

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, ) Rule and Regulation No. 202  
on its own motion, seeking to )  
establish Title 291, Chapter 16, ) ORDER OPENING DOCKET,  
to adopt Reverse Auction and ) RELEASING PROPOSED RULES,  
Wireless Registry rules and ) SEEKING COMMENT, AND SETTING  
regulations in accordance with ) HEARING  
Nebraska Legislative Bill 994 )  
[2018]. ) Entered: March 12, 2019

BY THE COMMISSION:

O P I N I O N   A N D   F I N D I N G S

The Commission, on its own motion, hereby opens this proceeding to adopt Reverse Auction and Wireless Registry rules and regulations in Title 291, Chapter 16, in accordance with Legislative Bill 994 [2018]. The Commission proposes to amend Title 291, by adding Reverse Auction and Wireless Registry Rules and Regulations as seen in the attached Appendix A, incorporated herein by this reference.

Comments on the proposed amendments shall be filed by interested parties on or before **3:00 p.m., Thursday, April 18, 2019**. Parties filing comments should file one (1) original and five (5) paper copies and one (1) electronic copy emailed to [john.monroe@nebraska.gov](mailto:john.monroe@nebraska.gov) and [cullen.robbins@nebraska.gov](mailto:cullen.robbins@nebraska.gov).

The Commission finds that this matter should be set for hearing on **Tuesday, May 7, 2019 at 1:30 p.m.**, in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Commission at (402) 471-0213 (TDD) or the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that this rulemaking amending Title 291, Chapter 16, Reverse Auction and Wireless Registry Rules and Regulations, be and it is hereby opened.

IT IS FURTHER ORDERED that interested parties file comments on or before **Thursday, April 18, 2019**. Parties filing comments should file one (1) original and five (5) paper copies and one (1) electronic copy emailed to [john.monroe@nebraska.gov](mailto:john.monroe@nebraska.gov) and [cullen.robbins@nebraska.gov](mailto:cullen.robbins@nebraska.gov).



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IT IS FURTHER ORDERED that this matter be set for hearing on, **Tuesday, May 7, 2019, 1:30 p.m.** in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 12<sup>st</sup> day of March, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Crystal Swadlow*

*[Signature]*

*[Signature]*

*[Signature]*

*Mary Ridd*

Chair

ATTEST:

*[Signature]*

Executive Director

EFFECTIVE DATE:

TITLE 291 – NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 16 – REVERSE AUCTION AND WIRELESS REGISTRY RULES AND REGULATIONS

001. SCOPE, DEFINITIONS, AND STATE CODE.

001.01 SCOPE AND APPLICATION: The scope and applicability of these rules and regulations is described in Neb. Rev. Stat. § 86-330.

001.02 DEFINITIONS: The terms and definitions in Neb. Rev. Stat. § 86-330 are hereby incorporated into this chapter. Such terms not specifically identified in statute are defined below.

001.03 WITHHOLDING OF NEBRASKA UNIVERSAL SERVICE FUND SUPPORT.

001.03(A) Consistent with Neb. Rev. Stat. § 86-330, the Commission may decide to withhold Nebraska Universal Service Fund Support from an eligible telecommunications carrier on a census block or telephone exchange basis which may have been otherwise deemed eligible in the following cases:

001.03(A)(i) Upon receipt of a consumer complaint consistent with § 86-330 where the Commission finds the availability, quality, or affordability of broadband telecommunications service is lacking; or

001.03(A)(ii) Based on a finding that an eligible telecommunications carrier has not provided broadband in a manner consistent with Neb. Rev. Stat. § 86-1101; or

001.03(A)(iii) Based on a finding that an eligible telecommunications carrier has not used Nebraska Universal Service Fund support for its intended purpose; or

001.03(A)(iv) Based on a finding made pursuant to Neb. Rev. Stat. § 86-324.

001.03(B) Prior to withholding support, the Commission will cause written notice to be sent to the carrier and provide the carrier with an opportunity for a hearing.

001.04 REVERSE AUCTIONS.

001.04(A) Pursuant to Neb. Rev. Stat. § 86-330, the Commission may determine areas eligible to receive Nebraska Universal Service Fund support through a reverse auction process.

001.04(B) Areas eligible for reverse auction support will be determined by the Commission. Such information will be released in an order and public notice. The Commission will provide a specific timeframe for application submittal and award announcement through an open proceeding.

001.04(C) An Applicant participating in a reverse auction must include the following information:

001.04(C)(i) A description of the applicant's corporate structure and ownership information;

001.04(C)(ii) Evidence that the applicant is financially and technically qualified to meet the public interest obligations for each relevant area for which it seeks support;

001.04(C)(iii) Evidence of its status as an eligible telecommunications carrier;

001.04(C)(iv) An indication of the tier of bids that the applicant plans to make;

001.04(C)(v) A description of the technology or technologies that will be used to provide service for each tier of bid;

001.04(C)(vi) Any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

001.04(C)(vii) To the extent that an applicant plans to use spectrum to offer its voice and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for at least 10 years from the date of the funding authorization; and

001.04(C)(viii) Specified operational and financial information including:

001.04(C)(viii)(1) A certification that the applicant has provided a voice and/or broadband service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the review process.

001.04(C)(viii)(1)(a) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

001.04(C)(viii)(1)(b) If the applicant has operated in other states, evidence that the applicant is in good standing in those states.

001.04(C)(viii)(2) If an applicant cannot meet the requirements in section 001.04(C)(viii)(1) above, in the alternative it must submit the audited financial statements from the three most recent fiscal years.

001.04(D) APPLICATION BY WINNING BIDDERS FOR SUPPORT.

001.04(D)(i) DEADLINE. As provided by a Commission order or notice, winning bidders for reverse auction support shall file an application for reverse auction support

no later than the number of business days specified after the public notice identifying them as winning bidders.

001.04(D)(ii) CONTENTS. An application for auction support must contain:

001.04(D)(ii)(1) Identification of the party seeking the support, including ownership information;

001.04(D)(ii)(2) Certification that the applicant is financially and technically qualified to meet the public interest obligations for each tier in which it is a winning bidder and in each area for which it seeks support;

001.04(D)(ii)(3) Certification that the applicant will meet the relevant public interest obligations for each relevant tier, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

001.04(D)(ii)(4) A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering voice and broadband service to every location within the auction area that meets the requisite performance requirements;

001.04(D)(ii)(5) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the auction for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

001.04(D)(ii)(6) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

001.04(D)(ii)(7) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

001.04(D)(ii)(8) Such additional information as the Commission may require.

001.04(E) APPLICATION PROCESSING.

001.04(E)(i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

001.04(E)(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications will be denied.

001.04(E)(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, or other parties. Minor modifications include correcting typographical

errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

001.04(E)(iv) Applications to which major modifications are made after the deadline for submitting applications will be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

001.04(E)(v) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive auction support.

001.04(F) FULL AND TIMELY PERFORMANCE. Authorization to receive auction support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

001.04(F)(i) Failure by an auction support recipient to meet its service milestones will trigger reporting obligations and the withholding of support. Failure to come into full compliance within 12 months will trigger a recovery action. If the recipient does not repay the requisite amount of support within six months, the Commission will be entitled to seek recovery through any means available to the state for recovery of a debt to the state and may disqualify the auction support recipient from the receipt of auction support or additional universal service support.

001.04(F)(ii) The default will be evidenced by a letter issued by the Department Director or their respective designees.

#### 001.05 WIRELESS REGISTRY.

001.05(A) The Commission will maintain a wireless registry to be used for the purpose specified in Neb. Rev. Stat. § 86-579.

001.05(B) The Commission will make available on its website or through paper filing a repository for any person or company to file information indicating a lack of appropriate coverage as defined in Neb. Rev. Stat. 86-579 section 5(3). The form will include the following information:

001.05(B)(i) The name of the person filing the informal complaint

001.05(B)(ii) The name of the wireless carrier, if applicable;

001.05(B)(iii) The address or locations where service was at issue;

001.05(B)(iv) A description of the services purchased and equipment used by the complainant; and

001.05(B)(v) The relevant date or dates for which wireless service coverage was lacking.

001.05(C) The wireless provider may challenge this information by providing evidence of adequate coverage in the relevant location(s).

001.05(D) The Commission may further investigate to determine the existence of or the lack of adequate coverage. In doing so, the Commission may utilize other publicly available data and crowd-sourced data to determine the reliability of the information provided for purposes of the registry.