

CHAPTER 17.

PROVISION OF LOCAL EXCHANGE AND EXCHANGE ACCESS COMPETITION.

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CHAPTER 17.

PROVISION OF LOCAL EXCHANGE AND EXCHANGE ACCESS COMPETITION.

Rule R17-1. DEFINITIONS.

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

- (a) Basic Local Exchange Service. -- The telephone service comprised of an access line, dialtone, the availability of touchtone, and usage provided to the premises of residential customers or business customers within a local exchange area.
- (b) Certificate. -- A certificate of public convenience and necessity to provide local exchange and/or exchange access service as a public utility as defined in G.S. 62-3(23)a.6.
- (c) Commission. -- The North Carolina Utilities Commission.
- (d) Competing Local Provider or CLP. -- Any person applying for or granted a certificate to provide local exchange or exchange access services in competition with a local exchange company.
- (e) Exchange Access Service. -- Switched or special access service provided by a LEC or CLP to a customer which facilitates a connection between an end-user and an interexchange carrier.
- (f) FCC – The Federal Communications Commission.
- (g) Local Exchange Service Area. -- The geographic area within which a CLP or LEC is authorized to provide local exchange or exchange access service.
- (h) Local Exchange Company or LEC. -- Any person, holding on January 1, 1995, a certificate to provide local exchange services or exchange access services, excluding telephone membership corporations.
- (i) Local Exchange Service. -- Switched service offered by a CLP or LEC, without the payment of long distance charges; or dedicated service connecting two or more points within an exchange as defined on an exchange service area map of a LEC or CLP.
- (j) Notice -- A document filed with the Commission pursuant to Rule R17-8 which includes the following: (1) The name, address of the principal headquarters, and telephone and facsimile numbers for each of the parties to the Section 214 License Transfer or Pro forma Transaction and any changes in the Name and Contacts information provided in the non-dominant CLP's original Competing Local Provider Application; (2) A statement setting forth a description of the Section 214 License Transfer or Pro forma Transaction; (3) A copy of the application for a domestic Section 214 License Transfer, or in the case of a Pro *forma* Transaction the notification letter, filed with the FCC; and (4) A copy of the FCC's Public Notice of the Section 214 License Transfer or *Pro forma* Transaction.

(k) Number Portability. -- The technical capability to allow customers to retain their telephone numbers when they change providers of local exchange service but do not change locations.

(l) Prepaid local exchange service. -- Local exchange service for which payment is typically required in advance. Prepaid service usually does not allow the customer to dial or use local or long distance directory assistance or operator services, to place long distance calls through standard dialing patterns (including 1+ and 0+ calls), or to place calls to the expanded local calling areas using standard dialing patterns.

(m) *Pro forma* Transaction – Any corporate restructuring, reorganization or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate.

(n) Section 214 License Transfer – A transfer of control of lines or authorization to operate pursuant to section 214 of the Communications Act of 1934 subject to the streamlining procedures for domestic transfer of control applications in 47 C.F.R. § 63.03.

(o) Universal Service. -- The provision of affordable basic local exchange service, part of which may be subsidized through a universal service fund.

(p) USDOJ – The United States Department of Justice.

(NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; 3/5/96; 9/21/00; NCUC Docket No. P-100, Sub 163, 8/24/06; 8/28/06.)

Rule R17-2. REQUIREMENTS AND LIMITATIONS REGARDING CERTIFICATION OF COMPETING LOCAL PROVIDERS.

(a) Any entity other than an existing CLP certificate holder applying for a certificate or for authority to acquire an existing certificate shall complete a CLP application form and make a satisfactory showing to the Commission:

- (1) That it is fit, capable and financially able to render such service;
- (2) That the service to be provided will reasonably meet the service standards set out in Rule R9-8;
- (3) That the provision of the service will not adversely impact the availability of reasonably affordable local exchange service;
- (4) That it will participate to the extent it may be required to do so by the Commission in the support of universally available telephone services at affordable rates; and
- (5) That the provision of the services will not otherwise adversely impact the public interest.

(b) Any CLP applying for a certificate to provide competing local exchange or exchange access services shall include in its application the following:

- (1) The name of the CLP, the address of the principal headquarters, the telephone and facsimile numbers, and the names and addresses of the CLP's principal officers;
- (2) Names, addresses, and telephone and facsimile numbers of the CLP's employees for the Commission to contact regarding various regulatory matters and for customers to contact regarding service;
- (3) If pay telephone service will be provided, the address to be used by the serving LEC in billing for payphone service provider (PSP) lines or trunks and by the CLP in meeting PSP notice requirements;
- (4) Information about the structure of the business organization and, where applicable, a copy of any articles of incorporation, partnership agreement, articles of organization, or by-laws of the CLP, and a copy of a certificate of authority to do business in North Carolina; if an office is not maintained in North Carolina, the name and address of agent for service of process in North Carolina;
- (5) A list of other states where the CLP or any of its affiliates is authorized to operate and a list of those states which have denied any requested authority and an indication of the nature of such denial;
- (6) A showing as to the CLP's financial, managerial and technical ability to render local exchange or local exchange access services:
 - (a) As a minimum requirement, a showing of financial ability shall be made by attaching the CLP's most recent stockholders' annual report, its most recent SEC 10K or audited financial statements for the most recent twelve months or, if the company is not publicly traded, its most recent balance sheet and income statement. If a balance sheet and income statement are not available, then the CLP shall provide a current 5-year business plan and all supporting

workpapers and schedules as provided on the CLP application form. Additional support for the Applicant's financial ability may also be included as provided on the CLP application form. The Applicant must also provide an explanation for any conditions which may affect its ability to continue as a going concern as set forth in the CLP application form;

(b) To demonstrate managerial and technical fitness and ability, the CLP shall attach a brief description of its history of providing local exchange or exchange access or other telecommunications services and shall list the geographic areas in which it has been and is currently providing such services. A newly created company shall list the experience of each principal officer and may also provide other documentation in order to show its managerial and technical ability to provide services.

(c) Rescinded.

(7) Confirmation that the application has been served on each of the LECs in North Carolina;

(8) A statement setting forth with particularity the proposed geographic areas to be served;

(9) The types of local exchange and exchange access services to be provided; and

(10) A statement that the CLP agrees to abide by all applicable statutes and all applicable Orders, rules, and regulations entered and adopted by the Commission.

(c) The application shall be verified. The CLP shall file the original and 11 copies of its application with the Chief Clerk of the Commission and shall submit a statutory filing fee of \$250 with the application. Applications are exempt from Commission Rule R1-5(d) which requires that pleadings filed on behalf of a corporation be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 are still applicable.

(d) Falsification or failure to disclose any required information in the petition for certification may be grounds for denial or revocation of any certificate.

(e) All CLPs shall be willing as a condition to certification to provide support for universal service in a manner determined by the Commission. This requirement shall not be construed as prohibiting the granting of a certificate before the universal service issues are finally determined by the Commission.

(f) Except as provided in Commission Rule R17-6, a CLP shall, either directly or through arrangements with other carriers, provide as a part of its basic local exchange service(s) the following:

(1) Access to emergency service and services for the hearing and speech impaired;

(2) Access to local and long distance directory assistance and provision of local telephone directories to end-users;

(3) Access to operator services;

- (4) Access to all standard dialing patterns to all interLATA and intraLATA long distance carriers, including 1+ and 0+ access to the customer's carrier of choice for interLATA and intraLATA long distance calls;
 - (5) Compliance with Commission basic services standards as defined in any applicable rules and decisions of the Commission;
 - (6) Free blocking of 900 and 976-type services and other pay-per-call services, including but not limited to calls to 700 and 800 numbers, for which charges are made by the service provider and billed by the CLP;
 - (7) Free per-call and per-line blocking in accordance with Orders of the Commission applicable to LECs; subscribers must be advised by bill insert or direct mailing of the availability of these free features at least once per year; and
 - (8) Number portability where technically and economically reasonable.
- (g) The provisions of Commission Rule R9-8 and R12-1 through R12-9 shall apply to CLPs.
- (h) Rescinded.
- (i) CLPs shall maintain their books of account in accordance with Generally Accepted Accounting Principles (GAAP).
- (j) Financial reports are not required to be routinely filed by CLPs. However, the CLP shall submit specific financial information upon request of the Commission or the Public Staff.
- (k) The number of access lines or other operating statistics are not required to be filed except upon specific request of the Commission or the Public Staff.
- (l) CLPs shall be required to participate in the telecommunications relay service in accordance with G.S. 62-157 and applicable orders, rules and regulations entered and adopted by the Commission.
- (m) CLPs shall be subject to the provisions of Chapter 62A of the General Statutes, the Public Safety Telephone Act, applicable to service providers.
- (n) A CLP must abide by all applicable provisions adopted by the Commission for disconnection, partial payments, global toll denial, nonregulated charges, 900 and similar charges, treatment of stale debts, disconnect notices, periodic notification of disconnect policy and billing statements as set forth in Commission Rule R12-17.
- (o) Rescinded.
- (p) Billing services for intrastate long distance calls may be offered by a CLP only to long distance carriers certified by the Commission or to clearinghouses acting on behalf of certified long distance carriers. The name of the service provider shall be clearly stated on each page of the bill, and a contact telephone number for questions on the service shall appear on the bill. If billing is done through a clearinghouse, the name of the clearinghouse shall also appear on each page of the bill.

(q) A notice by bill insert or direct mailing shall be given by a CLP to all affected customers at least 14 days before any public utility rates are increased and before any public utility service offering is discontinued. Notice of a rate increase shall include at a minimum the effective date of the rate change, the existing rates and the new rates.

(r) A CLP must abide by the provisions adopted by the Commission for the handling of problems arising from billing of 900 calls; other pay-per-call services, including but not limited to calls to 976, 700 and 800 numbers, for which charges are made by the service provider and billed to the caller by the CLP, shall be subject to the same provisions as are applicable to 900 calls.

(s) Usage charges and per-call rates for switched local exchange services provided by a CLP shall not apply unless the call is answered. Timing of a call shall not begin until the call is answered and shall end when either the calling party or the answering party disconnects.

(t) The provisions of Commission Rule R13, with the exception of R13-3(a), (b) and (c) shall apply to the offering of pay telephone service by a CLP. A CLP has the authority by virtue of its CLP certificate to offer both non-automated collect and automated collect service under the provisions of R13. When the term PSP Certificate Number is referred to in Rule R13, the docket number in which the CLP was certified shall be utilized, and when the term PSP certificate or certificate is referred to in Rule R13, the CLP certificate shall be used.

(u) CLPs are responsible for payment of the regulatory fee in accordance with G.S. 62-302 and Commission Rule R15.

(v) A CLP shall not knowingly offer or provide service for use in an unlawful manner.

(w) A CLP shall not assess a charge or penalty for disconnection of any regulated service unless the charge or penalty is specifically provided for in a contract signed by the subscriber.

(NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; P-100, Sub 140, 4/3/00; NCUC Docket No. M-100, Sub 128, 04/10/00; NCUC Docket No. P-100, Sub 133; 9/21/00; NCUC Docket No. M-100, Sub 4, 6/30/11; NCUC Docket Nos. P-100, Sub 133, P-100A, Sub 133, & P-100, Sub 110; 11/22/2019.)

Rule R17-3. UNIVERSAL SERVICE REQUIREMENTS.

(a) Each LEC shall be the universal services provider in the area in which it is certificated to operate on July 1, 1995, unless otherwise determined by the Commission in further interim or permanent rules.

(b) The Commission will establish a Universal Service Fund, designate a permanent universal service provider for each service area, and determine applicable payment mechanisms in compliance with G.S. 62-110(f1). Any CLP offering telecommunications services in North Carolina will be required to participate in such fund.

(c) To the extent required, the establishment of the Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone services and the calculation of the subsidy required to support those basic local exchange telephone services which the Commission may decide are appropriate.

(NCUC Docket No. P-100, SUB 133, 7/19/95; 2/23/96; 9/21/00.)

Rule R17-4. INTERCONNECTION.

- (a) Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis required by a requesting CLP to provide quality services. The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request.
- (b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs.
- (c) Interconnection arrangements must be made available pursuant to a *bona fide* written request. No refusal or unreasonable delay by any LEC to another carrier will be allowed.
- (d) Interconnection agreements are to be negotiated in good faith. Such agreements shall be filed for approval as soon as practicable but in no event later than 30 days from the date of conclusion of negotiations. Parties may operate on an interim basis under a negotiated interconnection agreement which has been filed with the Commission and which is publicly available as a public record pending Commission action on the filing. Interim operations under a negotiated interconnection agreement shall begin no earlier than the date upon which the agreement is filed with the Commission and shall be undertaken, at the risk of the parties, subject to the right of the Commission to approve or disapprove the agreement.
- (e) In the event the parties are unable to agree within 90 days of a *bona fide* request, either party may petition the Commission for a determination of the appropriate rates and terms for interconnection.
- (f) Unbundled functional elements of a LEC's network that are made available throughout interconnection agreements should also be made available on an individual tariffed basis.

(NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; 6/18/96; 9/21/00.)

Rule R17-5. NUMBER PORTABILITY AND NUMBER ASSIGNMENT.

- (a) End-users shall have number portability regardless of their chosen LEC or CLP.
- (b) True number portability shall be made available when technically and economically reasonable.
- (c) Interim number portability arrangements shall be utilized until true number portability is available. The LEC and CLP shall include interim number portability issues in interconnection negotiations.
- (d) To the extent feasible, the LEC shall provide the CLP with reservations for a reasonably sufficient block of numbers for their use.

(NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; 9/21/00.)

Rule R17-6. PREPAID LOCAL EXCHANGE SERVICE.

(a) Prepaid local exchange service(s) are exempt from portions of Commission Rule R17-2(f). No other basic local exchange service(s) offered by such CLP shall be exempt from any portion of Commission Rule R17-2(f). Those portions of Commission Rule R17-2(f) from which prepaid local exchange service may be exempt are:

- (1) That part of Commission Rule R17-2(f2) requiring access to local and long distance directory assistance;
- (2) Commission Rule R17-2(f3) requiring access to operator services; and
- (3) Commission Rule R17-2(f4) requiring access to all standard dialing patterns to all interLATA and intraLATA long distance carriers, including 1+ and 0+ access to the customer's carrier of choice for interLATA and intraLATA long distance calls.

(b) Prepaid local exchange service offered by a CLP is subject to the following terms and conditions:

- (1) The CLP shall provide the subscriber with a Customer Service Agreement which constitutes the contract between the subscriber and CLP. The Customer Service Agreement shall:
 - (i) describe with particularity the local exchange services offered, contain a concise list of the rates for all services offered, and fully disclose all terms and conditions with which the subscriber must comply;
 - (ii) fully disclose any limitations of the provided services as a result of the exemptions permitted in Commission Rule R17-6(a);
 - (iii) include a full description of the billing process and payment arrangements, which shall include, at a minimum, the billing date, the past due date and the date on which service may be discontinued for non-payment of regulated charges;
 - (iv) state that Lifeline and Link-Up Carolina programs are available for qualifying subscribers who contact their local social services agency; and
 - (v) contain a statement which establishes that the subscriber has read the Customer Service Agreement in its entirety, or has had the Customer Service Agreement read to him or her, and has fully understood the terms and conditions of service before signing the Customer Service Agreement.
- (2) The CLP shall make appropriate changes to the Customer Service Agreement pursuant to all statutes and Commission orders, rules and regulations;
- (3) If any portion of the Customer Service Agreement is in a language other than English, all portions of the Customer Service Agreement must be in that language. Every Customer Service Agreement must be in the same language as any promotional materials, oral descriptions, or instructions provided with the Customer Service Agreement;

- (4) A copy of the Customer Service Agreement signed by the subscriber shall be received by the CLP or its independent agent before the CLP may provide local exchange services to the subscriber;
 - (5) The CLP may not offer a service in such a way that purchasing a period of service obligates the subscriber to purchase additional periods of the same service;
 - (6) The CLP may not impose any charge for the termination of basic local exchange service; and
 - (7) The CLP may not impose any punitive charges on its subscribers for the accumulation of intraLATA toll or interLATA long distance charges.
- (c) The Customer Service Agreement shall be subject to periodic review by the Commission and the Public Staff.

(NCUC Docket No. P-100, Sub 133, 9/21/00.)

Rule R17-7. DIALING PARITY.

(a) Any CLP offering basic local exchange service, other than prepaid local exchange service for which exemptions of Commission Rule R17-2(f) are allowed, shall offer interLATA and intraLATA toll dialing parity for such basic local exchange service as prescribed in 47 CFR 51.209.

(b) Dialing parity means the implementation of the full 2-PIC (Primary Interexchange Carrier) selection methodology. The full 2-PIC method generally allows customers to presubscribe to a telecommunications carrier for all 0+ and 1+ interLATA toll calls and presubscribe to the same or another telecommunications carrier (including, but not limited to, the customer's local exchange carrier) for all 0+ and 1+ intraLATA toll calls.

(c) Customers who do not select a carrier for one or both types of long distance calls (intraLATA and/or interLATA toll calls) will be designated as "no-PIC" by the CLP for the handling of those types of long distance calls for which no telecommunications carrier was selected. Customers with the "no-PIC" designation for either type of long distance call will be required to place those calls by accessing their choice of carrier through 101XXXX (dial-around) access codes.

(d) If long distance carriers must arrange for connection to CLP's facilities in order to participate in the presubscription process, the carriers must be advised of that opportunity before orders for exchange service are taken.

(e) Each new customer must be given the choice of carriers by the service representative in a competitively neutral manner when the order for the exchange service is placed.

(NCUC Docket No. P-100, Sub 133, 9/21/00.)

Rule R17-8. PROCEDURES FOR TRANSFER OF CONTROL.

- (a) A CLP holding a Certificate is exempt from the provisions of G.S. § 62-111(a) requiring approval of transfers of control transactions, except as set forth in this rule.
- (b) A CLP holding a Certificate shall file a Notice with the Commission immediately upon filing an application for a domestic Section 214 License Transfer with the FCC pursuant to 47 C.F.R. § 63.03. Coincident with the filing with the NCUC, the CLP shall serve a copy of such Notice on any ILEC in North Carolina with which the CLP has entered into an interconnection agreement approved by this Commission.
- (c) Notwithstanding the provision of subsection (b), the Commission retains authority to make inquiries, initiate proceedings and impose conditions on a CLP's Certificate(s) including reporting requirements, to protect consumer interests.
- (d) Notwithstanding the close of a Section 214 License Transfer, any proceeding or investigation initiated by the Commission pursuant to subsection (c) shall continue in the Commission's discretion, and the Commission shall retain the authority to impose conditions on a CLP's Certificate(s) if necessary to protect consumer interests.
- (e) A CLP holding a Certificate shall file a Notice with the Commission no later than 30 days after control of the carrier is transferred pursuant to a *Pro forma* Transaction.
- (f) Nothing in this rule shall be deemed to exempt an entity from the requirements of Rule R17-2.

(NCUC Docket No. P-100, Sub 163; 8/24/06.)