

SENATE BILL NO. 440—COMMITTEE ON COMMERCE AND LABOR

MARCH 15, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to regulation of providers of telecommunication services. (BDR 58-1239)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to telecommunication services; providing for the alternative regulation of incumbent local exchange carriers; providing for the reclassification of basic network services provided by such carriers; requiring the public utilities commission of Nevada to establish standards of performance and reporting relating to the provision of local telecommunication services; providing an expedited procedure to resolve certain disputes between providers of telecommunication services; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 704 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 26, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 22, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *12, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
7 **Sec. 3.** “Affected person” means:
8 1. *A public utility affected by an action of an electing carrier or an*
9 *action of the commission relating to an electing carrier;*
10 2. *A person whose utility service or rates are affected by an action of*
11 *an electing carrier or an action of the commission relating to an electing*
12 *carrier;*
13 3. *A competitive supplier; or*
14 4. *The bureau of consumer protection in the office of the attorney*
15 *general.*

1 **Sec. 4.** *“Basic network service” means the provision of any of the*
2 *following services, unless the service has been reclassified as a*
3 *competitive, discretionary or other essential service by the commission*
4 *pursuant to section 16 of this act:*

- 5 1. *Farmer line service;*
- 6 2. *Flat rate service for residential lines;*
- 7 3. *Measured rate service for residential lines;*
- 8 4. *Flat rate service for residential trunk lines;*
- 9 5. *Flat rate service for business lines;*
- 10 6. *Measured rate service for business lines;*
- 11 7. *Flat rate service for business trunk lines;*
- 12 8. *Measured rate service for business trunk lines;*
- 13 9. *Suburban service access lines;*
- 14 10. *Toll station service access lines;*
- 15 11. *Universal lifeline service access lines;*
- 16 12. *Access to emergency 911 service; and*
- 17 13. *The first single-line directory listing.*

18 **Sec. 5.** *“Competitive service” means:*

19 1. *Any telecommunications service which is classified as a*
20 *competitive service or a nonregulated service by regulation of the*
21 *commission, or which is reclassified as a competitive service pursuant to*
22 *section 16 of this act; and*

23 2. *The intraLATA toll services of an electing carrier.*

24 **Sec. 6.** *“Competitive supplier” means a person who:*

25 1. *Is a competitor of an electing carrier with respect to a service*
26 *performed by the electing carrier; or*

27 2. *Wants to enter into competition with an electing carrier.*

28 **Sec. 7.** *“Discretionary service” means any telecommunications*
29 *service which is not otherwise classified as a basic network service, a*
30 *competitive service or any other essential service, or which is reclassified*
31 *as a discretionary service pursuant to section 16 of this act.*

32 **Sec. 8.** *“Electing carrier” means an incumbent local exchange*
33 *carrier regulated under an alternative plan of regulation pursuant to*
34 *NRS 704.040 that has elected also to be regulated pursuant to sections 2*
35 *to 22, inclusive, of this act by filing with the commission a statement*
36 *pursuant to section 13 of this act.*

37 **Sec. 9.** *“Incumbent local exchange carrier” has the meaning*
38 *ascribed to it in 47 U.S.C. § 251(h)(1), as that section existed on October*
39 *1, 1999, and includes a local exchange carrier that is treated as an*
40 *incumbent local exchange carrier pursuant to that section.*

41 **Sec. 10.** *“Local area of transport and access” or “LATA” means an*
42 *area within which a provider of telecommunication services may operate*
43 *pursuant to the order in United States v. American Telephone and*

1 Telegraph Co., 552 F. Supp. 131 (D.C. 1982). The term is equivalent to
2 "local access and transport area" as used in that order.

3 **Sec. 11.** "Other essential service" means any telecommunications
4 service that is classified as other essential service by regulation of the
5 commission.

6 **Sec. 12.** "Price floor" means the minimum price of a service using
7 cost-based standards as determined by the commission by regulation.

8 **Sec. 13.** An incumbent local exchange carrier that is regulated
9 under an alternative plan of regulation pursuant to NRS 704.040 may
10 elect also to be regulated pursuant to sections 2 to 22, inclusive, of this
11 act by filing with the commission a statement of its election to be so
12 regulated.

13 **Sec. 14.** 1. An electing carrier is not subject to any review of
14 earnings, monitoring of the rate base, or any other regulation by the
15 commission relating to the net income or rate of return of the electing
16 carrier, unless the electing carrier files with the commission a request to:

17 (a) Terminate its participation in the alternative plan of regulation
18 pursuant to NRS 704.040; or

19 (b) Continue its participation in the alternative plan of regulation
20 pursuant to NRS 704.040.

21 2. Except as otherwise provided in subsection 1, the commission
22 shall not consider the rate of return, rate base or any other earnings of
23 the electing carrier in connection with any change in rates.

24 3. Except for an electing carrier that files a request with the
25 commission pursuant to subsection 1, the commission shall not decrease
26 the rate of a basic network service provided by the electing carrier unless
27 the electing carrier agrees to the decrease in the rate.

28 4. Except for a telecommunications service reclassified pursuant to
29 section 16 of this act, or except where an electing carrier elects to
30 continue participation in an alternative plan of regulation pursuant to
31 paragraph (b) of subsection 1, an electing carrier shall not increase any
32 rate that the electing carrier charges for basic network services.

33 5. Except for universal service support for lifeline or link-up services
34 provided pursuant to 47 U.S.C. § 214 or as otherwise determined by the
35 commission, an electing carrier is not eligible to receive money from the
36 fund created pursuant to subsection 7 of NRS 704.040.

37 **Sec. 15.** Nothing in sections 2 to 22, inclusive, of this act authorizes
38 an electing carrier, without the approval of the commission, to
39 discontinue or otherwise change the terms and conditions relating to the
40 provision of the basic network services identified in subsections 1 to 4,
41 inclusive, of section 4 of this act, as set forth in the tariffs of the electing
42 carrier that are in effect on October 1, 1999.

1 **Sec. 16. 1.** *The commission may, at any time, upon its own motion*
2 *or that of any person, reclassify a basic network service, except access to*
3 *emergency 911 service.*

4 2. *The commission shall establish by regulation criteria for*
5 *determining whether a service should be reclassified, except that the*
6 *commission shall not adopt criteria for determining whether a service*
7 *should be reclassified that would deny a request to reclassify a basic*
8 *network service to another classification of service within an exchange*
9 *where a competitive supplier operates and provides that service, on the*
10 *basis that there is not a competitive supplier of that service in any other*
11 *portion of the state.*

12 **Sec. 17. 1.** *An electing carrier may, pursuant to this section and in*
13 *accordance with section 20 of this act, exercise flexibility in the pricing*
14 *of:*

15 (a) *Competitive services and discretionary services. The commission*
16 *shall not specify a maximum rate for any competitive services or*
17 *discretionary services of the electing carrier. The electing carrier shall,*
18 *with regard to any competitive or discretionary service that it provides, set*
19 *the price of that service above the price floor of the service.*

20 (b) *A package of services, which may include basic network services,*
21 *competitive services, discretionary services and other essential services.*

22 2. *Except as otherwise provided in this subsection, an electing*
23 *carrier*

24 *may, upon 30-days' notice to the commission in writing, exercise*
25 *flexibility in the pricing of its services pursuant to subsection 1 and is*
26 *exempt, with respect to the pricing of its services, from the provisions of*
27 *NRS 704.110 and the regulations of the commission relating thereto. The*
28 *notice must include a description in reasonable detail of:*

29 (a) *The characteristics of the services that will be subject to flexibility*
30 *in pricing;*

31 (b) *The terms and conditions applicable to the services;*

32 (c) *The nature of any limitations on the duration or geographical*
33 *availability of the services;*

34 (d) *The price or prices of the services or packages of services; and*

35 (e) *A certificate which provides that the electing carrier has*
36 *prepared*

37 *a cost study of the price floor to support the price or prices for each*
38 *service and that, on and after the date on which the notice is filed with*
39 *the commission, any affected person may, upon request, inspect and copy*
40 *the cost study, subject to reasonable terms and conditions of any*
41 *applicable confidentiality and nondisclosure agreement relating to the*
42 *services.*

43 *The notice requirements of this subsection do not apply to an electing*
44 *carrier with respect to the pricing of competitive services or for packages*
45 *comprised exclusively of competitive services.*

1 3. The price for a package of services must not be lower than the
2 lesser of:

3 (a) The sum of the price floors for each of the services contained in
4 the package; or

5 (b) The sum of the prices of the basic network services, as set forth
6 in
7 the tariffs of the electing carrier, and the price floors for each of the
8 other services contained in the package.

9 4. The commission shall not specify a maximum rate for a package
10 of services.

11 5. Each of the services included in a package pursuant to paragraph
12 (b) of subsection 1 must be made available on an individual basis.

13 **Sec. 18.** An electing carrier may establish promotional price
14 reductions for services upon a 1-day notice to the commission. The
15 promotional price reduction for a service may be offered for not more
16 than 90 days during any 12 consecutive months and must be given in all
17 geographic areas served by the electing carrier, where facilities permit,
18 on a nondiscriminatory basis during the 12-month period.

19 **Sec. 19.** 1. An electing carrier may introduce new services upon
20 30-days' notice to the commission in writing. The notice must include a
21 description in reasonable detail of:

22 (a) The characteristics of each new service;

23 (b) The terms and conditions applicable to each new service;

24 (c) The nature of any limitations on the duration or geographical
25 availability of each new service;

26 (d) The price or prices of each new service; and

27 (e) A certificate that provides that the electing carrier has prepared a
28 cost study of the price floor to support the price or prices for each new
29 service and that, on and after the date on which the notice is filed with
30 the commission, any affected person may, upon request, inspect and copy
31 the cost study, subject to reasonable terms and conditions of any
32 applicable confidentiality and nondisclosure agreement.

33 2. Each new service is subject to the conditions set forth in section 17
34 of this act.

35 3. Each new service is exempt from NRS 704.110 and the regulations
36 of the commission relating thereto.

37 4. Unless otherwise classified by the commission as a competitive
38 service pursuant to its regulations, a new service must be classified as a
39 discretionary service for which the commission shall not specify a
40 maximum rate. The electing carrier shall set the price of the new service
41 above the price floor of the service.

42 5. As used in this section, a "new service" means a
43 telecommunications

service:

1 (a) That provides a function, feature or capability which is
2 materially different from any service or services previously offered by
3 the carrier; or

4 (b) Combines two or more previously provided new services.

5 **Sec. 20.** *The rates charged by an electing carrier for services, except*
6 *for competitive services, must be geographically averaged throughout the*
7 *service territory in which the electing carrier is the provider of last resort,*
8 *as determined pursuant to regulations adopted by the commission, or*
9 *within such other smaller geographic area as the commission deems*
10 *appropriate to balance the interests of all customers and providers.*

11 **Sec. 21.** *The intrastate access prices charged by an electing carrier*
12 *must not exceed the interstate access prices charged by the electing*
13 *carrier as authorized by the Federal Communications Commission for*
14 *corresponding elements, and any resulting reductions must be offset on a*
15 *revenue-neutral basis with adjustments to other essential retail services*
16 *subject to regulation by the commission.*

17 **Sec. 22.** *The provisions of sections 2 to 22, inclusive, of this act do*
18 *not:*

19 1. *Apply to the commission in connection with any actions or*
20 *decisions required or permitted by the Telecommunications Act of 1996,*
21 *Public Law 104-104, 110 Stat. 56-161; or*

22 2. *Limit or modify the duties of an electing carrier to a competitive*
23 *supplier regarding the provision of network interconnection, unbundled*
24 *network elements and resold services under the provisions of the*
25 *Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56-161.*

26 **Sec. 23.** *The commission shall, by regulation:*

27 1. *Establish standards of performance and reporting regarding the*
28 *provision of interconnection, unbundled network elements and resold*
29 *services, which encourage competition and discourage discriminatory*
30 *conduct in the provision of local telecommunication services; and*

31 2. *Notwithstanding the provisions of NRS 703.320 to the contrary,*
32 *establish penalties and expedited procedures for imposing penalties upon*
33 *a provider of telecommunication services for actions that are inconsistent*
34 *with the standards established by the commission pursuant to subsection*

35 1. *Such penalties may include financial payment to the complaining*
36 *provider of telecommunication services for a violation of the standards*
37 *established by the commission pursuant to subsection 1, provided that*
38 *any penalty paid must be deducted, with interest, from any other award*
39 *under any other judicial or administrative procedure for the same*
40 *conduct in the same reporting period. Any penalty imposed pursuant to*
41 *this subsection is in lieu of the civil penalties set forth in NRS 703.380*
42 *and must be:*

43 (a) *Imposed for violating a standard or standards established by*
44 *regulations of the commission pursuant to subsection 1;*

1 **(b) Determined by the commission to further the goal of encouraging**
2 **competition or discouraging discriminatory conduct; and**

3 **(c) In an amount reasonable to encourage competition or discourage**
4 **discriminatory conduct.**

5 **Sec. 24. Notwithstanding the provisions of NRS 703.310 and**
6 **703.320, the commission shall establish by regulation expedited**
7 **procedures for complaints filed by a provider of telecommunication**
8 **services against another provider of telecommunication services for any**
9 **dispute arising under chapter 703 or 704 of NRS, including specific**
10 **procedures for interim relief that may include a preliminary decision by a**
11 **single commissioner except as to the imposition of monetary penalties.**

12 **Sec. 25. Any judicial review of a decision by the commission**
13 **pursuant to sections 23 and 24 of this act must be made in accordance**
14 **with NRS 703.373 to 703.376, inclusive.**

15 **Sec. 26. The provisions of sections 23 to 26, inclusive, of this act**
16 **must not be construed to exempt providers of telecommunication services**
17 **from any other applicable statute of this state or the United States**
18 **relating to consumer and antitrust protections. The exemption provided**
19 **in paragraph (c) of subsection 3 of NRS 598A.040 does not apply to**
20 **conduct of, or actions taken by, a provider of telecommunication services**
21 **in violation of the standards established pursuant to subsection 1 of**
22 **section 23 of this act.**

23 **Sec. 27. NRS 704.640 is hereby amended to read as follows:**

24 704.640 ~~{Any}~~ **Except as otherwise provided in sections 23 to 26,**
25 **inclusive, of this act, any person who:**

26 1. Operates any public utility to which NRS 704.005 to 704.751,
27 inclusive, and **sections 23 to 26, inclusive, of this act, and NRS** 704.993 to
28 704.999, inclusive, apply without first obtaining a certificate of public
29 convenience and necessity or in violation of its terms;

30 2. Fails to make any return or report required by NRS 704.005 to
31 704.751, inclusive, and **sections 23 to 26, inclusive, of this act, and NRS**
32 704.993 to 704.999, inclusive, or by the commission pursuant to NRS
33 704.005 to 704.751, inclusive, and **sections 23 to 26, inclusive, of this act,**
34 **and NRS** 704.993 to 704.999, inclusive;

35 3. Violates, or procures, aids or abets the violating of any provision of
36 NRS 704.005 to 704.751, inclusive, and **sections 23 to 26, inclusive, of**
37 **this act, and NRS** 704.993 to 704.999, inclusive;

38 4. Fails to obey any order, decision or regulation of the commission;

39 5. Procures, aids or abets any person in his failure to obey the order,
40 decision or regulation; or

41 6. Advertises, solicits, proffers bids or otherwise holds himself out to
42 perform as a public utility in violation of any of the provisions of NRS

1 704.005 to 704.751, inclusive, and *sections 23 to 26, inclusive, of this act,*
2 *and NRS* 704.993 to 704.999, inclusive,
3 shall be fined not more than \$500.

4 **Sec. 28.** Section 27 of this act is hereby amended to read as follows:

5 Sec. 27. NRS 704.640 is hereby amended to read as follows:

6 704.640 Except as otherwise provided in sections 23 to 26,
7 inclusive, of this act, any person who:

8 1. Operates any public utility to which NRS 704.005 to
9 704.751, inclusive, and sections ~~23~~ 2 to 26, inclusive, of this act,
10 and NRS 704.993 to 704.999, inclusive, apply without first
11 obtaining a certificate of public convenience and necessity or in
12 violation of its terms;

13 2. Fails to make any return or report required by NRS 704.005
14 to 704.751, inclusive, and sections ~~23~~ 2 to 26, inclusive, of this
15 act, and NRS 704.993 to 704.999, inclusive, or by the commission
16 pursuant to NRS 704.005 to 704.751, inclusive, and sections ~~23~~ 2
17 to 26, inclusive, of this act, and NRS 704.993 to 704.999, inclusive;

18 3. Violates, or procures, aids or abets the violating of any
19 provision of NRS 704.005 to 704.751, inclusive, and sections ~~23~~
20 2 to 26, inclusive, of this act, and NRS 704.993 to 704.999,
21 inclusive;

22 4. Fails to obey any order, decision or regulation of the
23 commission;

24 5. Procures, aids or abets any person in his failure to obey the
25 order, decision or regulation; or

26 6. Advertises, solicits, proffers bids or otherwise holds himself
27 out to perform as a public utility in violation of any of the
28 provisions of NRS 704.005 to 704.751, inclusive, and sections ~~23~~
29 2 to 26, inclusive, of this act, and NRS 704.993 to 704.999,
30 inclusive,
31 shall be fined not more than \$500.

32 **Sec. 29.** 1. This section and sections 1 and 23 to 27, inclusive, of
33 this act become effective upon passage and approval.

34 2. Sections 2 to 22, inclusive, and 28 of this act become effective on
35 October 1, 1999.