

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-131
Public Service Commission, on)
its own motion, to establish) ORDER OPENING DOCKET, SEEKING
reverse auction procedures and) COMMENT AND SETTING HEARING
requirements.)
) Entered: June 29, 2021

BY THE COMMISSION:

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

The Nebraska Public Service Commission (Commission) initiates this proceeding on its own motion to establish reverse auction procedures and requirements in order to carry out Neb. Rev. Stat. § 86-330 (2018). On May 7, 2021, the Governor approved the Commission's Reverse Auction Rules and Regulations which are now codified at 291 Neb. Admin. Code Ch. 16. In its orders developing the reverse auction rules and regulations, the Commission committed to providing more detail to the reverse auction framework through general guidance documents such as progression orders.

Accordingly, the Commission initiates this proceeding and solicits comments on the following issues:

Pre-Auction Vetting Process

The Commission's Reverse Auction rules prescribe an application process and the contents required by each potential auction participant. The Commission seeks comment on whether we should use lessons learned from the FCC's RDOF auction to validate that each auction participant has the technical capability to deliver the promised speeds prior to the auction. If the Commission does establish a pre-auction vetting process, what should that look like? Are there objective criteria the Commission can apply equally to all potential bidders? If so, please describe.

If the Commission does not establish a pre-auction vetting process, should the Commission prescribe penalties for auction bidders that are unable to meet the minimum standard requirements for deployment areas and speeds? If so, what should those penalties look like?

Term of Support

We propose adopting a two-year time frame in which the project must be completed. We propose that support for the project will be provided in equal increments during the two-year period that the project must be completed. Winning bidders must provide invoices that show costs incurred in support of the project. All cost information must be submitted by the end of year three. We recognize that the FCC auctions include a term of support for ten years. However, the Commission is not willing to prolong the two-year timeframe for three reasons. First, the projects are smaller and more discrete projects that can be built within a two-year timeframe. Second, this term matches the support periods given to providers for other high-cost buildout support. Finally, there is some urgency to bringing broadband to these unserved and underserved areas. The Commission is willing to consider reasonable efforts made by carriers in attempting to complete all projects awarded in the reverse auction program and will consider extension requests for good cause shown. We seek comment on this proposal.

Budget

The budget for each auction will be determined once the Commission knows how much support allocated to price cap carriers will go unused. Accordingly, once the amounts are known, and the eligible areas have been determined, the Commission proposes to release the amounts and reserve prices for each census block. At this point, only the census blocks which are considered wholly unserved because no provider is offering both voice service and 25/3 Mbps terrestrial fixed broadband service will be eligible for the auction. We seek comment on this proposal.

We also recognize that universal service objectives evolve and making adjustments to speed and service level criteria will be an ongoing process. As technologies and service levels evolve, fulfilling our objective of providing access in high-cost areas to services that are reasonably comparable to those available in urban areas means continually assessing the need to support services that compare to the ever-improving standard of advanced services in urban areas. We seek comment on how often the Commission should review its standards and make updates to its reverse auction criteria.

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We propose to use a multi-round, descending clock auction to identify the providers that will be eligible to receive support and to establish the amount of support that each bidder will be eligible to receive using procedures substantially similar to what the FCC used in the CAF Phase II auction. The FCC used a multi-round auction to enable bidders "to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts."¹ We propose that the Commission's auction process use a descending clock that will consist of sequential bidding rounds according to an announced schedule providing the start time and closing time of each bidding round. We seek comment on any different factors to and including the time in between each bidding round should be considered.

We propose that bids for different areas at specified performance tier and latency levels be compared to each other based on area reserve prices, and performance tier and latency weights similar to that utilized by the FCC. Likewise, we propose to use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. We propose that bids for different service tiers will be considered simultaneously, so bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. As the FCC did in both the CAF Phase II and RDOF auctions, we propose calculating the two year annual support amount at a bid percentage by adjusting an area-specific reserve price for the bid percentage and the weights for the performance tier and latency combination of the bid.

Further, we seek comment on the appropriate size of the bidding area to be used in each auction. Should the Commission wait until a certain level of support is available prior to opening an auction round? If so, what should that support amount be? Would a larger minimum geographic unit, like census tracts or exchanges, be more manageable? Are there other or more efficient ways to group census blocks for purposes of the auction?

¹ *Phase II Auction Order*, 31 FCC Rcd at 5978-79, para. 88.

Deployment Obligations

The Commission seeks comment on deployment obligations for auction winners. Should the Commission utilize the FCC's Baseline, Above-Baseline, and Gigabit performance tiers with the same speed and usage allowance requirements as the RDOF auction? Specifically, we seek comment on whether we should set baseline performance at 25/3 Mbps speeds with a 150 gigabyte (GB) monthly usage allowance or a monthly usage allowance that reflects the average usage of a majority of fixed broadband customer, whichever is higher. If so, should we establish an above-baseline performance to mean 100/20 Mbps speeds with 2 terabytes (TB) of monthly usage? Should we set a Gigabit performance tier which would require 1 Gbps/500 Mbps speeds with a 2 TB monthly usage allowance? We seek comment on whether these tiers are appropriate.

In the alternative, should the Commission start at a minimum tier of one Gigabit with a usage allowance? If the Commission does so, is the Commission risking a loss of future federal auctioned support in these areas? Should this make a difference? Why or why not?

Additionally, the Commission seeks comment on whether it should adopt minimum latency requirements. Should the Commission utilize the latency requirements and weights used by the FCC in its RDOF auction? If not, why not?

The Commission proposes using weights, similar to the FCC in the table referenced below. This approach would reflect a preference for higher speeds, higher usage allowances, and low latency. We propose using the weight for each tier described below. Recent changes in Nebraska statutes necessitate the removal of the Baseline speed tier, which had a minimum speed allowance of 25/3 Mbps. Statutory changes also require that the "Above Baseline" speed tier upload speeds need to be raised from 20 Mbps to 100 Mbps. Please provide comment on any recommended changes to the weights, speed, or monthly usage allowance.

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Proposed Performance Tiers, Latency, and Weights

Performance Tier	Speed	Monthly Usage Allowance	Weight
Above Baseline	≥ 100/100 Mbps	≥ 2 TB or U.S. median, whichever is higher	25
Gigabit	≥ 1 Gbps/500 Mbps	≥ 2 TB or U.S. median, whichever is higher	0

Latency	Requirement	Weight
Low Latency	≤ 100 ms	0
High Latency	≤ 750 ms & MOS ≥ 4	40

We seek comment on whether any alternative deployment obligations, performance requirements, weights, or testing methodologies should be adopted for recipients of reverse auction support. Commenters proposing alternatives should explain how their proposal meets the policy objectives of the NUSF high-cost program.

To ensure that support recipients are meeting their deployment obligations, we propose to require multi-layered reporting requirements. First, we will require a notice of completion to be filed with the Commission no later than two years from the date of the auction award. Support recipients shall file an affidavit attesting that they have met all of the conditions of the auction award. Second, support recipients shall demonstrate that the funded locations are represented in all applicable FCC broadband filings including FCC Form 477 data and the HUBB database. Finally, we will require support recipients to submit to speed testing similar to those that will be adopted to meet the requirements of LB 388. The Commission will determine the appropriate sample size and requirements for speed testing at a future date. The Commission may also utilize an outside third-party vendor to validate the speeds delivered in the project area.

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In addition, the Commission would require support recipients to file information with the Commission on an annual basis as support recipients file the same information in their annual FCC Form 481s.

We seek comment on these proposals and whether we need to make any adjustments to the reporting framework for reverse auction support recipients. Should support recipients be required to certify that they have met the applicable service milestone during interim periods and submit a list of locations where they offer service within a certain timeframe of the service becoming available to consumers? Should we require a certain level of consumer awareness of the project being completed? If so, what type of requirements should be put in place? Should we require copies of advertisements or promotional messages provided to consumers?

Service Offerings and Reasonable Comparability

The Commission proposes that auction support recipients would have the flexibility to offer a variety of broadband service offerings as long as they offer at least one standalone voice plan and one service plan that provides broadband at the relevant performance tier and latency requirements at rates that are reasonably comparable to rates offered in urban areas. Should the Commission consider the proposed offerings against other market-based plans and rates? If so, how should the comparison be made? Would it be appropriate to consider adoption or take rates? If so, how should we account for this? If not, why not? The Commission is concerned that auction support recipients will emphasize only the broadband and not the voice component. Should we be concerned about this? How can we ensure that standalone voice service is being offered and provided on reasonably comparable terms and rates to the service provided in urban areas? Should we require the auction support recipients to annually provide the Commission with copies of advertisements and marketing materials to ensure that they are promoting the availability of its services throughout its service area and the prices at which the services are offered?

The Commission seeks comment on what other safeguards it should put in place. As we believe the auction participants will also be eligible telecommunications carriers and are therefore required to offer the supported services codified in federal and state rules, we seek comment on whether these rules are sufficient. Should the Commission consider additional requirements related to battery back-up power or service quality metrics for addressing

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service disruptions and repairs? If so, what additional requirements should be added?

Areas Eligible for Auction Support

We seek comment on how best to ensure that rural census blocks that are wholly unserved by high-speed broadband are appropriately included in the auction framework. We propose to target auction support to areas that lack access to both fixed voice and 25/3 Mbps broadband services and where support is not timely used² or withheld from a carrier as a result of a Commission proceeding. We propose to prioritize census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps within the given area of a carrier not timely using support or where support has been withheld. We seek comment on this proposal.

As part of the NUSF-99 buildout requirements, carriers were required to serve every eligible census block in an exchange. The Commission recognizes that in many cases, the eligible blocks are not contiguous, and as such might be less attractive to bid on as a unit. Should the Commission auction areas in bidding units smaller than the exchange level?

Next, with respect to support withheld by the Commission due to a complaint or on the Commission's own motion, we propose to include any eligible census blocks within that specific area. If the carrier purports to provide service at broadband speeds of 25/3 Mbps or greater, we propose to require evidence to support that claim in the form of verified speed tests. Where this is the case, should the Commission base support on a census block area basis? Should the Commission consider an alternative area as the basis of auctioned support? Should the Commission restrict the carrier from whom support has been withheld from bidding on the area? If so, why? If not, why not?

Considering recent legislation increasing minimum broadband speed definitions, should the Commission consider any other areas in the initial list of eligible areas? Please explain.

² See NUSF-99, PO No. 2.

Reserve Prices

An area-specific reserve price should reflect the maximum price the Commission is willing to provide in support to the area. We seek to set area-specific reserve prices that are high enough to promote participation in the auction, but not so high as to create an unfair advantage. The Commission believes it has wide discretion to establish reserve prices. However, as a starting point for the auction mechanism, we propose to use the SBCM total investment support amount to determine the reserve prices and number of locations for each area eligible for support in the auction. Given that this model estimates costs for a fiber-to-the-premises (FTTP) build, we seek comment about setting alternative reserve prices for different technologies. If we should not, please explain. If we set different reserve prices, how should we determine an appropriate estimated cost?

We seek comment on prioritizing support to certain eligible areas where broadband is lacking. Specifically, we seek comment on prioritizing areas that entirely lack 25/3 Mbps or better fixed service in a census block. As a way to prioritize support, we seek comment on setting a reserve price for such areas that is higher than that based strictly on the model. If we do so, would a 10% increase give bidders a sufficiently greater incentive to bid for support for those areas? We seek comment on other approaches we should consider.

Application Process

We seek comment on the information we should collect from each auction applicant. Should the Commission implement short-form and long-form applications, similar to the FCC process used for the CAF II and RDOF auctions? Should the Commission implement a single application form for all auction participants? If so, what information should be collected from each applicant?

A short-form application can help facilitate the Commission's evaluation of whether a potential bidder is qualified to participate in an auction. If the Commission requires a pre-auction short-form application to establish eligibility to participate in the auction what should be included in the short-form application? We seek comment on whether to require less technical and financial information at the short-form stage from applicants that are existing providers. We seek comment on whether to define an existing provider as an entity that has been offering a voice

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and/or broadband service for a certain period of time. If we were to adopt this approach, how long should an applicant be required to demonstrate that it has been an existing provider? Should a provider be required to demonstrate that it has offered both voice and broadband services for a certain period of time, or is it sufficient if the provider has offered only broadband services?

The Commission then proposes to require a more extensive, post-auction review of the winning bidders' qualifications using a long-form application, which would be an in-depth presentation of the applicants' eligibility and qualifications to receive NUSF support. The Commission seeks comment on requiring a long-form application. The Commission seeks comment on whether all winning bidders should be required to provide detailed information showing that they are legally, technically, and financially qualified to receive support. If not, why not? Should the fact that a winning bidder has a certificate of public necessity and convenience or an ETC designation make a difference? Why or why not? The Commission contemplates that some providers may have an ETC designation but not a certificate of public convenience and necessity. Should that be a concern relative to jurisdiction and enforcement? If so, please explain.

The Commission proposes to require each winning bidder to submit information about its qualifications, funding, and details about the network it intends to construct to meet its obligations. We seek comment on the details needed to ensure the Commission has sufficient information prior to authorizing the grant of support to a winning bidder. Should the Commission require each winning bidder to disclose whether their plans would include the purchase of existing facilities or equipment from another carrier? Should that be relevant?

Should applicants be required to provide information such as ownership interests and any agreements the applicants may have relating to the support to be sought through the auction? With respect to any partnerships or consortium bidders, the Commission would propose that detailed information about the entities and their working relationship be submitted to the Commission. Should the Commission require each applicant to certify that it is technically and financially capable of meeting the auction public interest obligations in each area for which it seeks support? In addition, what information or documentation should be required to establish the auction winner's ability for meeting the technical commitments made? Should the Commission rely on the operational

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history of a bidder? If so, what kind of documentation should be considered acceptable? How many years of operational history should the Commission consider relevant to future performance? Should the Commission rely on FCC Form 477s in any way as part of a review of a carriers' operational history or technical ability? Why or why not?

The Commission also seeks comment on a requirement that applicants audited in the ordinary course of business submit their (or their parent company's) financial statements from the prior fiscal year. These would include the balance sheets, income statements, and cash flow statements, that were audited by an independent certified public accountant, along with the audit opinion. If an applicant (or its parent company) is not audited in the ordinary course of business and the applicant does not submit its audited financial statements with the short-form application, we propose requiring the applicant to certify that it will submit audited financial statements during the long-form application process and requiring such applicants to submit unaudited financial statements from the prior fiscal year with their short-form application. We also propose that applicants that make such a certification and fail to submit the audited financial statements as required would forfeit their auction support as well as subject to forfeiture of future auction support.

If an applicant does not have at least two years of operational experience, similar to the FCC's requirements in the RDOF auction, we propose requiring such applicants to submit with their short-form application their (or their parent company's) financial statements that were audited by an independent certified public accountant from the two prior fiscal years, including the balance sheets, income statement, and cash flow statements, along with a qualified opinion letter. We seek comment on this proposal.

To the extent that commenters oppose providing audited financial statements, please provide other ways the Commission can implement safeguards to ensure the NUSF support is being provided to ETCs that have the requisite operational and financial qualifications and to protect consumers in rural and high-cost areas against being stranded without a service provider in the event a winning bidder or long-form applicant defaults.

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Authorization and Release of Auction Support

Once the long-form applications have been reviewed, the Commission would plan to release an order providing notice and authorizing the project. This order would also initiate the incremental monthly payments of the winning bid amount. Is this process sufficient? If not, what should the Commission do to provide the winning bidder with the authorization to proceed?

If the long-form application does not meet the Commission's expectations, what should the process be for either withholding authorization for the project or requiring information that would satisfy any concerns? Should the Commission have the ability at that point to withhold authorization for reverse auction support? If so, on what basis? Assuming the Commission can deny the winning bidder authorization to receive support for a project, should the Commission then move to the next bidder in line or should the Commission conduct a further reverse auction with the support?

Should the Commission provide the timeline for project completion within the order approving the long-form application and authorizing support? If not, why not?

Non-Compliance Measures

We also propose to adopt measures for non-compliance. Given the fact that the Commission does not plan to require a letter of credit from auction winners, how should the Commission ensure that there is an adequate mechanism to address non-compliance? Should the Commission require the return of support, if so, how? Should it depend on the severity or willfulness of the non-compliance at issue?

We seek comment on the duty to report non-compliance. Similar to the FCC, but with some variation, we propose the following:

Non-Compliance Framework

Compliance Gap	Non-Compliance Measure
Tier 1: Less than 15% required number of locations	Quarterly reporting until compliance gap is eliminated. If not eliminated within one year, withhold percentage of project support based upon compliance gap

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	but no more than 15% of project support.
Tier 2: 15% to less than 25% required number of locations	Quarterly reporting + withhold 15% to 25% of project support.
Tier 3: 25% to less than 50% required number of locations	Quarterly reporting + withhold 25% to 50% of project support. Disqualification from bidding in future reverse auctions.
Tier 4: 50% or more required number of locations	Quarterly reporting + withhold 50% to 100% of project support. Disqualification from bidding in future reverse auctions.

In addition to or in the alternative, should the auction support recipients be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including but not limited to penalties and/or potential revocation of ETC designations?

Comments and Reply Comments

Comments on the issues discussed herein may be filed on or before **July 30, 2021**. Reply comments may be filed on or before **August 13, 2021**. Commenters should file one (1) paper copy and one (1) electronic copy of their comments with the Commission. Electronic copies should be sent to Cullen.Robbins@nebraska.gov and Brandy.Zierott@nebraska.gov.

Hearing

A public hearing will be held in legislative format on **August 31, 2021** at 1:30 p.m., central time, in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508. Remote access to the hearing will be available via WebEx at the following link: <https://psc.nebraska.gov/stream>. Individuals may also use audio by dialing 408-418-9388, then enter 146 273 5624 when prompted for the access code.

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

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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 the above-captioned docket be opened.

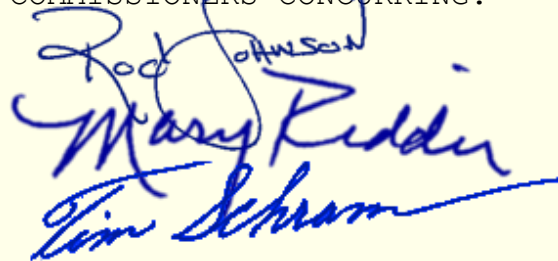
IT IS FURTHER ORDERED that comments responsive to the foregoing questions may be filed on or before **July 30, 2021** in the manner prescribed herein. Reply comments may be filed on or before **August 13, 2021**.

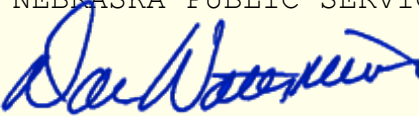
IT IS FURTHER ORDERED that a hearing will be held in this matter on **August 31, 2021**, at 1:30 p.m. in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508 and via WebEx as provided above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 29th day of June, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:





Chair

ATTEST:



Executive Director