

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) Progression Order No. 1
its own motion, to establish)
reverse auction procedures and) ORDER SEEKING COMMENT
requirements.)
)
) Entered: March 14, 2023

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") initiated this proceeding on June 29, 2021, 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 in 291 Neb. Admin. Code, Ch. 16. The Commission sought comment from interested parties and held a hearing on August 31, 2021 regarding the procedure for a reverse auction. Pursuant to these comments, the Commission set forth procedures and a schedule for the 2022 reverse auction, which began on August 8, 2022 ("2022 Auction"). Results of the 2022 Auction were released on August 30, 2022. One bid was received in the 2022 Auction from one bidder. Because no other bids were received, the auction was closed after the first round of bidding, and the single bid was awarded.

The Commission now seeks comment on the reverse auction process. The Commission seeks additional information from telecommunications providers and interested parties as to how the reverse auction process might be improved. Several topics for comment are set forth below.

1. Minimum Bidding Units

In the 2022 Auction, minimum bidding units ("MBUs") were designated on the census block group level. The Commission seeks guidance on whether it should revise its designation of MBUs. Should the MBUs made available in the 2022 Auction be subdivided? If so, by how much? What geographic or other considerations should the Commission take into account in revisiting the size of MBUs?

2. Reserve Price for MBUs

In the 2022 Auction, the Commission relied upon the State Broadband Cost Model ("SBCM") in setting the reserve prices for MBUs. However, since the 2022 Auction was conducted, the Commission

has received informal feedback that these reserve prices were not sufficient to generate participation in the reverse auction process. Should the Commission, therefore, increase the reserve prices for MBUs in future auctions? If so, by how much? Would an approach of placing the reserve price for each MBU at three times the SBCM pricing be an appropriate starting point for a future auction? If not, what other methodology can the Commission use in setting the reserve price for MBUs?

3. Participation by Providers Who Returned Support or from Whom Support Was Withheld

In 2022 Auction, carriers who turned back NUSF support, or did not file projects to claim the allocated support, were not allowed to bid in the auction.¹ The Commission proposes to remove this restriction in future reverse auctions. If the reserve price for MBUs is increased, the Commission expects that it may be possible for the incumbent provider in the service area to serve the area with increased funding, and that the provider should be afforded the opportunity to competitively bid for that MBU.

The Commission seeks comment on this proposal. Is it appropriate to allow a provider from whom support was withheld to participate in the reverse auction for said support? Is removing this restriction likely to minimize overbuilding and increase efficiency, and will it increase participation in reverse auctions? Are any alternative approaches available which the Commission should consider?

4. Participation by Fixed Wireless Providers

The Commission also seeks input as to how it might evaluate fixed wireless providers as participants in future reverse auctions. In order to fairly evaluate fixed wireless providers against wireline providers, should the Commission require that fixed wireless providers submit supplemental information to the Commission in order to be authorized as a qualified bidder? If so, what information should be provided?

¹ Commission Docket No. NUSF-131, *In the matter of the Nebraska Public Service Commission, on its own motion, to establish reverse auction procedures and requirements*, Order Establishing Reverse Auction Procedures and Scheduling Workshop (Feb. 1, 2022) ("Feb. 1 Order"), at 20-21. In the 2022 Auction, this restriction only affected Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska.

The Commission proposes to require fixed wireless providers to be designated as an eligible telecommunications carrier ("ETC") prior to participation in the reverse auction. The Commission also proposes that fixed wireless providers should be required to submit speed test data for at least ten Nebraska customers subscribing to the fixed wireless product, demonstrating the ability of the provider to meet the speed requirements of the program.² Speed tests collected should follow the requirements laid out in Commission Docket No. NUSF-133, where tests should be collected for one calendar week on an hourly basis between the hours of 6:00 pm and 12:00 am local time each day.³

The Commission seeks input as to whether this approach is appropriate. What should the Commission consider in evaluating this planned approach? Should any other information be required to be submitted?

5. Ongoing Support

The Commission is considering a range of approaches in order to increase participation in future reverse auctions. One approach under consideration is to allow for successful bidders in a reverse auction to receive ongoing support, comparable to the support withheld from the incumbent price cap carrier for that area, in order to maintain the network. The Commission seeks comment on whether this approach is feasible, and whether current processes should be revisited. If ongoing support is provided, what factors should be considered when calculating how much ongoing support to provide, if ongoing support is provided for the purpose of ensuring a network will be adequately maintained in the long term?

6. Carrier of Last Resort

The Commission also seeks input as to whether the provision of ongoing support to successful bidders would necessitate a change in carrier of last resort ("COLR") obligations. Would the winning bidder necessarily be held to the COLR obligations previously held

² The Commission previously determined that the minimum bidding tier for the 2022 reverse auction would require infrastructure capable of delivering minimum speeds of 100/100 Mbps. Feb. 1 Order at 23.

³ The Commission's speed testing requirements are set forth in Commission Application No. NUSF-133, *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data*, Order Setting Speed Test Requirements (Nov. 8, 2022).

by the incumbent price cap carrier for that MBU? Are the processes set forth in the Commission's regulations and in the FCC's Section 214 process sufficient for carriers seeking to adjust or withdraw their COLR obligations? If a winning bidder provides fixed wireless or other non-wireline services, could an analysis similar to that adopted by the FCC in 2016 be adopted by the Commission?⁴ This process included an analysis of network infrastructure and service quality, access to critical applications and functionalities, and interoperability with key applications and functionalities. Would such an analysis be sufficient to evaluate whether that winning bidder can meet COLR obligations? At what stage in the reverse auction process should an analysis of a provider's ability to meet COLR obligations be performed?

7. Other Issues

The Commission also seeks comment on other ways in which the process for future reverse auctions might be improved from the 2022 Auction. What issues or barriers to participation did carriers face in the 2022 Auction? Are there other approaches the Commission should consider to increasing engagement in future reverse auctions? Alternatively, are there other mechanisms for distributing withheld support which the Commission should consider?

8. Confidential Materials

The Commission wishes to remind participants that while a Protective Order is in place with respect to filings made in the course of the 2022 Auction, that Protective Order would not extend to confidential materials submitted to the Commission in support of comments filed pursuant to the above-captioned Order.⁵ However,

⁴ See *In the Matter of Technology Transitions*, GN Docket No. 13-5; *USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are NonDominant in the Provision of Switched Access Services*, WC Docket 13-3; *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358, Declaratory Ruling, Second Report and Order, and Order on Reconsideration (adopted July 14, 2016) ("FCC Technology Transitions Order"). This order includes a three-pronged analysis for determining whether a new service qualifies as an adequate replacement for a legacy voice service, which is set forth in detail in paragraphs 88-167. This three-pronged approach was rescinded by the FCC in 2018 and replaced with a notice-based process in *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order (adopted June 7, 2018). The revised process was codified at 47 U.S.C. § 214.

⁵ See Commission Docket No. NUSF-131, *Protective Order* (July 15, 2022), at 2.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-131, PO #1

Page 5

the Commission wishes to encourage parties to provide as much supporting information or documentation as possible in providing responses to the questions listed above. The Commission therefore recommends that any party wishing to share materials with the Commission that may be of a sensitive nature submit a motion for protective order to the Commission seeking specific protection of the filings to be made, prior to the comment deadlines listed below.

9. Comment Deadlines

The Commission hereby requests that interested parties submit comments on the above-described topics by **Friday, April 14, 2023, at 5:00 p.m. Central Time**. Reply comments will be received and may be submitted on or before **Friday, May 5, 2023, at 5:00 p.m. Central Time**. Parties may submit comments via email to psc.nusf@nebraska.gov. Following review of comments submitted, the Commission may set this matter for hearing at a later date.

O R D E R

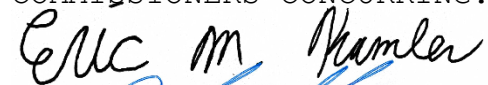


IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that comments in this proceeding shall be filed on or before **Friday, April 14, 2023, at 5:00 p.m. Central Time**.

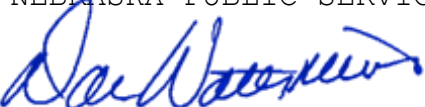
IT IS FURTHER ORDERED that reply comments in this proceeding shall be filed on or before **Friday, May 5, 2023, at 5:00 p.m. Central Time**.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 14th day of March, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chair

ATTEST:


Executive Director