

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 RELEASING PROPOSED
to adopt Reverse Auction and)	RULES AND SEEKING COMMENT
Wireless Registry rules and)	
regulations in accordance with)	
Nebraska Legislative Bill 994)	
[2018].)	Entered: October 8, 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, 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 proposes to amend Title 291, by adding Reverse Auction and Wireless Registry Rules and Regulations. In that Order, the Commission released its proposed rules and solicited comments from interested persons. Comments were filed by the following entities: Citizens Telecommunications Company of Nebraska, Inc. d/b/a Frontier Communications of Nebraska (Frontier); CenturyLink; CTIA; the Rural Telecommunications Coalition of Nebraska ("RTCN"); the Rural Independent Companies ("RIC"); NE Colorado Cellular, Inc. d/b/a Viaero Wireless ("Viaero") and United States Cellular Corporation ("US Cellular"); and Windstream Nebraska, Inc. ("Windstream").

A public hearing was held on Tuesday, May 7, 2019 in Lincoln, Nebraska. The hearing was held in legislative format. Comments were offered by Frontier, RIC, CenturyLink, RTCN, CTIA and Viaero.

Mr. Scott Bohler provided comments for Frontier. He suggested the Commission define successful investment for funding and did not agree that the Commission should be able to withhold NUSF support in situations where the carrier has not provided broadband in a manner consistent with Neb. Rev. Stat. § 86-1101. He stated the existence or non-existence of broadband is not really mentioned in the criteria for withholding of funds. He also wanted more details in the rules about what areas the Commission would target for the withholding of funding or when that would occur. Mr. Bohler wanted more specifics in the rules about whether funding would be based on census blocks, exchange areas, or municipalities. Finally, he thought the rules should be clear that the process would be applicable across the state.

Upon questioning, Mr. Bohler stated the lack of successful investment could be defined as a lack of broadband deployment in that area.

Mr. Paul Schudel testified for RIC. RIC filed comments with the Commission. They are primarily focused on the proposed reverse auction

rule at 001.04. RIC had procedural concerns, particularly with the process and procedure used by the Commission to withhold support. RIC believes the Commission should question whether a reverse auction should be implemented at this time. He stated the Commission should give careful consideration to whether implementation of any reverse auction program should be delayed until data is available with regard to actual deployment results achieved as a result of the federal CAF II auction that was recently completed. In addition, RIC believed other specific elements should be formulated in order to establish the when, what and how details of any reverse auction program would proceed. Finally, the Commission should work with the parties to refine the content of Rule 001.03 relating to the withholding of support. RIC did not take any positions with regard to the wireless registry portion.

Ann Prockish provided comments for CenturyLink. She stated there is a lack of clarity and detail in the rules that they would like to see. She also stated there should be a definition of successful investment of funding. She indicated it was a phrase that was open to interpretation. CenturyLink has a concern that under the CAF-II and the NUSF program the minimum required speeds have been 10/1 Mbps. The minimum speed guidance of LB 994 is 25/3 Mbps. Finally, CenturyLink did not agree with RIC that the reverse auction should apply exclusively to price cap carriers receiving NUSF high-cost support. She stated nothing in LB 994 allows the Commission to apply the withholding of NUSF support to only specific carriers.

Mr. Andy Pollock provided comments for RTCN. RTCN also submitted written comments. He stated the Commission should have more robust and specific criteria for the withholding of support. He stated carriers have made substantial investments and have taken on long-term loans to deploy facilities. The Commission should be aware of those circumstances. He stated the Commission should establish timelines or milestones to let carriers know what the expectations are for them. The Commission should favor withholding support at the exchange level as opposed to a smaller area level. Additionally, RTCN strongly believed that reverse auctions should not be the Commission's first option when it comes to redirecting support. If the Commission makes a decision to withhold support, it should not be rushing to a reverse auction as a way to redirect that support. RTCN supported adoption of proposals that would allow for collaboration with the local community and businesses in the area. A reverse auction sets up a bottom and should be considered as a last resort.

Mr. Loel Brooks entered an appearance for CTIA and Viaero. Each filed comments with the Commission.

A public workshop was held on July 16, 2019, in Lincoln, Nebraska. Prior to the workshop, RIC circulated its own suggested revisions to the Commission's proposed rules. The following entities participated in the

workshop: Frontier, Viaero, CTIA, CenturyLink, RIC, RTCN, Great Plains, Cox, the Nebraska Telecommunications Association ("NTA") and US Cellular. Subsequent to the workshop, RTCN circulated its proposed revisions to the Commission's rule amendments.

After considering the comments, testimony and alternative drafts circulated by RIC and RTCN, the Commission hereby issues a revised (2nd) version of its proposed rules and regulations which is attached hereto and fully incorporated herein as "Attachment A".

The Commission made some changes based upon comments made by the interested parties. The Commission emphasizes that the LB 994 imposes a duty to consider setting up a reverse auction and promulgating any rules it deems appropriate to carry out that duty. Many of the draft rules related to the auction process itself were taken directly from the federal rules. The Commission understands the concerns raised by the commenters about the status of federal universal service, NUSF funding, and investments that are ongoing. However, the Commission anticipates there will be issues that will need to be more appropriately addressed during the time and place of a factual examination as to whether to withhold support and conduct an auction. We expect that several key issues may evolve over time, such as speed and latency standards, state and federal funding availability, and mapping improvements, which will necessarily drive policy decisions made by the Commission through NUSF orders.

Further, we decline to add special procedural requirements that would impose additional burdens on consumers or the Commission for the purpose of determining the availability of broadband and investigating the use of NUSF support. We expect any affected carrier would have the opportunity to raise procedural issues in the scope of a proceeding if inconsistent with the Commission's general rules of procedure. We reiterate that this rule and regulation process is designed to implement LB 994 and set a general framework which would allow the Commission to conduct a reverse auction, while avoiding requirements that limit the Commission's ability to carry out its purpose.

Finally, we note that the Commission incorporated a suggestion surrounding the use of community-based plans. However, the Commission finds that such a pathway will be optional for the Commission and not a requirement prior to initiating a reverse auction.

We seek comments on the proposed rule amendments attached hereto as Attachment A. Comments in response to this 2nd set of draft rule amendments must be filed on or before **December 6, 2019**. Reply comments may be filed on or before **December 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 and cullen.robbs@nebraska.gov.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the attached revised Title 291, Chapter 16, Reverse Auction and Wireless Registry Rules and Regulations, be and they are hereby open for public comment.

IT IS FURTHER ORDERED that interested parties file comments on or before **December 6, 2019**. Reply comments may be filed on or before **December 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 and cullen.robbins@nebraska.gov.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 8th day of October, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Cynthia Knodt
Donna Williams
Tim Schram

Mary Padden
Chair

ATTEST:

Michael S. H. S.
Executive Director

Attachment A

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.

001.02(A) "Commission" as used in this Chapter 16 means the Nebraska Public Service Commission.

001.02(B) "Eligible Telecommunications Carrier" or "ETC" means a Commission-designated entity that meets the requirements of Section 214(e) of the Communications Act of 1934, as amended and any other requirements the Commission may adopt.

001.02 (C) "Fund" means the Nebraska Telecommunications Universal Service Fund.

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

001.02(E) "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(F) "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 telecommunications service is lacking; or

001.03(A)(i)(b) 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 of Neb. Rev. Stat. § 86-324(2); or

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

001.04 COMMUNITY-BASED REDIRECTION OF SUPPORT

001.04(A) The Commission may consider community-based plans for redirection of support that has been withheld from an ETC.

001.04(B) To qualify for Commission consideration, a community-based plan will include an ETC.

001.04(C) The Commission may consider community-based plans based on the following scoring criteria:

001.04(C)(i) The history of the participating eligible telecommunications carrier in providing quality and affordable telecommunications and broadband services in rural areas;

001.04(C)(ii) The capability of the ETC to use the proposed technology to provide broadband services to every location in the exchange on a reasonably comparable basis;

001.04(C)(iii) The support of local businesses, hospitals, schools, colleges, agricultural producers, and residents;

001.04(C)(iv) Other sources of funding;

001.04(C)(v) Partnerships and other cooperative arrangements with local public power providers;

001.04(C)(vi) Partnerships and other cooperative arrangements with local wireless Internet service providers; and

001.04(C)(vii) Cooperation by the incumbent local exchange carrier from which support has been withheld.

001.04(D) In entering an order redirecting support, the Commission will establish a timeline for deployment that includes periodic milestones for ensuring timely deployment and will subject the ETC with reporting duties sufficient to assess compliance with deployment milestones.

001.05 REVERSE AUCTIONS.

001.05(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.

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

001.05(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.

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

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

001.05(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;

001.05(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;

001.05(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;

001.05(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;

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

001.05(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 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;

001.05(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;

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

001.05(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.

001.05(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.

001.05(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.

001.05(C)(ix)(2) If an applicant cannot meet the requirements in section 001.05(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.

001.05(D) APPLICATION PROCESSING

001.05(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.

001.05(D)(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.

001.05(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.

001.05(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.

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

001.05(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.

001.05(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.

001.05(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.

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

001.06 WIRELESS REGISTRY.

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

001.06(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:

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

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

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

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

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

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

001.06(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.