

Senate Bill No. 41–Committee on
Commerce, Labor and Energy

CHAPTER.....

AN ACT relating to public utilities; revising certain provisions governing proposed changes in schedules submitted by small-scale providers of last resort; revising certain provisions relating to the approval by the Public Utilities Commission of Nevada of proposed transactions involving certain public utilities providing telecommunication services in this State; authorizing the Commission to regulate broadband services in this State under certain circumstances; revising provisions relating to the eligibility of persons with low incomes for reductions in rates for certain telephone services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally requires a public utility to submit an application and obtain the approval of the Public Utilities Commission of Nevada for a change in any schedule of rates or services. (NRS 704.110) Generally, an application for a proposed change is subject to a hearing. However, existing law provides that the Commission will determine whether to dispense with a hearing regarding a change in a schedule proposed by a small-scale provider of last resort of telephone service under certain circumstances. (NRS 704.100) **Section 1** of this bill provides that a small-scale provider of last resort may file with the Commission the proposed change using a letter of advice in lieu of an application if the applicant: (1) demonstrates that the proposed change in schedule is required by or directly related to a regulation or order of the Federal Communications Commission; and (2) files the letter of advice not later than 5 years after the Commission has issued a final order on a general rate application filed by the applicant. **Section 1** authorizes a small-scale provider of last resort to request a waiver of the 5-year period. **Section 1** additionally authorizes the Regulatory Operations Staff of the Commission or any other interested party to file with the Commission a request for the issuance of an order requiring the applicant to file a general rate application and provides that the Commission may hold a hearing to consider such a request.

Existing law requires that, with certain exceptions, a person who seeks to merge with, directly or indirectly acquire or directly or indirectly obtain control of a public utility doing business in this State obtain from the Commission authorization of the proposed transaction. (NRS 704.329) **Section 2** of this bill exempts a provider of commercial mobile radio service from this requirement. Existing law further provides that a proposed transaction involving a public utility providing telecommunication services is exempted from this requirement if, in the most recently completed calendar year, not more than 10 percent of the gross operating revenue of the public utility was derived from intrastate telecommunication services provided to retail customers in this State. **Section 2** provides that a person who proposes such a transaction must provide to the Commission written notice of the proposed transaction, which must include certain information concerning the proposed transaction. **Section 2** authorizes the person proposing the transaction to request that the Regulatory Operations Staff of the Commission and the Consumer's Advocate of the Bureau of Consumer Protection in the Office of the



Attorney General each waive the right to request an order from the Commission requiring the person to file an application for authorization of the proposed transaction. If such waivers are made, **section 2** provides that the person proposing the transaction is exempted from the requirement that the person obtain the authorization of the Commission.

Existing law prohibits the Commission, with certain limited exceptions, from regulating any broadband services. (NRS 704.684) **Section 3** of this bill provides that the Commission is not prohibited from exercising its authority in accordance with certain federal statutes to implement the federal universal service program and taking any action within the scope of that authority because of a regulation or order of the Federal Communications Commission.

Section 4 of this bill revises certain requirements concerning regulations which the Commission is required to adopt governing eligibility for persons with low incomes for a reduction in rates for telephone service.

Section 9 of this bill expands the applicability of the reduction in telephone rates provided by lifeline or tribal link up services to include certain services included in bundled service offerings which an eligible provider is required to offer pursuant to federal regulations. **Sections 5-8 and 10** of this bill make various additional changes concerning lifeline and tribal link up services provided by such providers.

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

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

Section 1. NRS 704.100 is hereby amended to read as follows:

704.100 1. Except as otherwise provided in NRS 704.075 and 704.68861 to 704.68887, inclusive, or as may otherwise be provided by the Commission pursuant to NRS 704.095 or 704.097:

(a) A public utility shall not make changes in any schedule, unless the public utility:

(1) Files with the Commission an application to make the proposed changes and the Commission approves the proposed changes pursuant to NRS 704.110; or

(2) Files the proposed changes with the Commission using a letter of advice in accordance with the provisions of paragraph (f) ~~H~~ *or (g).*

(b) A public utility shall adjust its rates on a quarterly basis between annual rate adjustment applications pursuant to subsection 8 of NRS 704.110 based on changes in the public utility's recorded costs of natural gas purchased for resale.

(c) An electric utility shall, between annual deferred energy accounting adjustment applications filed pursuant to NRS 704.187, adjust its rates on a quarterly basis pursuant to subsection 10 of NRS 704.110.



(d) A public utility shall post copies of all proposed schedules and all new or amended schedules in the same offices and in substantially the same form, manner and places as required by NRS 704.070 for the posting of copies of schedules that are currently in force.

(e) A public utility may not set forth as justification for a rate increase any items of expense or rate base that previously have been considered and disallowed by the Commission, unless those items are clearly identified in the application and new facts or considerations of policy for each item are advanced in the application to justify a reversal of the prior decision of the Commission.

(f) Except as otherwise provided in paragraph (g), if the proposed change in any schedule does not change any rate or will result in an increase in annual gross operating revenue, as certified by the public utility, in an amount that does not exceed \$2,500:

(1) The public utility may file the proposed change with the Commission using a letter of advice in lieu of filing an application; and

(2) The Commission shall determine whether it should dispense with a hearing regarding the proposed change.

(g) If the applicant is a small-scale provider of last resort and the proposed change in any schedule will result in an increase in annual gross operating revenue, as certified by the applicant, in an amount that does not exceed \$50,000 or 10 percent of the applicant's annual gross operating revenue, whichever is less ~~to the~~:

(1) The applicant may file the proposed change with the Commission using a letter of advice in lieu of filing an application if the applicant:

(I) Demonstrates that the proposed change in schedule is required by or directly related to a regulation or order of the Federal Communications Commission; and

(II) Except as otherwise provided in subsection 2, files the letter of advice not later than 5 years after the Commission has issued a final order on a general rate application filed by the applicant in accordance with subsection 3 of NRS 704.110; and

(2) The Commission shall determine whether it should dispense with a hearing regarding the proposed change.

↪ Not later than 10 business days after the filing of a letter of advice pursuant to subparagraph (1), the Regulatory Operations Staff of the Commission or any other interested party may file with the Commission a request that the Commission order an applicant to file a general rate application in accordance with subsection 3



of NRS 704.110. The Commission may hold a hearing to consider such a request.

(h) In making the determination pursuant to paragraph (f) or (g), the Commission shall first consider all timely written protests, any presentation that the Regulatory Operations Staff of the Commission may desire to present, the application of the public utility and any other matters deemed relevant by the Commission.

2. An applicant that is a small-scale provider of last resort may submit to the Commission a written request for a waiver of the 5-year period specified in sub-subparagraph (II) of subparagraph (1) of paragraph (g) of subsection 1. The Commission shall, not later than 90 days after receipt of such a request, issue an order approving or denying the request. The Commission may approve the request if the applicant provides proof satisfactory to the Commission that the applicant is not earning more than the rate of return authorized by the Commission and that it is in the public interest for the Commission to grant the request for a waiver. The Commission shall not approve a request for a waiver if the request is submitted later than 7 years after the issuance by the Commission of a final order on a general rate application filed by the applicant in accordance with subsection 3 of NRS 704.110. If the Commission approves a request for a waiver submitted pursuant to this subsection, the applicant shall file the letter of advice pursuant to subparagraph (1) of paragraph (g) of subsection 1 not earlier than 120 days after the date on which the applicant submitted the request for a waiver pursuant to this subsection, unless the order issued by the Commission approving the request for a waiver specifies a different period for the filing of the letter of advice.

3. As used in this section, "electric utility" has the meaning ascribed to it in NRS 704.187.

Sec. 2. NRS 704.329 is hereby amended to read as follows:

704.329 1. Except as otherwise provided in subsection 6, a person shall not merge with, directly acquire, indirectly acquire through a subsidiary or affiliate, or otherwise directly or indirectly obtain control of a public utility doing business in this State or an entity that holds a controlling interest in such a public utility without first submitting to the Commission an application for authorization of the proposed transaction and obtaining authorization from the Commission.

2. Any transaction that violates the provisions of this section is void and unenforceable and is not valid for any purpose.



3. Before authorizing a proposed transaction pursuant to this section, the Commission shall consider the effect of the proposed transaction on the public interest and the customs in this State. The Commission shall not authorize the proposed transaction unless the Commission finds that the proposed transaction:

- (a) Will be in the public interest; and
- (b) Complies with the provisions of NRS 704.7561 to 704.7595, inclusive, if the proposed transaction is subject to those provisions.

4. The Commission may base its authorization of the proposed transaction upon such terms, conditions or modifications as the Commission deems appropriate.

5. If the Commission does not issue a final order regarding the proposed transaction within 180 days after the date on which an application or amended application for authorization of the proposed transaction was filed with the Commission, and the proposed transaction is not subject to the provisions of NRS 704.7561 to 704.7595, inclusive, the proposed transaction shall be deemed to be authorized by the Commission.

6. The provisions of this section do not apply to:

- (a) The transfer of stock of a public utility doing business in this State or to the transfer of the stock of an entity that holds a controlling interest in such a public utility, if a transfer of not more than 25 percent of the common stock of such a public utility or entity is proposed.

- (b) Except as otherwise provided in this paragraph, a proposed transaction involving a public utility doing business in this State providing telecommunication services or an entity that holds a controlling interest in such a public utility if, in the most recently completed calendar year, not more than 10 percent of the gross operating revenue of the public utility or the entity that holds a controlling interest in the public utility was derived from intrastate telecommunication services provided to retail customers in this State by the public utility. *A person who proposes such a transaction shall file with the Commission written notice of the proposed transaction. The notice must identify each party to the proposed transaction and include a verified statement that not more than 10 percent of the gross operating revenue of the public utility or the entity that holds a controlling interest in the public utility was derived from intrastate telecommunication services provided to retail customers in this State by the public utility in the most recently completed calendar year. Upon filing the notice required by this paragraph, the person may submit a written request that the Regulatory Operations Staff of the Commission*



and the Consumer's Advocate waive the right pursuant to subparagraph (1) to request an order from the Commission requiring the person to file an application for authorization of the proposed transaction. If the Regulatory Operations Staff and the Consumer's Advocate waive in writing the right to request an order from the Commission requiring the person to file an application, the proposed transaction is exempted from the provisions of this section. Such a proposed transaction is not exempted from the provisions of this section if:

(1) Not later than 30 days after the date on which the person undertaking the proposed transaction ~~submits~~ *files* the ~~notification~~ *notice* required by ~~15 U.S.C. § 18a.~~ *this paragraph,* the Regulatory Operations Staff of the Commission or the Consumer's Advocate requests an order from the Commission requiring the person to file an application for authorization of the proposed transaction ~~it~~ *, and has not waived its right to request such an order;*

(2) The request alleges in sufficient detail that the proposed transaction may materially affect retail customers of public utilities in this State; and

(3) The Commission issues an order requiring the person to file an application for authorization of the proposed transaction.

(c) A public utility engaged in the business of furnishing, for compensation, water or services for the disposal of sewage, or both, to persons within this State if the utility:

(1) Serves 15 persons or less; and

(2) Operates in a county whose population is 700,000 or more.

(d) A provider of commercial mobile radio service.

7. As used in this section:

(a) "Person" means:

(1) A natural person;

(2) Any form of business or social organization and any other nongovernmental legal entity, including, without limitation, a corporation, partnership, association, trust or unincorporated organization;

(3) A government or an agency or instrumentality of a government, including, without limitation, this State or an agency or instrumentality of this State; and

(4) A political subdivision of this State or of any other government or an agency or instrumentality of a political subdivision of this State or of any other government.



(b) "Transaction" means a merger, acquisition or change in control described in subsection 1.

Sec. 3. NRS 704.684 is hereby amended to read as follows:

704.684 1. Except as otherwise provided in this section, the Commission shall not regulate any broadband service, including imposing any requirements relating to the terms, conditions, rates or availability of broadband service.

2. The provisions of subsection 1 do not limit or modify the authority of the Commission to:

(a) Consider any revenues, costs and expenses that a small-scale provider of last resort derives from providing a broadband service, if the Commission is determining the rates of the provider under a general rate application that is filed pursuant to subsection 3 of NRS 704.110;

(b) Act on a complaint filed pursuant to NRS 703.310, if the complaint relates to a broadband service that is provided by a public utility;

(c) Include any appropriate gross operating revenue that a public utility derives from providing broadband service when the Commission calculates the gross operating revenue of the public utility for the purposes of levying and collecting the annual assessment in accordance with the provisions of NRS 704.033; or

(d) Determine the rates, pricing, terms and conditions of intrastate switched or special access services provided by a telecommunication provider.

3. The provisions of subsection 1 do not:

(a) Apply to the Commission in connection with any actions or decisions required or permitted by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56-161; ~~for~~

(b) *Prevent the Commission from exercising its authority pursuant to 47 U.S.C. § 214(e) or § 254(f) relating to the implementation of the federal universal service program, including, without limitation, taking any action within the scope of that authority because of a regulation or order of the Federal Communications Commission; or*

(c) Limit or modify:

(1) The duties of a telecommunication provider regarding the provision of network interconnection, unbundled network elements and resold services under the provisions of the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56-161; or

(2) The authority of the Commission to act pursuant to NRS 704.6881 and 704.6882.



4. As used in this section, "broadband service" means any two-way service that transmits information at a rate that is generally not less than 200 kilobits per second in at least one direction.

Sec. 4. NRS 704.6873 is hereby amended to read as follows:

704.6873 1. The Commission shall adopt regulations that require each telecommunication provider furnishing service to:

- (a) An elementary or secondary public school; or
- (b) A public library,

→ to establish discounts in the rates for the telecommunication services that the provider furnishes to that school or library. The amount of the discount must be determined by the Commission in a manner that is consistent with the provisions of 47 U.S.C. § 254.

2. The Commission shall adopt regulations that require each telecommunication provider furnishing service to:

(a) Public or private nonprofit providers of health care which serve persons in rural areas; or

(b) Persons with low income and persons in rural, insular and high-cost areas,

→ to ensure that such providers of health care and persons have access to telecommunication services that are reasonably comparable to those services available in urban areas and that the rates for such services charged by the telecommunication provider are reasonably comparable to those charged in the urban areas, to the extent required by the provisions of 47 U.S.C. § 254.

3. The Commission shall adopt regulations which set forth the requirements for eligibility for:

(a) Persons with low income to receive a reduction in rates for telephone service pursuant to NRS 707.400 to 707.500, inclusive. The regulations adopted pursuant to this paragraph must provide that ~~if a person is a customer of:~~

~~— (1) A competitive supplier that is an incumbent local exchange carrier, the person is eligible to receive a reduction in rates if the person's household has a total household gross income not exceeding 175 percent of the federally established poverty level for a household with the same number of persons; and~~

~~— (2) Any other competitive supplier or a small-scale provider of last resort, the person is eligible to receive a reduction in rates if the person's household has a total household gross income not exceeding 150 percent of the federally established poverty level for a household with the same number of persons.† :~~

(1) An eligible provider shall provide a reduction in rates for telephone service if the income of a person's household is at or below the greater of:



(I) The percentage of the federally designated level signifying poverty for a household of that size specified by 47 C.F.R. § 54.409, as that section existed on June 28, 2012; or

(II) The percentage of the federally designated level signifying poverty for a household of that size specified by the Commission; and

(2) The percentage of the federally designated level signifying poverty specified pursuant to subparagraph (I) is applicable to all eligible providers.

(b) Small-scale providers of last resort to apply to receive payments from the fund to maintain the availability of telephone service with regard to rural, insular and high-cost areas.

(c) Competitive suppliers that are providers of last resort to apply to receive payments from the fund to maintain the availability of telephone service with regard to rural, insular and high-cost areas.

4. Any regulations adopted pursuant to this section and NRS 704.040 regarding the availability of telephone service must:

(a) Be consistent with the applicable provisions of 47 U.S.C. ~~†§~~ **§§ 214 and 254**;

(b) Define rural, insular and high-cost areas;

(c) Establish nondiscriminatory eligibility requirements for all small-scale providers of last resort that apply to receive payments from the fund to maintain the availability of telephone service with regard to rural, insular and high-cost areas; and

(d) Allow competitive suppliers which are providers of last resort and which meet the eligibility requirements established by the Commission to apply to receive payments from the fund to maintain the availability of telephone service with regard to rural, insular and high-cost areas.

5. As used in this section:

(a) "Eligible provider" has the meaning ascribed to it in NRS 707.440.

(b) "Household" has the meaning ascribed to it in 47 C.F.R. § 54.400(h), as that section existed on April 2, 2012.

(c) "Income" has the meaning ascribed to it in 47 C.F.R. § 54.400(f), as that section existed on April 2, 2012.

Sec. 5. NRS 704.68867 is hereby amended to read as follows:

704.68867 1. Each competitive supplier that is an incumbent local exchange carrier on May 31, 2007, shall:

(a) On or before October 1, 2008, prepare and submit to the Commission and the Bureau of Consumer Protection in the Office of the Attorney General a report regarding competition in the local markets for telecommunication service, including, without



limitation, competition from available alternative services that serve as technological substitutes for telecommunication service. The report must be based on information that is reasonably available from public sources and must contain data, statistical measures and analyses for assessing:

(1) The existing number of customers of the competitive supplier, the forms of telecommunication service provided by the competitive supplier and the prices for such services;

(2) The number of competitors in the local markets within the service territory of the competitive supplier for various forms of telecommunication service, including, without limitation, wireline and wireless telecommunication service, and any available alternative services that serve as technological substitutes for telecommunication service, such as broadband services, and a comparison of the services provided by such competitors and prices for telecommunication service and broadband service;

(3) The growth or decline, if any, in customers and primary access lines of the competitive supplier during the preceding 5 years; and

(4) The number of persons receiving a reduction in rates for telephone service pursuant to NRS 707.400 to 707.500, inclusive, within the service territory of the competitive supplier, the price of such service, the consumer outreach and informational programs used to expand participation of eligible persons in such service, and the management, coordination and training programs implemented by the competitive supplier to increase awareness and use of lifeline and ~~link-up~~ *tribal link up* programs.

(b) On or before October 1 of each year thereafter for a period of 4 years, prepare and submit to the Commission and the Bureau of Consumer Protection in the Office of the Attorney General a report that compares and evaluates any changes in the data, prices, statistical measures and analyses set forth in the report submitted by the competitive supplier pursuant to paragraph (a).

2. The Commission shall:

(a) On or before December 1 of each applicable year, provide to the Legislative Commission a copy of the reports received pursuant to subsection 1; and

(b) On or before December 1, 2010, prepare and submit to the Legislative Commission and the Bureau of Consumer Protection in the Office of the Attorney General a report that:

(1) Summarizes and evaluates the data, prices, statistical measures and analyses set forth in the reports submitted by competitive suppliers pursuant to subsection 1;



(2) Provides an assessment of market conditions and the state of competition for telecommunication service in the various geographical areas of this State; and

(3) Includes, without limitation:

(I) A discussion of the types of alternative services that serve as technological substitutes for telecommunication service and the availability of such alternative services in the various geographical areas of this State; and

(II) An assessment of the alternative services that are available for basic network service and business line service considering intermodal alternatives, technological developments, market conditions and the availability of comparable alternative services in the various geographical areas of this State.

3. As used in this section:

(a) "Lifeline" has the meaning ascribed to it in NRS 707.450.

(b) "Tribal link up" has the meaning ascribed to it in NRS 707.460.

Sec. 6. NRS 707.430 is hereby amended to read as follows:

707.430 "Eligible customer" means a customer who is eligible to receive lifeline or *tribal* link up services.

Sec. 7. NRS 707.450 is hereby amended to read as follows:

707.450 "Lifeline" has the meaning ascribed to it in 47 C.F.R. § 54.401(a), as that section existed on ~~January 1, 1999.~~ *April 2, 2012.*

Sec. 8. NRS 707.460 is hereby amended to read as follows:

707.460 ~~"Link"~~ *"Tribal link up"* has the meaning ascribed to it in 47 C.F.R. § ~~54.411(a).~~ *54.413*, as that section existed on ~~January 1, 1999.~~ *April 1, 2012.*

Sec. 9. NRS 707.490 is hereby amended to read as follows:

707.490 1. The reduction in the telephone rates provided by lifeline or *tribal* link up services must be based on the methods for determining reductions which are adopted by the Commission by regulation. The Commission may provide different methods for determining reductions to allow for differences between eligible providers. The methods may include, without limitation:

(a) Basing the reduction on the tariff filed by the eligible provider with the Commission; or

(b) Establishing a formula pursuant to which the amount of the reduction may be determined.

2. The reduction in such telephone rates applies only to:

(a) Basic network service ~~and~~ *or the voice telephony service included in any bundled service offering that includes voice*



telephony service and any other services specified in 47 C.F.R. § 54.401(b), as that section existed on April 2, 2012.

(b) Residential service connection charges for such ~~basic~~
~~network~~ service.

3. If the amount of the reduction in rates provided by an eligible provider to an eligible customer for lifeline services is greater than the amount which the eligible provider receives as universal service support pursuant to 47 U.S.C. § 254, the eligible provider is entitled to reimbursement from the fund to maintain the availability of telephone service established by the Commission pursuant to NRS 704.040 for the difference between the amount of the reduction and the amount received as universal service support pursuant to 47 U.S.C. § 254.

Sec. 10. NRS 707.480 is hereby repealed.

Sec. 11. This act becomes effective upon passage and approval.

