

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

LCB File No. R010-04

Effective June 28, 2004

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

AUTHORITY: §§1-5, NRS 426.295 and 703.025.

A REGULATION relating to telecommunications; revising certain provisions concerning the Program to Provide Devices for Telecommunication to Persons With Impaired Speech or Hearing; and providing other matters properly relating thereto.

Section 1. NAC 707.010 is hereby amended to read as follows:

707.010 As used in this chapter, unless the context otherwise requires:

1. *“Carrier” means:*

(a) *An intraexchange carrier; and*

(b) *A provider of commercial mobile radio service.*

2. *“Commercial mobile radio service” has the meaning ascribed to it in NAC 704.786.*

3. “Commission” means the Public Utilities Commission ~~[~~
~~—2.] of Nevada.~~

4. “Customer” means a person who:

(a) Subscribes to the service of ~~[an intraexchange]~~ a carrier;

(b) Is subject to a fee for the service charged for each line of access per month; and

(c) Is not a carrier.

~~{3.}~~ 5. “Intraexchange carrier” ~~[means any person providing, for a fee, intrastate telecommunications within a specified area where local service is provided by a single telephone service having its own switching facilities.~~

~~—4.}~~ *has the meaning ascribed to it in NAC 704.00864.*

6. “Line of access” means ~~[a switched line to a business, residence or private branch exchange within the public switched network]~~ *any connection between a customer and a carrier that provides the customer with access to telecommunications* in Nevada.

Sec. 2. NAC 707.020 is hereby amended to read as follows:

707.020 1. On or before June 1 of each year, the ~~[Public Utilities]~~ Commission, after an investigation and hearing, will notify each ~~[intraexchange]~~ carrier of the amount of the surcharge to be assessed and collected for the period from July 1 of that year to June 30 of the next year from each of its customers for the ~~[Fund for Telecommunication for Persons With Impaired Speech or Hearing.]~~ *program developed pursuant to NRS 426.295 by the Office of Disability Services within the Department of Human Resources.* The surcharge will be assessed for each line of access and will be either a percentage of the basic charge for service to the customer or an equal amount for each customer in a class of customers. ~~[It may not be listed]~~ *An intraexchange carrier may not list the surcharge* as a separate item on the customer’s bill unless the intraexchange carrier demonstrates to the Commission that it would be unduly burdensome to comply with this provision.

2. The Commission, upon its own motion or upon the petition of an interested person for good cause shown, will conduct a hearing to evaluate the reasonableness of the surcharge currently in effect.

3. The surcharge must be billed by each ~~[intraexchange]~~ carrier to its customers on a monthly basis.

Sec. 3. NAC 707.030 is hereby amended to read as follows:

707.030 No later than January 31 and July 31 of each year, each ~~[intraexchange]~~ carrier shall submit to the Commission for the 6 full months immediately preceding that date, the money collected as the surcharge and a report containing the following information:

1. The name and address of the ~~[intraexchange]~~ carrier;
2. The amount of the surcharge for each line of access;
3. The total number of lines of access;
4. The amount of the surcharge collected; and
5. The amount of the surcharge to be submitted to the Commission.

↪ Each ~~[intraexchange]~~ carrier may submit the money collected with an appropriate report more frequently than twice a year.

Sec. 4. NAC 707.040 is hereby amended to read as follows:

707.040 ~~[The intraexchange carrier must]~~ *Each carrier shall* keep account of any interest earned on surcharges collected before they are remitted to the Commission. If the interest revenue is not sufficient to reimburse the ~~[intraexchange]~~ carrier for costs associated with the collection of the surcharge, the amount of the interest must be deducted in computing the reimbursement claimed.

Sec. 5. NAC 707.050 is hereby amended to read as follows:

707.050 The Commission will review and approve or disapprove the program developed *pursuant to NRS 426.295* by the ~~[Rehabilitation Division of the Department of Employment, Training and Rehabilitation]~~ *Office of Disability Services within the Department of Human*

Resources at the hearing held by the Commission each year to determine the amount of surcharge for an upcoming period.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R010-04**

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. R010-04 which pertain to chapter 707 of the Nevada Administrative Code on May 2, 2004.

Notice date: 1/9/2004
Hearing date: 2/24/2004

Date of adoption by agency: 5/2/2004
Filing date: 6/28/2004

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code ("NAC") 707.

1. A 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.

This matter involves an investigation into and development of proposed revisions to NAC 707 regarding changes to the Public Utilities Commission's ("Commission's") regulations as a result of Senate Bill 164. A Notice of Workshop and Request for Comments was issued on September 9, 2003. A combined Notice of Intent to Amend/Repeal Regulations, Notice of Workshop, and Notice of Hearing was issued on January 9, 2004. The foregoing notices were published in the Elko Daily Free Press, Las Vegas Review Journal, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notices were mailed to county clerks, county libraries and all persons who requested inclusion on the Commission's service list.

The following represents a summary of the public responses that were made to the Commission at the duly-noticed workshop held on October 8, 2003: The Attorney General's Bureau of Consumer Protection ("BCP") and the Regulatory Operations Staff ("Staff") of the Commission supported minor amendments to NAC 707 to clarify that the surcharge for the fund for telecommunications for persons with impaired speech or hearing applies to each personal wireless access line as well as to each access line of a local exchange customer in accordance with SB 164.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed workshop held on February 24, 2004: The participants discussed the LCB revised regulation, and the wireless carriers orally presented their joint written comments that were filed with the Commission the day before the workshop. Although the LCB revised regulation was acceptable to Staff and BCP, the wireless carriers still had concerns with the regulation. The wireless carriers' concerns were the use of the terms "access lines" and "intraexchange carrier" in the regulation, because they believe that these terms are not applicable to wireless carriers. The wireless carriers also proposed adding a section to the regulation on calculation of the surcharge.

The participants present at the workshop were then provided an opportunity to go off the record to attempt to come to a consensus on the necessary changes to the LCB revised regulation. The workshop re-convened and the participants presented their joint proposal. Verizon Wireless also requested that the Commission adopt additional changes to the regulation regarding calculation of the surcharge.

A copy of the summary may be obtained by calling the Commission at (775) 687-6001 or (702) 486-2600, or by writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

2. (a) The number of persons who Attended the workshop:

October 8, 2003: 2

February 24, 2004: 7

(b) Testified at the workshop:

October 8, 2003: 2

February 24, 2004: 7

(c) Attended the hearing:

February 24, 2004: 7

(d) Testified at the hearing:

February 24, 2004: 6

(e) Submitted to the agency written comments:

Written Comments were submitted to the Commission by Staff, BCP, AT&T Wireless Services of Nevada Inc./Reno Cellular Telephone Company d/b/a AT&T Wireless, Cingular Wireless, Nextel of California, Inc. d/b/a Nextel, Verizon Wireless, and Sprint Spectrum L.P. d/b/a Sprint PCS.

3. 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.

Comments were solicited from affected businesses by notices placed in the newspapers mentioned in the response to question #1 above, by direct mailings to interested persons on the Commission's mailing list and by posting of notices at county libraries, courthouses and the Commission's website.

Appearances were made at the foregoing workshops and hearing by interested persons, including Staff, BCP, AT&T Wireless Services of Nevada Inc./Reno Cellular Telephone Company d/b/a AT&T Wireless, Cingular Wireless, Nextel of California, Inc. d/b/a Nextel, Verizon Wireless, and Sprint Spectrum L.P. d/b/a Sprint PCS.

Written responses were received as set forth in the response to question 2(e) above.

Written comments were filed with the Commission on September 29, 2003, September 30, 2003, and February 23, 2004.

The wireless carriers' concerns were the use of the terms "access lines" and "intraexchange carrier" in the regulation, because they believe that these terms are not applicable to wireless carriers. The wireless carriers also proposed adding a section to the regulation on calculation of the surcharge.

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.

Multiple changes were made to the January 9, 2004, noticed regulation after the February 24, 2004, Workshop and Hearing, and before it was adopted by the Commission at a duly noticed general session on May 12, 2004. In its review of the January 9, 2004, noticed regulation, the LCB made several changes. These changes were discussed at the February 24, 2004, Workshop and Hearing. The majority of the revisions were maintained, and some were modified after the aforementioned Workshop and Hearing.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both intermediate and long-term effects.**

The Commission has found that the regulation does not impose a direct and significant burden upon businesses in Nevada based on the following facts: (1) the regulations bring the Commission's regulations in conformance with SB 164, which clarifies that the surcharge for the fund for telecommunication for persons with impaired speech or hearing applies to personal wireless access lines of each customer of any company that provides wireless phone services in Nevada; (2) the application of the surcharge on wireless access lines in SB 164 clarifies existing Commission practices; (3) SB 164 allows for reimbursement of wireless phone companies for the expenses incurred for collecting and transferring the surcharge money to the Commission; and (4) the effect of the regulation does not impose a direct and significant economic burden upon small businesses, nor does it restrict the formation, operation, or expansion of a small business.

The Commission cannot estimate the economic effect of the regulation upon the public at this time. The current amount of the surcharge is 8 cents per access line. However, the Commission anticipates that the surcharge amount will actually decrease because the regulations clarify that the surcharge applies to wireless carriers as well, so the surcharge will be spread over more access lines. After the Office of Disability Services files its budget for the next fiscal year, the Commission will be conducting proceedings to determine the amount of the surcharge to be assessed and collected for the period of July 1, 2004 through June 30, 2005.

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

The Commission does not believe there will be any additional cost to the Commission to enforce the adopted regulation.

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.

The Commission is not aware of any overlap or duplication by this regulation of any regulation of any other local, state or federal government agencies.

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

The Commission is not aware of any provision in this regulation that is more stringent than a federal regulation which regulates the same activity.

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.

The Commission does not believe that the regulation provides for a new fee, or increases an existing fee. The regulations bring the Commission's regulations in conformance with SB 164, which clarifies that the surcharge for the fund for telecommunication for persons with impaired speech or hearing applies to personal wireless access lines of each customer of any company that provides wireless phone services in Nevada. The Commission assesses and collects the surcharge from the companies, and the money is deposited in the State Treasury for credit to the Account for Services for Persons With Impaired Speech or Hearing pursuant to NRS 426.295(3).

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re investigation and rulemaking to consider)
changes to the Commission’s regulations as a result)
of SB 164.)

Docket No. 03-8011

At a general session of the Public
Utilities Commission of Nevada,
held at its offices on May 12, 2004.

PRESENT: Chairman Donald L. Soderberg
Commissioner Adriana Escobar Chanos
Commissioner Carl B. Linvill
Commission Secretary Crystal Jackson

ORDER ADOPTING REGULATIONS

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

I. Procedural History

1. On August 22, 2003, the Commission voted to open an investigation and rulemaking docket to consider changes to the Commission’s regulations as a result of Senate Bill ("SB") 164 passed during the Regular Session of the Nevada Legislature. Specifically, Section 11 of SB 164 provides that the surcharge for the fund for telecommunication for persons with impaired speech or hearing is to be imposed on each access line of each customer to the local exchange of any telephone company providing such lines in this state, and on each personal wireless access line of each customer of any company that provides wireless phone services in this state. This matter has been designated by the Commission as Docket No. 03-8011.

2. This matter is being conducted by the Commission pursuant to the Nevada Revised Statutes and the Nevada Administrative Code (“NAC”), Chapters 223B, 703, and 704.

3. On September 9, 2003, the Commission issued a Notice of Workshop and Request for Comments.

4. The Commission received written comments from the Regulatory Operations Staff of the Commission (“Staff”) and the Attorney General’s Bureau of Consumer Protection.

5. The Commission held a duly noticed workshop on October 8, 2003.

6. On January 9, 2004, the Commission issued a public Notice of Intent to Amend/Repeal Regulations; Notice of Workshop and Notice of Hearing in accordance with state law and the Commission's Rules of Practice and Procedure.

7. On January 13, 2004, the Commission delivered the proposed regulations to the Legislative Counsel Bureau ("LCB").

8. On February 5, 2004, the LCB submitted its revisions to the proposed regulations to the Commission.

9. On February 11, 2004, the Commission voted, pursuant to NRS 233B.0608, to accept recommendation that the proposed regulation does not impose a direct and significant economic burden upon a small business, or directly restrict the operation or expansion of a small business.

10. On February 23, 2004, AT&T Wireless Services of Nevada Inc./Reno Cellular Telephone Company d/b/a AT&T Wireless, Cingular Wireless, Nextel of California, Inc. d/b/a Nextel, Verizon Wireless, and Sprint Spectrum L.P. d/b/a Sprint PCS (collectively referred to as "the Wireless Industry") filed written comments with the Commission.

11. On February 24, 2004, the Commission held a workshop and a hearing on the proposed regulations.

12. On March 2, 2004, Post-Hearing Exhibit 4 "Proposed Revised Regulations" was filed with the Commission and supported by all of the participants in this docket.

13. Also on March 2, 2004, the Commission received Verizon Wireless' Comments on the Proposed Regulation of the Public Utilities Commission of Nevada Submitted by the Wireless Industry.

II. Commission Discussion and Findings

14. The Commission agrees with many of the changes proposed by the participants in this docket set forth in Post-Hearing Exhibit 4, except the proposal to have two different definitions for "line of access" and "personal wireless access line." In Attachment 1 the Commission has adopted a new definition of "carrier" which includes both intraexchange carriers and providers of commercial mobile radio service ("CMRS"). Additionally, the Commission's revisions to the current definition of "line of access" encompass any connection between a customer and a carrier, whether a wireline or wireless connection. Therefore, the Commission believes a new definition of "personal wireless access line" would be redundant.

15. The Wireless Industry also contends that the proposed definition of “personal wireless access line” is necessary to address their concern that the Commission may attempt to assess the surcharge on customers who have the same calling area but are not located in Nevada. (Workshop Transcript Volume 2 at 8.) However, the CMRS provider knows whether the access line belongs to a Nevada customer or someone located out of state by where it is billed. (Workshop Transcript Volume 2 at 26.) Therefore, the CMRS provider would only report Nevada access lines to the Commission for purposes of assessing the surcharge.

16. Although Verizon Wireless supports the changes set forth in Post-Hearing Exhibit 4, Verizon Wireless believes that the Commission should also adopt additional changes to NAC 707.020 concerning the setting of the surcharge. (Hearing Transcript Volume 1 at 5.) Verizon Wireless states that its proposed revisions to NAC 707.020(1) would require the Commission to re-calculate the surcharge currently in effect prior to collecting the surcharge from the CMRS providers. However, pursuant to NAC 707.020(1), the Commission is already required to annually conduct an investigation and hearing on the amount of the surcharge to be assessed and collected. These proceedings are noticed to the public, interested persons may petition the Commission to intervene, and hearings may be conducted. (Workshop Transcript Volume 2 at 47-48.) Additionally, NAC 707.020(2) provides that “[t]he commission, upon its own motion or upon the petition of an interested person for good cause shown, will conduct a hearing to examine the reasonableness of the surcharge currently in effect.” Therefore, Verizon Wireless can petition the Commission to examine, or the Commission on its own motion can examine, the reasonableness of the surcharge currently in effect. Therefore, the Commission’s existing regulations provide adequate opportunities for Verizon Wireless to address the reasonableness of the surcharge without adopting the additional changes to NAC 707.020 they are proposing in this docket.

17. The Commission finds that it is in the public interest to adopt the proposed regulations, attached hereto and incorporated herein as Attachment 1.

THEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. The proposed permanent regulations, attached hereto and incorporated herein as Attachment 1, are ADOPTED.

2. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting of this Order.

By the Commission,

DONALD L. SODERBERG, Chairman

ADRIANA ESCOBAR CHANOS, Commissioner

CARL B. LINVILL, Commissioner

Attest: _____
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL)