substituting a comparable service for the service to be classified as deregulated;

(i) The share of the market for the service held by competitors providing alternative services;

(j) The extent of the entry into the market by providers of alternative or competitive services;

(k) The extent to which competition exists in the geographic area for which a certificate of public convenience and necessity is issued to a provider to provide the service;

(l) Whether the service is reasonably necessary to the operations of a subscriber to the service; and

(m) Any other factors considered to be relevant by the commission.

3. In making a determination, it is not necessary for the commission to find in favor of a party on a majority of the factors set forth in subsection 2, except that the commission will classify a service as competitive if:

(a) The service, or a comparable service, is available from at least two alternative providers in the relevant geographic market;

(b) The service, or a comparable service, is available from alternative providers to more than 50 percent of the households or businesses, or both, in the relevant geographic market; and

(c) All alternative providers of the service and comparable services have a market share of the relevant geographic market of 15 percent or more if the relevant geographic market is an exchange or larger, or a market share of the relevant geographic market of 30 percent or more if the relevant geographic market is smaller than an exchange.

4. For the purposes of this section, the commission will determine a market share by using one of the following measurements, as deemed appropriate by the commission:

(a) The number of households or businesses, or both, in a relevant geographic market supplied with a service by a provider will be divided by the total number of households or

businesses, or both, in the same relevant geographic market supplied with the service and all comparable services by all providers; or

(b) The number of units of the service supplied to households or businesses, or both, in a relevant geographic market by a provider will be divided by the total number of units of the service and all comparable services supplied to households or businesses, or both, in the same relevant geographic market by all providers of these services.

5. As used in this section:

(a) “Alternative provider” means an entity that is not affiliated with or under the common control with another alternative provider or with a provider of last resort. As used in this paragraph, “affiliation” and “control” have the meaning ascribed to them in 47 C.F.R. Part 32.9000, as that section exists on October 25, 1995.

(b) “Relevant geographic market” means the geographic area for which the classification of a service as competitive is sought pursuant to NAC 704.68062.

Sec. 9. NAC 704.68072 is hereby amended to read as follows:

704.68072 1. If a small provider of last resort of basic service, or a large provider of last resort of basic service with less than 50,000 access lines regulated pursuant to NAC 703.2501 to 703.2688, inclusive, 703.2691 and 703.2711, [applies to have] *requests that* a service *be* classified as discretionary or competitive, the commission may, in lieu of the factors specified in NAC 704.68068 and 704.6807, consider whether a comparable service offered by another provider of last resort of basic service has been classified as discretionary or competitive. If the [applicant] *requester* can demonstrate that a comparable service provided by a provider of last resort of basic service has been classified as discretionary or competitive, and that it is reasonable to apply that classification to service provided by the [applicant,] *requester*, the

requested classification may be authorized. The [applicant] *requester* has the burden of demonstrating that the classification will not unfairly or unreasonably impede competition.

2. A small provider of last resort of basic service and a large provider of last resort of basic service with less than 50,000 access lines regulated pursuant to NAC 703.2501 to 703.2688, inclusive, 703.2691 and 703.2711 shall include in its regulated results of operation:

(a) All revenues and costs associated with services related to inside wiring pursuant to NAC 704.681 to 704.683, inclusive, and yellow pages; and

(b) All revenues and cost associated with services classified as discretionary or competitive pursuant to this section.

Sec. 10. NAC 704.68074 is hereby amended to read as follows:

704.68074 A service will be classified as a deregulated service if the commission finds that the provider has complied with NAC 704.68492, and that:

1. Regulation of the service by the commission has been preempted by state or federal law or regulation; or

2. The commission finds through a hearing that classification of the service as deregulated is appropriate. Such a finding will be based on the information filed pursuant to NAC 704.6807, and any other factors which the commission determines to be relevant. The commission will hold a hearing to determine if a service should be classified as deregulated in accordance with this subsection upon the [application] *request* of any person pursuant to NAC 704.68062 or a motion of the commission.

Sec. 11. NAC 704.68484 is hereby amended to read as follows:

704.68484 1. The category of a service may be changed after a hearing upon:

(a) [An application] *A request* by the provider filed pursuant to NAC 704.68062;

- (b) A complaint from a competitor or customer of a provider of last resort of basic service; or
- (c) The motion of the commission.

2. The commission will utilize the factors set forth in NAC 704.68068 to 704.68074, inclusive, to determine whether a request to change the category of a service should be granted.

Sec. 12. NAC 704.68486 is hereby amended to read as follows:

704.68486 1. Unless the service has been deregulated by the commission, the provider must apply to the commission for approval before providing any new service and:

(a) The application must set forth the proposed category of the service and include all appropriate information required for [an application] *a request* to classify a service pursuant to NAC 704.68062.

(b) If the provider contends the new service has been effectively deregulated because the Federal Government has preempted the area, the provider shall notify the commission before offering the service and cite the authority for the preemption.

2. The commission will:

(a) Consider the factors set forth in NAC 704.68068, 704.6807, and 704.68072 to determine whether a provider may provide a new service, the category of the new service and the appropriate rates, terms, and conditions applicable to the service. Any service not classified as discretionary, competitive [,] or deregulated must be classified as a basic or other essential service.

(b) Act upon an application filed pursuant to subsection 1 within 90 days after it is filed unless a protest is received from:

- (1) The staff of the commission;
- (2) A person given permission to intervene by the commission; or

(3) The advocate for customers of public utilities.

If a protest is filed, the commission will act upon the application within 180 days after the date on which the application is filed.