BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 16, to adopt Reverse Auction and Wireless Registry rules and regulations in accordance with Nebraska Legislative Bill 994 [2018].	)	Rule and Regulation No. 202 ORDER SETTING HEARING Entered: January 22, 2020

FILED
JAN 24 2020
SECRETARY OF STATE
By

BY THE COMMISSION:

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

The Commission opened this proceeding on March 12, 2019, to adopt Reverse Auction and Wireless Registry rules and regulations in Title 291, Chapter 16, in accordance with Legislative Bill 994 [2018]. The Commission's proposed amendments were attached to the Order opening the proceeding.

Comments on the initial draft rules were filed by interested parties on April 18, 2019. A hearing was held in Lincoln, Nebraska on May 7, 2019. Subsequently, on July 16, 2019, the Commission entered an order scheduling a workshop. A workshop was held on August 6, 2019. A second set of proposed rules was released for public comment on October 8, 2019. Comments on the second set of proposed rules were filed on December 6, 2019, Reply comments were filed on December 18, 2019.

Some minor revisions to the rules have been made, but none of which are substantive in nature. The Commission attaches the current proposed amendments to this order. The Commission was advised to remove definitions which may be cross-referenced in another section of Commission rules or statute. The Commission made this update. At this time, the Commission finds it appropriate to set a hearing on the second set of proposed rule amendments. The hearing will focus on the substantive recommendations by the interested commenters. A hearing will be held on **March 3, 2020**, at 1:30 p.m., in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508.

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 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 matter be set for hearing on, **Tuesday, March 3, 2020, at 1:30 p.m.** in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 22nd day of January, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

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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. § 86-319 through 86-322 and in Neb. Admin. Code Title 291, Chapter 10, are hereby incorporated into this chapter. Such terms not specifically identified in statute or existing rules are defined below.

001.02(A) "Reverse Auction" as used in § 86-330 means an auction process to determine redistribution of support from the fund.

001.02(B) "Support" means payments from the fund allocated by the Commission to an ETC for such ETC's eligible expenses associated with broadband Internet infrastructure deployment in an Unserved Area or an Underserved Area within the State of Nebraska.

001.02(C) "Unserved Area" or "Underserved Area" means any location in the State of Nebraska that does not have access to broadband Internet service as defined by the Commission.

001.03 WITHHOLDING OF NEBRASKA UNIVERSAL SERVICE FUND SUPPORT.

001.03(A) Consistent with Neb. Rev. Stat. § 86-330, the Commission may withhold Support from an ETC:

001.03(A)(i) on the basis of consumer complaints or on the Commission's own motion, after making a finding that:

001.03(A)(i)(a) the availability, quality, or affordability of broadband or telecommunications service provided by the ETC is lacking; or

001.03(A)(i)(b) the ETC has failed to follow the criteria for successful investment of support from the fund;

001.03(A)(ii) Where an ETC has failed to comply with the requirements established by the Commission in orders pursuant to Neb. Rev. Stat. § 86-324; or

001.03(A)(iii) Where Commission-approved projects were not completed according to the Commission's requirements.

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001.04 REVERSE AUCTIONS.

001.04(A) If pursuant to Neb. Rev. Stat. § 86-330 and the rules set forth in this Chapter 16, the Commission withdraws Support provided to an ETC, the Commission may use such withdrawn Support to implement and operate a Reverse Auction program, provided that such withdrawn Support is required to be utilized in the same area for which the Support was originally granted.

001.04(B) Areas eligible for the Reverse Auction program will be determined by the Commission and will be:

001.04(B)(i) Released to the public by the Commission in a notice published in accordance with the Commission's Rules of Procedure which includes the specific timeframe for Reverse Auction application submittals and any other information relevant to the Reverse Auction process.

001.04(C) An applicant participating in a Reverse Auction must include the following information in any application for Support filed with the Commission:

001.04(C)(i) A description of the applicant's business 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 to confirm applicant's status as an ETC or that, should it be the successful bidder for the Reverse Auction, will seek such ETC status within thirty (30) days after the close of the Reverse Auction;

001.04(C)(iv) Confirmation that the applicant plans to provide access to broadband Internet service at speeds defined by the Commission in the area or areas subject to the Reverse Auction;

001.04(C)(v) A description of the technology or technologies that will be used to provide service in the area or areas subject to Reverse Auction;

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

001.04(C)(vii) To the extent that an applicant plans to use licensed or unlicensed spectrum to offer its voice and broadband services in the area or areas subject to Reverse Auction, a demonstration that it has the proper authorizations to use such spectrum, that use of such spectrum will not cause any interference with existing users, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve the Fund-eligible area or

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areas defined in the Reverse Auction, and certify that it will retain its access to and the use of the spectrum for at least 10 years from the date of the Support authorization;

001.04(C)(viii) A description of how the required construction will be funded, including financial projections to demonstrate, if applicable, that the applicant can cover the necessary debt service payments over the life of any loan obtained to fund construction;

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

001.04(C)(ix)(1) A certification that the applicant has provided a voice and/or broadband Internet service for at least two years or that it is affiliated with such an entity, and specifying the number of years the applicant or its affiliate has been operating, and submission of the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant's financial statements are not audited in the ordinary course of business, in lieu of submitting audited financial statements, the applicant 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)(ix)(1)(a) If the applicant or an affiliate has provided a voice and/or broadband Internet service it must certify that it or its affiliate has filed FCC Form 477s as required during the relevant time period that such voice or broadband Internet service has been provided.

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

001.04(C)(x) If an applicant cannot meet the requirements in section 001.04(C)(ix)(1) above, in the alternative it must submit the audited financial statements from the three most recent fiscal years; and Such additional information as the Commission may require.

001.04(D) APPLICATION PROCESSING.

001.04(D)(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 will be accepted or considered.

001.04(D)(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking Support as specified in the public notice

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announcing application procedures or does not include required certifications will be denied.

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

001.04(D)(vi) Once all applications for a Reverse Auction have been accepted by the Commission as meeting the criteria established in this Chapter 16, the Commission will issue an order announcing the timing and conduct of the Reverse Auction.

001.04(E) FULL AND TIMELY PERFORMANCE. Authorization to receive auction Support is conditional 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(E)(i) Failure by a recipient of Support from a Reverse Auction 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 thereafter, 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 recipient from the receipt of any, all or additional Support.

001.04(E)(ii) The default will be evidenced by a letter issued by the Executive Director of the Commission or his designee.

001.05 WIRELESS REGISTRY.

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

1.05(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:

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

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

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

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

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

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

1.05(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.

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