

LCB File No. R191-07

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

Docket No. 07-06016

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

AUTHORITY: SECTION 91(3) OF A.B. 518 (2007).

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Owner or developer” defined. For the purposes of this regulation, “owner or developer” means the owner or developer of any multitenant business or residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, or any condominium association or homeowners’ association thereof. Such definition does not include single family residences for which the owner or builder of the single family residence makes decisions on utility installation only for a single residence.*

Sec. 3. 1. *Subject to the provisions of subsections 3 and 4, an incumbent local exchange carrier that is a provider of last resort is per se excused from all obligations as provider of last resort to any specific real property or the occupants of any specific real property if the owner, homeowners’ association, operator, or developer of the specific real property, or a person acting on behalf of the owner, homeowners’ association, operator, or developer of the specific real property, has engaged in either of the following acts:*

(a) Permits any person other than the incumbent local exchange carrier to install facilities or equipment to provide basic network service or business line service to the exclusion of the incumbent local exchange carrier who is the provider of last resort and legally or physically prohibits the incumbent local exchange carrier who is the provider of last resort from installing facilities or equipment necessary for the provision of basic network service or business line service during the construction phase of the specific real property. Legal prohibition of installation of facilities or equipment may include the following:

(i) Preventing or failing to deliver access to the specific real property, including suitable rights of way or easements, for the incumbent local exchange carrier who is

the provider of last resort to install facilities or equipment capable of providing basic network service or business line service; or

(ii) Not requesting from the incumbent local exchange carrier who is the provider of last resort detailed plans, specifications, engineering drawings and designs, and estimated costs and advances to be paid by the owner or developer for construction of facilities for telecommunication service on the specific real property, prior to the commencement of any trenching for permanent basic network service or business line service on the specific real property.

(b) Collects mandatory rent, fees or dues from the occupants or residents of the specific real property for the provision of basic network service or business line service by the person other than the incumbent local exchange carrier.

↪ An incumbent local exchange carrier who is a provider of last resort shall not be per se excused unless a person other than the incumbent local exchange carrier will provide basic network service or business line service at the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief.

2. After learning that one of the conditions in subsection 1 is met, an incumbent local exchange carrier who is the provider of last resort qualifying for per se relief shall file a notice with the Commission, and serve such notice on the Regulatory Operations Staff of the Commission, the owner or developer of the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief, and, if known, the person other than the incumbent local exchange carrier that will provide basic network service or business line service to the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief. The notice shall contain the following information:

(a) The name of the incumbent local exchange carrier who is the provider of last resort;

(b) The name of the owner or developer of specific real property;

(c) A description of the specific real property in which the incumbent local exchange carrier who is the provider of last resort will be excused from its obligations under NAC 704.6802;

(d) A statement as to why the incumbent local exchange carrier who is the provider of last resort qualifies for per se relief;

(e) Documentation in support of the per se relief request; and

(f) The name, address, telephone number and a contact name for the person other than the incumbent local exchange carrier that will provide basic network service or business line service to all requesting and eligible customers at the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief.

↳ If the incumbent local exchange carrier who is the provider of last resort cannot provide the information required above, the incumbent local exchange carrier who is the provider of last resort must submit the information it has with an explanation as to why all the information required in this section cannot be provided.

3. If the incumbent local exchange carrier who is the provider of last resort states that it qualifies for per se relief in accordance with subsection 1 above, the Regulatory Operations Staff of the Commission, the Bureau of Consumer Protection, the person other than the incumbent local exchange carrier that will provide basic network service or business line service to the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief, or any other affected party will have 14 days to file a protest. If a protest is filed, the grant of per se relief shall be held in abeyance for no more than 30 days until such time as the Commission can determine if per se relief shall be granted or whether a full waiver proceeding shall be conducted in accordance with Section 5. If no protest is received within 14 days or the Commission does not act on any protest filed within 30 days, the per se relief shall be deemed to be granted.

4. The Regulatory Operations Staff of the Commission is required to file a protest in accordance with subsection 3 above if the Regulatory Operations Staff cannot confirm the material facts provided by the incumbent local exchange carrier who is the provider of last resort pursuant to subsection 2 that the person other than incumbent local exchange carrier will provide basic network service or business line service to all requesting and eligible customers of the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief.

Sec. 4. 1. *An incumbent local exchange carrier that is not per se relieved pursuant to Section 4 may seek a waiver of the provider of last resort obligations, for good cause shown, under NAC 704.6802. Such a petition must include, but not be limited to:*

(a) The name of the incumbent local exchange carrier who is the provider of last resort;

(b) The name of the owner or developer of specific real property;

(c) A description of the specific real property in which the incumbent local exchange carrier who is the provider of last resort will be excused from its obligations under NAC 704.6802;

(d) A showing of good cause that the incumbent local exchange carrier who is the provider of last resort be excused from its obligations under NAC 704.6802;

(e) The name, address, telephone number and a contact name for the person other than the incumbent local exchange carrier that will provide basic network service or business line service to all requesting and eligible customers at the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief.

↪ If the incumbent local exchange carrier who is the provider of last resort cannot provide the information required above, the incumbent local exchange carrier who is the provider of last resort must submit the information it has with an explanation as to why all the information required in subsection 1 cannot be provided.

2. Concurrent with the filing of a petition pursuant to subsection 1, the petitioner shall serve notice that a petition has been filed to the owner or developer, occupants, or any subsequent owner, homeowners' association, or operator, and, if known the person other than the incumbent local exchange carrier that will provide basic network service or business line service to the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief.

3. Within 90 days upon a petition filed pursuant to subsection 1, the Commission shall issue an order on the petition. The order granting relief shall require the person other than the incumbent local exchange carrier providing basic network service or business line service

on the specific real property to provide written notice not later than 180 days prior to terminating or discontinuing basic network service or business line service to the specific real property at issue.

4. If the Commission grants a waiver of the obligations of the incumbent local exchange carrier who is the provider of last resort under NAC 704.6802 pursuant to subsection 3, the Commission shall ensure that the person other than the incumbent local exchange carrier that will provide basic network service or business line service to all requesting and eligible customers at the specific real property for which the incumbent local exchange carrier who is the provider of last resort seeks relief:

(a) Maintains a current address, telephone number and a contact name with the Commission; and

(b) Provides written notice not later than 180 days prior to terminating or discontinuing basic network service or business line service to the specific real property for which the incumbent local exchange carrier who is the provider of last resort was granted relief pursuant to this section.

5. If a petition pursuant to this section is not granted at the conclusion of the proceeding pursuant to this section, and the incumbent local exchange carrier who is the provider of last resort does not have facilities installed at the specific real property because the developer has not complied with the applicable laws and regulations concerning the placement of underground facilities, and the trenches on the specific real property are already closed, then the owner or developer shall notify all occupants and any subsequent owner of the specific real property that:

(a) The incumbent local exchange carrier who is the provider of last resort does not have facilities installed to serve the specific real property;

(b) In the event that an occupant or any subsequent owner requests basic network service or business line service from the incumbent local exchange carrier who is the provider of last resort, the owner or occupant may be required to pay special construction charges for

the installation of facilities before the incumbent local exchange carrier who is the provider of last resort can provide service; and

(c) Upon receipt of payment of special construction charges for the installation of facilities, the incumbent local exchange carrier who is the provider of last resort may require 180 days to install the facilities to provide service, or additional time as agreed to by the Commission.

Sec. 5. 1. *The person other than the incumbent local exchange carrier providing basic network service or business line service at the specific real property for which the incumbent local exchange carrier who is the provider of last resort was relieved of its provider of last resort obligations shall not discontinue such services to all or part of the specific real property being served by it except upon at least 180 days notice filed with the Commission, and concurrently served upon the incumbent local exchange carrier that is the provider of last resort in the area served, the owner or developer, and the customers served by the person other than the incumbent local exchange carrier providing service at the specific real property, specifying the character and nature of the discontinuance of the service intended and upon filing the following information:*

(a) The date the person other than the incumbent local exchange carrier will discontinue basic network service or business line service at the specific real property for which the incumbent local exchange carrier who is the provider of last resort was relieved of its provider of last resort obligations;

(b) Contact information for the person other than the incumbent local exchange carrier providing basic network service or business line service, including at least one toll free customer service telephone number maintained by the provider to facilitate the continuation of service and the transition of customers to another provider;

(c) The name of the owner or developer of the specific real property, if known; and

(d) A description of the specific real property where the incumbent local exchange carrier who is the provider of last resort was relieved of its obligations and is being served by the exiting person other than the incumbent local exchange carrier.

2. If the owner or developer of the specific real property or the person other than the incumbent local exchange carrier who provided basic network service or business line service at the specific real property where the incumbent local exchange carrier who is the provider of last resort was relieved of its obligations has already made an arrangement for the incumbent local exchange carrier in that service territory to resume the provider of last resort obligations at the specific real property at issue, the owner or developer of the specific real property or incumbent local exchange carrier shall immediately notify the Commission of that agreement. A petition is not required to be filed in accordance with this section if an agreement has been reached and the incumbent local exchange carrier will voluntarily resume its provider of last resort obligations.

3. If the owner or developer of the specific real property or the person other than the incumbent local exchange carrier who provided basic network service or business line service to the specific real property where the incumbent local exchange carrier who is the provider of last resort was relieved of its obligations intends to make an arrangement for another person other than the incumbent local exchange carrier to provide basic network service or business line service at the specific real property at issue, a notice shall be filed by the exiting person other than the incumbent local exchange carrier, owner, or a new person other than the incumbent local exchange carrier in a similar manner as described in Section 5 to verify that the new person other than the incumbent local exchange carrier will provide basic network service or business line service at the specific real property.

4. Subject to subsections 2 and 3, upon receipt of a notice described in subsection 1, or upon receipt of other evidence provided to the Commission that any person required to provide notice pursuant to subsection 1 will discontinue such service to all or part of the specific real property being served by such provider, the Commission shall open a proceeding to reinstate the incumbent local exchange carrier who is the provider of last resort to assist with ensuring continuity of service to the occupants of the specific real property in accordance with this section.

5. The purpose of the Commission proceeding identified in subsection 4 is to determine the following:

(a) the amount of money necessary to compensate for the cost that the incumbent local exchange carrier who is the provider of last resort will incur to place facilities at the specific real property where the provider of last resort was relieved of its obligations, taking into consideration the amount necessary to install or retrofit facilities or equipment at the specific real property, including, but not limited to, the cutting and trenching of sidewalks and streets, and restoration of roads, sidewalks, block walls, or landscaping to original condition;

(b) the amount of time needed for the incumbent local exchange carrier who is the provider of last resort to install facilities at the specific real property in order to provide telecommunication service to the occupants of the specific real property; and

(c) whether and at what cost, if any, existing telecommunication facilities on the specific real property may be given or made available to the provider of last resort in the event such facilities are compatible with the reinstated provider of last resort's existing facilities and will be used pursuant to subsection 11.

6. The Commission shall consider the use of alternative technologies by the person other than the incumbent local exchange carrier and the provider of last resort when making any determination pursuant to this section.

7. The Commission may issue an interim order to ensure the continuity of service to the occupants of the specific real property.

8. The necessary amount determined by the Commission pursuant to subsection 5(a) shall be delivered to the incumbent local exchange carrier who is the provider of last resort through either of the following methods at the discretion of the person other than the incumbent local exchange carrier who is providing basic network service or business line service to the specific real property:

(a) posted in the form of a bond by the person other than the incumbent local exchange carrier that provided basic network service or business line service to the specific real property; or

(b) paid directly to the incumbent local exchange carrier who is the provider of last resort by the person other than the incumbent local exchange carrier.

9. The Commission shall:

(a) provide for a reasonable period of time for the construction, retrofitting and installation of necessary facilities and equipment by the provider of last resort, which time period shall be based on evidence provided by the incumbent local exchange carrier who is the provider of last resort, and such time period does not commence until the incumbent local exchange carrier who is the provider of last resort receives the funds pursuant to subsection 8;

(b) permit the incumbent local exchange carrier who is the provider of last resort to satisfy its provider of last resort obligations through the use of an alternative technology; and

(c) not impose any other restrictions or requirements on the rates, terms or conditions of service not provided by law.

10. In the event the time period prescribed by the Commission to allow the incumbent local exchange carrier who is the provider of last resort to construct, retrofit and install necessary facilities at the specific real property is not sufficient, the incumbent local exchange carrier who is the provider of last resort may request additional time to construct and install facilities and equipment.

11. Nothing in this section shall prohibit the incumbent local exchange carrier who is the provider of last resort from utilizing existing facilities on the specific real property, to the extent compatible with the provider of last resort's facilities, in order to provide telecommunication service to the owner or occupants of the specific real property. The incumbent local exchange carrier who is the provider of last resort may be required by the Commission to compensate the person other than the incumbent local exchange carrier for use of such facilities if compatible. The amount of compensation for such facilities may be offset in part, or whole, based upon the amount of money required to be paid pursuant to subsections 5(a) and 8.

12. The Commission will not reinstate the incumbent local exchange carrier who is the provider of last resort unless the owner or developer of the specific real property provides the

necessary access pursuant to the laws and regulations concerning the placement of underground facilities, including easement(s) to the incumbent local exchange carrier who is the provider of last resort in order to enable it to install and maintain its facilities on the specific real property, and the time periods set forth by the Commission will not commence until all the necessary access has been provided to the incumbent local exchange carrier who is the provider of last resort.

Sec. 6. NAC 704.6802 is hereby amended to read as follows:

Designation of companies as providers of last resort of basic service.

1. The following companies or their successors are designated as providers of last resort ~~of basic service~~ and shall provide basic *network* service *and business line service* to all current and future subscribers within their respective service territories:

~~[(a) ALLTEL Nevada, Inc.;~~

(a) Beehive Telephone Co., Inc., Nevada;

~~[(b) Beehive Telephone Company, Inc.;~~

(b) Central Telephone Company d/b/a Embarq;

~~[(c) Central Telephone Company;~~

(c) CenturyTel of the Gem State, Inc. d/b/a CenturyTel;

~~[(d) Contel of California, Inc., d.b.a. Contel of Nevada;~~

(d) Citizens Telecommunications Company of Nevada d/b/a Frontier Communications;

(e) Filer Mutual Telephone Company;

~~[(f) Gem States Utilities Corporation;~~

(f) Lincoln County Telephone System, Inc.

~~[(g) Humboldt Telephone Company;~~

(g) Moapa Valley Telephone Company;

~~[(h) Lincoln County Telephone System, Inc.;~~

(h) Nevada Bell Telephone Company d/b/a AT&T Nevada and AT&T Wholesale;

~~[(i) Moapa Valley Telephone Company;~~

(i) Oregon – Idaho Utilities, Inc. d/b/a Humboldt Telephone Company;

~~[(j) Nevada Bell;~~

(j) Rio Virgin Telephone Company d/b/a Rio Virgin Telephone & Cablevision;

~~[(k) Rio Virgin Telephone Company; and]~~

(k) Rural Telephone Company; and

~~*[(l) Rural Telephone Company.]*~~

(l) Verizon California Inc. d/b/a Verizon Nevada.

2. Unless otherwise authorized by the Commission, Nevada Bell *Telephone Company d/b/a AT&T Nevada and AT&T Wholesale* or its successor is designated as the provider of last resort ~~[of basic service]~~ for intrastate interexchange toll services within the northern LATA, designated as LATA 720, and shall provide those services between all points of origination and termination within the LATA, unless the service both originates and terminates within the service territory of a company, other than Nevada Bell *Telephone Company d/b/a AT&T Nevada and AT&T Wholesale*, listed in subsection 1.

3. Unless otherwise authorized by the Commission, Central Telephone Company *d/b/a Embarq* or its successor is designated as the provider of last resort ~~[of basic service]~~ for intrastate interexchange toll services within the southern LATA, designated as LATA 721, and shall provide those services between all points of origination and termination within the LATA, unless the service both originates and terminates within the service territory of a company, other than Central Telephone Company *d/b/a Embarq*, listed in subsection 1.

4. The companies identified in subsection 1, other than Nevada Bell *Telephone Company d/b/a AT&T Nevada and AT&T Wholesale* and Central Telephone Company *d/b/a Embarq*, are designated as the providers of last resort ~~of basic services~~ for intrastate interexchange toll service within their respective service territories, as defined in tariffs on file with the Commission on ~~[December 1, 1995]~~ *January 1, 2007*, and shall provide those services between all points of origination and termination within those territories.

REPEAL OF OTHER SECTIONS

NAC 704.68098 should be repealed.