

**PROPOSED REGULATION OF THE PUBLIC UTILITIES**

**COMMISSION OF NEVADA**

**LCB File No. R107-00**

October 10, 2000

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

AUTHORITY: §§1-10, NRS 703.025 and 704.281; §§11-19, NRS 703.025 and 704.282.

**Section 1.** Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 10, inclusive, of this regulation, unless the context otherwise requires, “nonrural incumbent local exchange carrier” means an incumbent local exchange carrier that does not meet the definition of a rural telephone company set forth in 47 U.S.C. § 153(37).*

**Sec. 3.** *The provisions of sections 2 to 10, inclusive, of this regulation:*

*1. Apply to interconnection, unbundled network elements and resold services of nonrural incumbent local exchange carriers; and*

*2. Are to be used to:*

*(a) Determine whether interconnection, unbundled network elements and resold services provided by nonrural incumbent local exchange carriers to competitive local exchange carriers are at least equal in quality to that provided by the nonrural incumbent local exchange carrier to itself or to any subsidiary, affiliate or any other party; and*

*(b) Provide remedies if those standards are not met.*

**Sec. 4. 1.** *A nonrural incumbent local exchange carrier shall, in accordance with sections 2 to 10, inclusive, of this regulation, file with the commission a request for the approval of:*

- (a) A plan for the reporting and auditing of performance measures; and*
- (b) A plan establishing performance incentives.*

**2.** *The commission will conduct a hearing on a request for approval of the plans submitted pursuant to subsection 1 not later than 60 calendar days after the date on which the request for approval is filed with the commission. At such a hearing, any certificated competitive local exchange carrier doing business in the services area of the nonrural incumbent local exchange carrier that filed the request for approval may request modifications to the plans.*

**3.** *The commission will issue an order granting, denying or modifying a request for the approval of the plans within 120 calendar days after the date on which the commission holds a hearing on the request for approval.*

**4.** *Not later than January 31 of each year following the year in which the plans of a nonrural incumbent local exchange carrier are approved by the commission pursuant to this section, the nonrural incumbent local exchange carrier shall file a request for the renewal of the approval by the commission of the plans. The commission may, upon good cause shown, conduct a hearing and issue an order in accordance with this section on a request for the renewal of the approval of the commission of the plan.*

**5.** *Unless good cause is shown, no person may request a modification of the plans except as otherwise provided in this section. If good cause is shown, the commission will treat a request for modification as a request for approval subject to the provisions of this section.*

*Sec. 5. A nonrural incumbent local exchange carrier shall file with the commission a plan for measuring performance. Each set of performance measurements included in a plan for measuring performance must include an assessment for measuring the performance of a nonrural incumbent local exchange carrier for:*

*1. Preordering activities, which relate to the exchange of information between a nonrural incumbent local exchange carrier and a competitive local exchange carrier regarding current or proposed customer products and services, or any other information required to initiate the ordering of service by a competitive local exchange carrier. Such activities encompass the critical information needed to submit a provisioning order from a competitive local exchange carrier to a nonrural incumbent local exchange carrier. Measurements for preordering must report the timeliness with which the preordering inquiries are returned to a competitive local exchange carrier by a nonrural incumbent local exchange carrier. Preordering measurements must assess the level of service provided for the following types of queries, without limitation:*

- (a) Address verification and required dispatch;*
- (b) Requests for a telephone number;*
- (c) Requests for customer service records;*
- (d) Availability of service;*
- (e) Scheduling of service appointments, such as due date;*
- (f) Rejected and failed inquiries; and*
- (g) Availability of facilities.*

*2. Ordering activities, which include the exchange of information between a nonrural incumbent local exchange carrier and a competitive local exchange carrier regarding requests for service. The number of requests from competitive local exchange carriers that*

*automatically generate a service order in the system of a nonrural incumbent local exchange carrier that creates service orders must be reported within this category. Ordering measurements must assess the level of service for the:*

*(a) Cycle time for the completeness of an acknowledgment that a request for service has been received;*

*(b) Cycle time of confirmation that a valid request for service has been received and a due date for the request assigned;*

*(c) Cycle time of rejection of any requests for service with errors; and*

*(d) Cycle time and efficiency in which ordering tasks are completed by a nonrural incumbent local exchange carrier.*

*3. Provisioning, which includes the set of activities required to install, change or disconnect service to a customer, the functions to establish or condition physical facilities and the completion of any required software translations to define the feature functionality of the service. Provisioning involves communication between a competitive local exchange carrier and a nonrural incumbent local exchange carrier on the status of a service order, including any delay in meeting the commitment and the time at which actual completion of service installation has occurred. Provisioning measurements must assess, without limitation, the:*

*(a) Quality of service installations;*

*(b) Cycle time of the installation process; and*

*(c) Cycle time of notifications to a competitive local exchange carrier that installation is completed or that installation has been delayed.*

*4. Maintenance, which involves the repair and restoration of customer service.*

*Maintenance functions include the exchange of information between a nonrural incumbent*

*local exchange carrier and a competitive local exchange carrier related to requests for the repair of services, the processing of trouble ticket requests by a nonrural incumbent local exchange carrier, actual service restoration and tracking of maintenance history.*

*Maintenance measurements must assess, without limitation, the:*

*(a) Cycle time in which requests concerning trouble are resolved by a nonrural incumbent local exchange carrier; and*

*(b) Process for the restoration of the quality of service.*

*5. Network performance, which involves the level at which a nonrural incumbent local exchange carrier provides services and facilitates the processing of calls within its network. A nonrural incumbent local exchange carrier shall complete any upgrades to its network efficiently. If an outage of a network occurs, a nonrural incumbent local exchange carrier shall notify the competitive local exchange carriers so that the competitive local exchange carriers can conduct appropriate management of the network and notify their customers. Network performance measurements must assess, without limitation, the level of service provided on the:*

*(a) Quality of interconnection;*

*(b) Timeliness of notification of outages of the network by a nonrural incumbent local exchange carrier to the competitive local exchange carriers; and*

*(c) Timeliness of upgrades to the network, including code openings, that a nonrural incumbent local exchange carrier completes on behalf of a competitive local exchange carrier.*

*6. Billing, which involves the exchange of information necessary for a competitive local exchange carrier to bill its customers, process end-user claims and adjustments, verify a bill from a nonrural incumbent local exchange carrier for services provided to the competitive*

*local exchange carrier and to allow the competitive local exchange carrier to bill for access.*

*Billing includes, without limitation, usage records. Billing requirements must assess, without limitation, the:*

- (a) Accuracy of the billing process of a nonrural incumbent local exchange carrier; and*
- (b) Cycle time of the billing process of a nonrural incumbent local exchange carrier.*

*7. Collocation, which involves the provision to a competitive local exchange carrier of available space within the central end office of a nonrural incumbent local exchange carrier to allow the installation of the equipment of the competitive local exchange carrier.*

*Collocation measurements must assess, without limitation, the timeliness with which a nonrural incumbent local exchange carrier processes a request for collocation from a competitive local exchange carrier.*

*8. Updates of the databases for directory assistance, directory listings and emergency 911 services, including the processes by which these databases are updated with customer information that has changed as a result of service-provisioning activity. Database measurements must assess, without limitation, the:*

*(a) Timeliness by which changes to customer information are completed by a nonrural incumbent local exchange carrier; and*

*(b) Accuracy by which changes to customer information are incorporated into the appropriate database.*

*9. Interfaces through which a nonrural incumbent local exchange carrier provides competitive local exchange carriers with choices for access to operation support systems for preordering, maintenance and repair, the availability of which is fundamental to the ability of a competitive local exchange carrier to do business effectively with a nonrural incumbent*

*local exchange carrier. Interface measurements must assess, without limitation, the availability of the systems and personnel of a nonrural incumbent local exchange carrier to a competitive local exchange carrier.*

**Sec. 6. 1.** *Each individual measurement described in section 5 of this regulation must include, without limitation:*

- (a) The title;*
- (b) A description;*
- (c) The method of calculation;*
- (d) The period for which the measurement is being reported;*
- (e) The structure for the report;*
- (f) The level of reported disaggregation;*
- (g) The standard for measurement; and*
- (h) A description of the applicable business rules used, as approved by the commission.*

*2. A nonrural incumbent local exchange carrier may not make changes to any metric, measurement process, start point, end point, definition or any other parameter that would change the measurement, unless the change has been approved by the commission.*

*3. The commission may exempt a nonrural incumbent local exchange carrier from its performance measures and reporting requirements set forth in its plans for measuring performance and establishing reporting requirements if the nonrural incumbent local exchange carrier demonstrates that the system processes are providing parity by design.*

**Sec. 7. 1.** *A nonrural incumbent local exchange carrier shall file with the commission a plan for establishing reporting requirements.*

*2. A nonrural incumbent local exchange carrier shall create a monthly report of its performance measurements. Each monthly report of performance measurements must include, without limitation, all reportable measures on file with the nonrural incumbent local exchange carrier for which there is activity during the previous month.*

*3. Not later than the 15th day of each month, a nonrural incumbent local exchange carrier shall:*

*(a) Provide a copy of the monthly report of performance measurements for the previous month to each competitive local exchange carrier who has submitted a request to receive the monthly report, the regulatory operations staff of the commission and the bureau of consumer protection in the office of the attorney general; and*

*(b) Place a copy of the monthly report of performance measurements for the previous month on its website.*

*4. Not later than January 31 of each year, a nonrural incumbent local exchange carrier shall file an annual report of performance measurements that includes its monthly reports for the immediately preceding year with the staff of the commission. The annual report of performance measurements must be on a CD-ROM or diskette.*

*5. A report of performance measurements must include sufficient information to allow for a determination of parity or benchmark achievement by the nonrural incumbent local exchange carrier.*

*6. When reporting begins on a new performance measurement or for a new competitive local exchange carrier, a nonrural incumbent local exchange carrier is only required to report results after a full calendar month of data is available.*

*7. Each competitive local exchange carrier must have access to its own data, aggregated data relating to all competitive local exchange carriers, data relating to the nonrural incumbent local exchange carrier and data relating to any affiliate of the nonrural incumbent local exchange carrier. Data relating to an affiliate of a nonrural incumbent local exchange carrier must not be included in the aggregated data relating to the competitive local exchange carriers.*

*8. A nonrural incumbent local exchange carrier shall make its raw data supporting its results of its performance measurements with regard to competitive local exchange carriers available to its competitive local exchange carriers, the staff of the commission and the bureau of consumer protection in the office of the attorney general. A nonrural incumbent local exchange carrier shall archive its raw data for at least 24 months, and the raw data must be retained with sufficient detail so that a person requesting to see the raw data can reasonably reconcile the data captured by the nonrural incumbent local exchange carrier for a competitive local exchange carrier with the internal data of the competitive local exchange carrier.*

**Sec. 8.** *A nonrural incumbent local exchange carrier must file with the commission a request for approval of a plan establishing auditing requirements. A plan establishing auditing requirements must include, without limitation, a comprehensive identification of comprehensive procedures and cost-allocation methods for an initial audit, annual audits and mini-audits.*

**Sec. 9.** *A plan establishing performance incentives must:*

- 1. Be specific in amount as it relates to applicable performance measures, and in an amount that reasonably encourages competitive conduct and discourages discriminatory conduct.*
- 2. Be based on actual or statistical methods of measuring whether parity or a benchmark has been missed for a measure.*
- 3. To the extent that financial payment is made to an affected competitive local exchange carrier, provide that any such payment to the affected competitive local exchange carrier be considered partial payment, with interest, against any other award to that affected competitive local exchange carrier under any other judicial or administrative procedure for the same conduct in the same reporting period.*
- 4. Be self-executing, subject to limited exceptions, which must be specified in the plan.*
- 5. Be subject to any other reasonable conditions or limitations approved by the commission.*

*Sec. 10. In accordance with NRS 704.281, the commission will conduct a proceeding to determine for each nonrural incumbent local exchange carrier subject to the provisions of sections 2 to 10, inclusive, of this regulation a prescribed system of penalties for actions that are inconsistent with the standards adopted in the plans of the nonrural incumbent local exchange carrier approved by the commission pursuant to section 4 of this regulation. A nonrural incumbent local exchange carrier who has received an order from a competitive local exchange carrier shall separately file the plan for its approved system of penalties with the commission.*

*Sec. 11. As used in sections 11 to 19, inclusive, of this regulation, unless the context otherwise requires:*

1. *“Complaint” means a complaint filed by one provider of telecommunication services against another provider of telecommunication services.*

2. *“Provider” means a provider of telecommunication services that is subject to the jurisdiction of the commission.*

**Sec. 12.** *Notwithstanding any provision of this chapter or chapter 703 of NAC to the contrary, sections 11 to 19, inclusive, of this regulation apply to complaints made by a provider against another provider for any dispute arising out of chapters 703 and 704 of NRS, and any regulations adopted pursuant thereto.*

**Sec. 13.** 1. *A provider may file a complaint with the commission to resolve any dispute with another provider arising out of chapters 703 and 704 of NRS, and any regulations adopted pursuant thereto.*

2. *Before a provider may file a complaint with the commission against another provider, the provider shall attempt to resolve the complaint directly with the other provider.*

3. *A complaint filed with the commission by a provider against another provider must include certification by the complainant that:*

(a) *The parties to the complaint have met and conferred in an attempt to settle the matter, but were unable to resolve the matter; or*

(b) *The other party to the complaint has refused to meet with the complainant, including a description of the attempts made by the complainant to meet and confer with the other party.*

**Sec. 14.** 1. *In addition to the certification required by section 13 of this regulation, a complaint filed by a provider pursuant to sections 11 to 14, inclusive, of this regulation must:*

(a) *Contain a short and plain written statement of the claim showing that the complainant is entitled to relief;*

*(b) Include the facts, statutes, regulations, orders and tariffs that support each claim for relief in the complaint;*

*(c) Specify the relief requested, including any interim relief being requested;*

*(d) Include a certificate of service, made under penalty of perjury, that sets forth the method of service on the respondent and the bureau of consumer protection in the office of the attorney general, in accordance with NAC 703.610 via same-day or overnight delivery, with a copy sent by electronic mail; and*

*(e) Include a summary of the complaint, in 25 words or less, suitable for publication by the commission.*

*2. A complainant must file the original and nine copies of the complaint with the commission. Upon the filing of a complaint, the commission will designate a docket number for the administrative proceedings on the complaint and assign a presiding commissioner for those administrative proceedings.*

**Sec. 15. 1.** *A respondent to a complaint must serve its answer to the complaint within 7 calendar days after the date on which the complaint is filed with the commission pursuant to section 13 of this regulation.*

*2. In its answer, a respondent shall:*

*(a) State, in short and concise terms, its defenses to each claim asserted;*

*(b) Admit or deny the facts alleged in the complaint;*

*(c) State which allegations, if any, the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations; and*

*(d) Set forth any facts and law that constitute an affirmative defense.*

*3. The commission will consider an unexcused failure of a respondent to file an answer to a complaint within the time prescribed by this section to be an admission by the respondent to all relevant facts stated in the complaint.*

*Sec. 16. 1. Upon the filing of a complaint pursuant to section 13 of this regulation, the complaint must be submitted to mediation. Except for the filing of an answer and the filing of any requests for interim relief under section 19 of this regulation, the commission will suspend action, including any action or petitions that are pending for leave to intervene, on a complaint pending mediation. Except as otherwise provided in this subsection, the director of regulatory operations within the commission shall preside over the mediation of a complaint pursuant to this section. The director of regulatory operations may, not later than 3 business days after the date on which a complaint is filed, designate a member of his staff to preside over the mediation of the complaint.*

*2. The mediator of a complaint shall issue a notice to the parties to the complaint scheduling an initial mediation conference. An initial mediation conference must be scheduled for and begun not earlier than 15 calendar days before or later than 30 calendar days after the date on which the complaint is filed with the commission.*

*3. Each party to a complaint submitted for mediation shall submit a position statement directly with the mediator not later than 14 calendar days after the date on which the complaint was filed with the commission. A party to a complaint shall not file a position paper with the commission, any opposing party or counsel for an opposing party. A position statement must:*

*(a) Be not more than 15 pages in length; and*

*(b) Concisely state:*

- (1) The relevant facts;*
- (2) The issues that are the subject of the complaint;*
- (3) The argument of the party supporting its position;*
- (4) The applicable legal authorities; and*
- (5) All other information that, in the opinion of the party, may assist the mediator in conducting the mediation conference.*

*4. A mediation conference must be held at a time and place designated by the mediator. Parties to the complaint being submitted to mediation may be represented by legal counsel. Except as otherwise provided in this subsection, a party must have in attendance at the mediation a representative who has the authority to settle the dispute. A mediator may, for good cause shown, excuse the attendance of a representative of a party if legal counsel for the party is in attendance at the mediation and the legal counsel has written authorization from the party to resolve the dispute fully on behalf of the party or has immediate telephone access to a representative of the party who has such authority.*

*5. The procedures for a mediation conference and the sequence and manner of presentations by the parties are at the discretion of the mediator. Additional mediation conferences may be conducted upon the agreement of the parties or at the direction of the mediator.*

*6. If a complaint is settled as a result of a mediation conference, the parties to the complaint shall execute and file with the commission a voluntary dismissal of the complaint. A voluntary dismissal of a complaint must be filed with the commission within 10 calendar days after the date on which the settlement is reached.*

*7. If a settlement of the complaint is not reached through mediation, the parties to the complaint shall, not later than 10 calendar days after the last mediation conference but in no event not later than 45 calendar days after the date on which the complaint was filed with the commission, jointly prepare and file a mediation conference report with the secretary of the commission. A mediation conference report must include a list of the undisputed facts and a list of issues for resolution by the commission.*

*8. Papers or documents prepared by a party to a complaint, by legal counsel for such a party or by the mediator of the complaint in furtherance of the mediation conference, excluding the mediation report, are not available for public inspection and must not be submitted to, and will not be considered by, the commission in resolving the complaint. Matters discussed at a mediation conference and papers and documents that are not available for public inspection pursuant to this section are not available for discovery and are not admissible in any administrative proceeding before the commission.*

**Sec. 17.** *1. Not later than 3 business days after the date on which a mediation conference report is filed with the commission pursuant to section 16 of this regulation, the parties that filed the mediation conference report shall execute a protective agreement regarding discovery. A copy of the protective agreement must forthwith be filed with the commission.*

*2. Objections to requests for discovery, if any, must be made to the commission not later than 3 business days after the date on which the request for discovery is made. A response to a request for discovery must be served on the party requesting the discovery not later than 10 calendar days after the date on which the request is made. A dispute concerning discovery may be resolved through a conference call between the parties and the presiding officer.*

3. *All service between the parties must be made by same-day or overnight delivery, with a copy sent via electronic mail.*

**Sec. 18.** 1. *If a complaint is not fully resolved through mediation, the presiding officer assigned to the complaint shall cause to be served upon the parties to the complaint an order scheduling a hearing not later than 45 calendar days after the date on which the mediation conference report is filed. The only parties who may attend a proceeding on a complaint before a presiding officer are the complainant, the respondent, the staff of the commission and the consumer's advocate of the bureau of consumer protection in the office of the attorney general.*

2. *The presiding officer may, by stipulation of the parties to the complaint or upon the showing of good cause by one of the parties, shorten or extend the time set for the hearing on the complaint.*

3. *Not less than 3 business days before a hearing on a complaint, each party to the complaint shall file with the presiding officer its prepared testimony and exhibits.*

4. *Except as otherwise provided in this chapter and chapter 703 of NAC, and as may be modified by the presiding officer, the rules and practices regarding parties, discovery and hearings apply to complaints filed by a provider pursuant to sections 11 to 19, inclusive, of this regulation.*

5. *The commission will issue a final decision concerning a complaint not later than 45 calendar days after the date on which the hearing is held for the complaint. The commission will, in its final decision, apportion the cost of the expenses incurred by the commission for a transcript of the hearing on the complaint and subsequent noticing between the parties to the complaint.*

**Sec. 19. 1.** *A complaint filed with the commission pursuant to section 13 of this regulation may include a request for interim relief. A request for interim relief must:*

- (a) Be filed with the commission and served on the respondent to the complaint;*
- (b) Provide prima facie evidence that immediate and irreparable injury, loss or damage will result to the complainant as a result of the conduct of the respondent and that the complainant is likely to prevail on the merits of the complaint; and*
- (c) Be accompanied by a memorandum of points and authority establishing the legal basis for the interim relief requested.*

**2.** *An opposing party may file a written response to a request for interim relief within 7 calendar days after service of the request for interim relief.*

**3.** *As soon as possible after a request for interim relief is filed, the presiding officer shall set a date for hearing the request. Such a hearing must be set for the earliest date on the calendar of the presiding officer that occurs after the last date on which a response to the request for interim relief may be filed.*

**4.** *Notwithstanding any provision of this chapter or chapter 703 of NAC to the contrary, notice of a hearing on a request for interim relief must be:*

- (a) Served at least 7 calendar days before the time set for the hearing on the parties to the underlying complaint, the staff of the commission and the bureau of consumer protection in the office of the attorney general; and*
- (b) Published, at least 5 calendar days before the time set for the hearing, in two newspapers of general circulation.*

**5.** *The presiding officer shall issue his written decision on a request for interim relief as expeditiously as possible following the conclusion of the hearing on the request.*

*6. If the presiding officer determines that it is in the public interest to grant a request for interim relief, the presiding officer shall condition the terms of any order issued thereon to expire upon the resolution of the complaint by mediation or order of the commission on the complaint, whichever occurs first.*

*7. If, after the hearing on a request for interim relief, the presiding officer determines that the request fails to state a claim upon which relief may be granted, the presiding officer shall take only such further action on the complaint as is authorized by statute or regulation.*