

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. 2
its own motion, to establish	)	
reverse auction procedures and	)	
requirements.	)	ORDER REVISING REVERSE
	)	AUCTION PROCEDURES
	)	AND ISSUING 2024 REVERSE
	)	AUCTION SCHEDULE
	)	
	)	
	)	Entered: November 7, 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.

On March 14, 2023, the Commission entered an order seeking comment on various aspects of the reverse auction process.<sup>1</sup> Comments were received from CTIA - The Wireless Association ("CTIA"); the Nebraska Rural Broadband Association ("NRBA"); the Nebraska Rural Independent Companies ("RIC"); and Windstream Nebraska, Inc. ("Windstream"). Reply comments were received from Lumen Technologies, Qwest Corporation dba CenturyLink QC, and United Telephone of the West dba CenturyLink (collectively "CenturyLink"); the NRBA; and RIC.

<sup>1</sup> The order seeking comment was originally docketed as NUSF-131, Progression Order #1. However, due to administrative error, an order scheduling this matter for hearing was docketed as NUSF-131, Progression Order #2. For purposes of clarity, this proceeding will continue under the Progression Order #2 heading.

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131, PO #2

Page 2

## E V I D E N C E

A hearing was held in this matter on August 2, 2023. Sallie Dietrich appeared for the Telecommunications/NUSF Department of the Commission ("Department"). Sarah Meier appeared for the NRBA. Paul Schudel appeared for RIC. Exhibits numbered 1 through 10 were offered and accepted.

Cullen Robbins, Director of the Telecommunications and NUSF Department, testified first. Mr. Robbins described the August 2022 reverse auction, noting that support in the amount of \$13,000,100 was made available for over 129 bidding units.<sup>2</sup> Mr. Robbins noted that the available bidding units were located within the exchanges of the Frontier and Citizens Telecommunications Company because that was the only company which had not used their available support, and that those were the exchanges from which support was subsequently withheld.<sup>3</sup> Mr. Robbins noted that each bidding unit was assigned a starting price based upon the State Broadband Cost Model ("SBCM").<sup>4</sup>

Mr. Robbins made several recommendations for future Reverse Auctions. First, Mr. Robbins recommended increasing the reserve price for bidding units by two to three times the SBCM price in order to incentivize increased bidding.<sup>5</sup> Mr. Robbins further noted that commenters supported reducing the size of bidding units, and proposed that bidding units should consist of contiguous census blocks within the same block group.<sup>6</sup> The census blocks would be organized to prevent areas from being isolated and difficult to serve.<sup>7</sup>

Additionally, Mr. Robbins recommended that the price cap carriers originally assigned to serve the areas up for bid should be allowed to participate in the reverse auction.<sup>8</sup> Mr. Robbins also recommended that in order to ensure carrier of last resort ("COLR") obligations can be transferred between carriers, that all participants in the reverse auction be required to hold eligible

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<sup>2</sup> Transcript at 9.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 9-10.

<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.* at 10-11.

<sup>7</sup> *Id.* at 15-16.

<sup>8</sup> *Id.* at 11-12.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131, PO #2

Page 3

telecommunications carrier ("ETC") status.<sup>9</sup> Mr. Robbins suggested that bidders in the reverse auction should be required to acknowledge and commit to undertaking COLR obligations in order to ensure the area remains served.<sup>10</sup>

With regard to a future reverse auction, Mr. Robbins noted that approximately \$16 million in NUSF-99 funding could be reallocated from Frontier/Citizens territories, and about \$5.8 million from Windstream territory.<sup>11</sup> Mr. Robbins also stated that the Department's expectation would be that upon completion of a reverse auction project, a customer should be able to order and receive service within nine to ten business days, but that the carrier would not be required to complete the drop to customer premises as part of the project.<sup>12</sup> However, the carrier would have an obligation to serve the customer premises in the project area.<sup>13</sup>

Dan Davis, Director of Policy and Analysis at Consortia Consulting, then offered testimony on behalf of RIC. Mr. Davis recommended that the size of each minimum bidding unit ("MBU") be reduced, and that each MBU should consist of a contiguous geographic area.<sup>14</sup> Mr. Davis stated that if an MBU is non-contiguous, a provider must build additional fiber to connect the non-contiguous area, and that the price for the MBU must reflect this additional cost.<sup>15</sup> Mr. Davis recommended that MBUs be designated at the census block level, rather than census block group level.<sup>16</sup>

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<sup>9</sup> *Id.* at 12-13.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 13-14.

<sup>12</sup> *Id.* at 16-17.

<sup>13</sup> *Id.* at 20.

<sup>14</sup> *Id.* at 25.

<sup>15</sup> *Id.* at 26.

<sup>16</sup> *Id.*

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131, PO #2

Page 4

Mr. Davis further stated that RIC's position is that the use of cost data from the SBCM is no longer feasible, and that the reserve price should be set at a level that approximates the actual investment necessary to provide fiber-based broadband service.<sup>17</sup> Mr. Davis stated that inflationary impacts alone would support a reserve price of 1.6 times the SBCM costs.<sup>18</sup> Mr. Davis also recommended that increases in materials and labor costs, as well as middle-mile costs, should be included in the MBU reserve price.<sup>19</sup>

Mr. Davis also discussed the issues of ongoing support and COLR obligations, referencing the Enhanced A-CAM Order issued by the Federal Communications Commission on July 24.<sup>20</sup> Mr. Davis recommended that winning bidders in a reverse auction should receive ongoing support, and should also hold COLR obligations for the service area.<sup>21</sup> Mr. Davis recommended that the Commission begin a proceeding to review the NUSF high cost program.<sup>22</sup> Mr. Davis also supported a requirement that bidders in the reverse auction hold ETC status.<sup>23</sup>

Following Mr. Davis' testimony, Sarah Meier provided testimony on behalf of the NRBA. Ms. Meier recommended that the Commission address allocation of NUSF support to incentivize broadband infrastructure deployment in rural areas, and the transition of COLR obligations "ensure the long-term sustainability of the broadband infrastructure being deployed through various grant-type programs."<sup>24</sup> Ms. Meier raised questions

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<sup>17</sup> *Id.* at 27.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 27-28.

<sup>20</sup> *Id.* at 29-31. See also *In the Matter of Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support, Expanding Broadband Service Through the ACAM Program, et al.*, WC Docket No. 10-90, RM-11868, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (July 24, 2023) ("Enhanced A-CAM Order").

<sup>21</sup> Transcript at 31-32.

<sup>22</sup> The Commission opened a docket to address revisions to its NUSF High Cost program shortly after this hearing. See Commission Docket No. NUSF-139, *In the Matter of the Nebraska Public Service Commission, on its own Motion, to consider appropriate modifications to the high-cost distribution and reporting mechanisms in its Universal Service Fund program in light of federal and state infrastructure grants*, Order Opening Docket Seeking Comment and Setting Hearing (Aug. 29, 2023).

<sup>23</sup> Transcript at 32.

<sup>24</sup> *Id.* at 42-43.

about the purpose of the NUSF program itself, relating to the allocations of support and whether NUSF should be used to sustain rural broadband networks.<sup>25</sup> Ms. Meier testified in favor of defining smaller MBUs and increasing reserve prices.<sup>26</sup>

Following Ms. Meier's testimony, no further witnesses appeared, and the hearing was adjourned.

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

Based upon the comments submitted in this docket and at hearing, the Commission finds that the process used in the 2022 Auction should continue for the 2024 Reverse Auction ("2024 Auction") with minor modifications. The 2024 Auction process and requirements are set forth below.

**1. Reverse Auction Budget**

The Commission has determined that the total budget for the 2024 Auction will be \$21,841,947.50. This amount represents NUSF support unused or withheld from both Windstream Nebraska, Inc. ("Windstream") and Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska ("Frontier"). For purposes of this auction, this budget will be divided. The eligible areas within the Frontier service territory are allocated a total budget of \$15,996,054.50, and the eligible areas within the Windstream service territory are allocated \$5,845,893.00. Should any amount of this budget remain following the Auction, or if additional amounts become available in the future, the Commission may hold a separate reverse auction.

**2. Minimum Bidding Units**

Based upon the input received in comments and at hearing, the Commission finds that the size of the MBUs designated for the reverse auction should be reduced, and that MBUs should be geographically contiguous in order to more accurately represent the costs required to serve the locations in the MBU. Therefore, for the 2024 Reverse Auction, MBUs will consist of contiguous census blocks within a census block group. All census blocks in a

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<sup>25</sup> *Id.* at 43-44.

<sup>26</sup> *Id.* at 44-45.

bidding unit will be within the same census block group and share common boundaries.

The Commission further finds that the reserve prices for MBUs should be increased significantly to encourage participation in the 2024 Auction. Therefore, the reserve prices for MBUs will be increased to two and a half times the modeled cost to serve all locations within the MBU as determined by the State Broadband Cost Model. The Commission expects that additional competition for MBUs will drive down the price for MBUs and ensure that the price ultimately paid for service to the MBUs is a fair representation of the costs required for the service.

The MBUs will be assigned unique identifiers, which must be used by bidders when bids are submitted. The eligible areas will be released on the Commission website on or before Wednesday, November 22, 2023.

### **3. Bidding Tiers and Speed Testing**

Two bidding tiers will be available: the Baseline tier and the Gigabit tier. The Baseline tier will require service to be delivered at speeds of 100/100 megabits per second (Mbps) (Down/Up) to all eligible locations in the MBU. The Gigabit tier will require service to be provided at speeds of 1 gigabit per second (Gbps)/500 Mbps (Down/Up) to all eligible locations in the MBU. Latency measurements for both tiers will be required to be at or below 100 milliseconds. Participants will not be able to change the bid tier they submit for any given MBU from one bidding round to another.

Winning bidders in the 2024 Auction will be subject to post-buildout speed testing requirements. Following deployment of the completed network as outlined in the Post-Auction Commitment Form, participants must submit speed test information to the Commission. Speed testing should be performed in accordance with requirements as set out in Commission Docket No. NUSF-133.<sup>27</sup> Speed test results must meet the standards for the speed tier listed in the winning bid. Winning bidders should be prepared to perform speed tests which meet the standards set forth in NUSF-133, including the

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<sup>27</sup> See Commission Docket 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). In the case that the speed testing requirements set forth in this order are updated or modified in future orders, winning bidders in the 2024 Auction will be required to meet speed testing requirements as they exist at the time buildout is completed.

testing intervals, number of locations tested, and testing end points. Among other requirements, 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.

If the winning bidder is unable to demonstrate speed tests meeting the required performance thresholds, the Commission may request additional testing. If the Commission finds that the additional testing does not meet the standards of the speed tier listed in the winning bid, the Commission may in its discretion impose penalties as described below.

#### **4. Eligible Participants**

In the 2022 Auction, carriers who turned back NUSF support, or that did not file projects to claim the allocated support, were not allowed to bid in the auction. However, for the 2024 Auction, the Commission finds that due to middle mile costs, the price cap carrier originally assigned to an area may be able to serve an MBU for the lowest cost. The Commission also seeks to minimize overbuilding and increase efficiency. The Commission will therefore remove this restriction, and carriers who turned back NUSF-99 support will be allowed to participate in the 2024 Auction.

The Commission further finds that providers intending to utilize a fixed wireless product to serve areas through the reverse auction 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. 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.

As in the 2022 Auction, Auction bidders may, under certain circumstances, participate as a consortium of bidders in order to facilitate the bidding process. Participants in a consortium must file an application to the Commission on or before Friday, December 8, 2023. The application for consortium must include a list of all consortium members, the consortium representative (or representatives) responsible for submitting bids, and the service history, subscribership, and financial information for each consortium member. If approved by the Commission prior to the start of the reverse auction, members of the consortium will only be able to submit bids through the consortium. Consortium members,

including subsidiaries or business affiliates of members, will not be allowed to submit bids independent of the consortium.

**5. Ongoing Support and Carrier of Last Resort**

Based on comments submitted and presented at hearing, the Commission finds that participants in the 2024 Auction must be eligible telecommunications carriers ("ETCs") prior to participation in the reverse auction. The Commission makes this determination in order to ensure that COLR obligations can be transferred between carriers as needed, as well as to ensure that any providers participating in the 2024 Auction have met the Commission's minimum standards for provision of service and are able to adequately serve eligible areas.

With regard to ongoing support, the Commission finds that its existing mechanisms for transfer of ongoing support are sufficient. Winning bidders in a reverse auction may follow the procedures set forth in 291 Neb. Admin. Code § 10-004.02G and petition the Commission to assume COLR obligations and replace the ETC receiving NUSF high-cost program support. Similarly, Neb. Rev. Stat. § 86-1505 provides a mechanism for the Commission to transfer ETC and COLR obligations once the final payment of a reverse auction award has been issued.<sup>28</sup> The amount of ongoing support may be revised pursuant to other Commission proceedings, including but not limited to the Commission's current review of high-cost distribution in Commission Docket No. NUSF-139.

**6. Application Forms and Requirements**

The Commission hereby issues the Pre-Auction Application Form and Post-Auction Commitment Form to be used in the 2024 Auction. Copies of these forms are attached hereto as Attachments A and C, respectively. Applicants will be required to provide the following in the Pre-Auction Application Form:

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<sup>28</sup> As in the 2022 Auction, 50% of the awarded support will be distributed to winning bidders upon the approval of the bidders' Post-Auction Commitment Forms. The remainder of support will be distributed once the bidder has completed its build of service to the bid area and met all applicable speed testing requirements. The mechanisms of Neb. Rev. Stat. § 86-1505 therefore would not result in a transfer of COLR and ETC obligations until at least two years following the close of the auction.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Application No. NUSF-131, PO #2

Page 9

1. Documents showing a demonstrated history of at least two (2) years of service at speeds that meet the minimum requirements for the service tiers in which the Applicant would propose bidding, and experience with the technology to be used to complete the proposed deployment;
2. Subscribership information to demonstrate the Applicant's ability to run a successful broadband operation and serve its customers; and
3. Financial information documentation showing the Applicant's financial capability to bid on the proposed service areas.

Additionally, Applicants proposing to use technology other than fiber, or a combination of fiber and other technologies, must include speed test data for at least ten Nebraska customers subscribing to the product, demonstrating the ability of the provider to meet the speed requirements of the program. 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.

Participants in the reverse auction must offer a standalone voice plan, as well as Lifeline and Affordable Connectivity Plan eligible service.

Approval of the Pre-Auction Application form and eligibility to participate in the Auction is not a guarantee that an entity will ultimately receive funding. Successful bidders must complete a Post-Auction Commitment Form and be approved by the Commission to receive funding. Successful bidders must also submit a description of how the construction will be funded and must certify that they will have available funds for all project costs that exceed the amount of NUSF reverse auction support within the two-year term of support. The Commission may revoke an entity's eligibility to participate in the Auction or receive funding at any time.

### **7. Financial Requirements**

The Commission finds that the financial requirements used in the 2022 Auction should continue in the 2024 Auction. If an Applicant is audited in the ordinary course of business, an Applicant will be required to submit with the Pre-Auction Application its (or its parent company's) audited financial

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131, PO #2

Page 10

statements from the prior fiscal year, including net income, cash flow, balance sheets, an opinion letter, and accompanying notes if such statements are available. If audited statements are not available, the Applicant must submit its (or its parent company's) unaudited financial statements in the pre-auction phase. If unaudited financial statements are provided with the Pre-Auction Application, the Applicant must also provide a statement certifying that if it is identified as a winning bidder, the audited financial statements will be provided with the Post-Auction Commitment Form.

In an effort to streamline the Commission's review of applications, an Applicant that submits audited financial statements with an auditor's clean opinion letter will be considered financially qualified to participate in the Auction.<sup>29</sup> Applicants that present audited financial statements that do not contain a clean opinion letter, as well as any Applicants that submit unaudited financial statements, will be subject to additional review of all financial statements provided with the Pre-Auction Application. In situations where the audited financial statements do not contain a clean opinion letter, Commission staff will determine whether the issue is material to participation in the auction. Applicants that submitted unaudited financials in pre-auction stage and later submit the required audited financial statements during the post-auction stage will be subject to additional review of financial capability at that time.

As the circumstances for each Applicant may differ, establishing specific parameters for the review of an Applicant's financials is impractical. Therefore, we will tailor the financial review based on the individual circumstances of each Applicant to determine whether concerns exist that are material to participation in the auction, or whether it is reasonable to expect

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<sup>29</sup> An opinion letter is considered clean if it includes an unmodified opinion and does not contain an emphasis-of-matter paragraph relating to an entity's ability to continue operating as an ongoing concern. An unmodified opinion is one where "the auditor concludes that the [audited] financial statements are presented fairly, in all material respects, in accordance with the applicable financial reporting framework." American Institute of Certified Professional Accountants, Clarified Statements on Auditing Standards ("AICPA Clarified Statements"), *Forming an Opinion and Reporting on Financial Statements*, AU-C §§ 700.18 - 700.20, "Form of Opinion." See also AICPA Clarified Statements, *Modifications to the Opinion in the Independents Auditor's Report*, AU-C §§ 705.08 - 705.10, "Determining the Type of Modification to the Auditor's Opinion;" AICPA Clarified Statements, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern*, AU-C §§ 570.19 - 570.22, "Auditor Conclusions."

that the Applicant is financially capable of fulfilling NUSF reverse auction obligations.

**8. Bidding Process and Schedule of Proceedings**

The bidding process for the 2024 Auction will follow the process used in the 2022 Auction. Potential bidders must pre-qualify for the Auction, both as an entity and for the tier they wish to bid in. Bidders must pre-qualify by submitting the Pre-Auction Application form to the Commission by Friday, December 8, 2023. Applications will be reviewed by the Commission, and a list of qualified bidders will be issued on Tuesday, January 9, 2024.

Bidders will be provided a list of the census block groups available for bid, with online resources available for reference containing the MBU identification number and the bid dollar amount. Geographic Information System ("GIS") shapefiles of the MBUs will also be available upon request. Bidding will begin at the reserve price, calculated as described above.

Bidding will begin on Monday, January 22, 2024. Each bidding window will be open from 8:00 a.m. - 3:00 p.m. Central Time on each bidding day. During that time, bidders wishing to participate must submit a bid sheet to the Commission via email to [psc.nusf@nebraska.gov](mailto:psc.nusf@nebraska.gov) for that round. **Bids for each round must be submitted by 3:00 p.m. Central Time.** Bids submitted after 3:00 p.m. will not be considered. The initial bid sheet participants must use is available on the Commission website. A sample initial bid sheet is attached to this order as Attachment B.<sup>30</sup> Following the initial round of bids, Commission staff will issue an individual bid sheet to each participant for use in subsequent rounds.

Bidders must indicate on the bid sheet all MBUs on which they wish to bid and the bid tier in which they are bidding. Bid tiers cannot change for any given MBU from round to round. A new bidding round will commence every other business day, as follows:

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<sup>30</sup> The initial bid sheet released on the Commission website in Excel format also includes an overview of each bidding unit.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131, PO #2

Page 12

<b>Bidding Round</b>	<b>Date</b>
Round 1	Monday, January 22
Round 2	Wednesday, January 24
Round 3	Friday, January 26
Round 4	Tuesday, January 30
Round 5	Thursday, February 1
Round 6	Monday, February 5
Round 7	Wednesday, February 7
Round 8	Friday, February 9
Round 9	Tuesday, February 13
Round 10	Thursday, February 15

Should additional bidding rounds become necessary, each additional round will continue to occur every other business day, beginning on Tuesday, February 20.

Following the first round of bids, the Commission will review the bids received and assess the overall demand. The Commission will then determine whether the demand for funding is above or below the two established Auction budgets for the Frontier and Windstream areas. The Commission will then follow procedures as described below:

Over Budget. If the demand for funding is above the Auction budget, the funding for all MBUs receiving bids will be reduced by five percent (5%), and all MBUs not receiving bids will be removed from consideration. The remaining MBUs for which there are still bids will proceed to the next Auction round. Any entity that submitted a bid for an MBU in the first round will be eligible to re-bid on that MBU in the second round, at the lowered support amount. Only entities that bid on an MBU will be eligible to bid on that same MBU in successive rounds. This process will be repeated after each round.

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131, PO #2

Page 13

Under Budget. If the demand for funding is below the Auction budget, MBUs that received only one bid will be removed from further bidding and considered complete. Any MBUs that received multiple bids, but a single bid in the Gigabit tier, will be awarded to the bidder in the higher tier and considered complete. MBUs that received multiple bids in the same tier will continue to the next round. Only entities that bid on an MBU will be eligible to bid on that same MBU in successive rounds. The available support amount for eligible areas will be reduced by 5% until all MBUs have either been reduced to a single winning bid or otherwise eliminated.

Once all bidding is complete, the Commission will release a list of the successful bidders and the MBUs that were awarded successful bids. The Commission will also set forth a deadline for the submission of the Post-Auction Commitment Form at this time. The successful bidders must then complete the Post-Auction Commitment Form, attached hereto as Attachment C. On this form, successful bidders will be required to provide information specific to their successful bid, including a business plan, a detailed description of how funding will be used, and an explanation of how the project will be constructed. Applicants must submit a description of how the construction will be funded and must certify that they will have available funds for all project costs that exceed the amount of NUSF reverse auction support within the term of support. Successful bidders must also certify that they will provide Lifeline and Affordable Connectivity Plan eligible service and comply with ETC requirements and speed testing requirements. Audited financial statements with an opinion letter must also be provided by this date.

After reviewing the Post-Auction Commitment Forms, the Commission will issue the final award of bids and begin distributing support.

## **9. Term of Support**

Winning bidders will be awarded support for a term of two years. Extensions of that term may be available if approved by the Commission. 50% of the awarded support will be distributed to winning bidders upon the approval of the bidders' Post-Auction Commitment Forms. The remainder of support will be distributed once the bidder has completed its build of service to the bid area and met all applicable speed testing requirements.

## **10. Quiet Period**

The Commission finds that beginning on Friday, December 8, 2023 and continuing until ended by order of the Commission, a Quiet Period shall be in place in the Auction. During the Quiet Period, participants in the reverse auction shall not discuss the reverse auction with one another.<sup>31</sup> Participants shall not directly or indirectly communicate information regarding bids or bid strategies to one another. Barred topics of conversation include, but are not limited to, the following:

1. Discussion of eligible areas
2. Bids
3. Bidding strategy
4. Agreements to bid on or not bid on bid areas

Members of consortiums approved to bid in the auction may discuss these topics with other members of the consortium, but are prohibited from discussing with other participants.

Should a violation of the Quiet Period occur, any participant who receives or who makes or knowingly causes to be made the violation must immediately file with the Commission all such written communications, memoranda stating the substance of all such oral communications, and all written responses and memoranda stating the substance of all oral responses to the communications. The filing must be made within two business days of the receipt or making of the communication. Failure to disclose a violation of the quiet period will constitute a violation of the order of the Commission and may result in penalties as described below.

## **11. Penalties**

The Commission finds that integrity in the Auction is of the utmost importance. Therefore, any person or entity who violates the Quiet Period, or who makes or causes to be made a false record, statement, or claim during the 2024 Reverse Auction shall be subject to penalties as determined by the Commission. Penalties may include but are not limited to repayment of support distributed, prohibition from participation in future Commission

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<sup>31</sup> For purposes of the 2024 Auction, the term "participant" refers to all persons, entities, or consortiums submitting applications to participate in the 2024 Reverse Auction, as well as their agents, employees, and representatives.

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131, PO #2

Page 15

funding opportunities, withholding of ongoing support, and civil penalties pursuant to Neb. Rev. Stat. § 75-156.

## **12. Procedural Schedule**

The Commission finds that the Procedural Schedule attached hereto as Attachment E should be adopted. The deadline to submit bids in all rounds is 3:00 p.m. Central Time. All other deadlines listed are at 5:00 p.m. Central Time. Forms submitted after that time will not be considered.

Submissions of applications, bids, or other filings in this docket should be made via email to [psc.nusf@nebraska.gov](mailto:psc.nusf@nebraska.gov).

### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the opinions and findings set forth herein shall be, and they are hereby, adopted.

IT IS FURTHER ORDERED that the 2024 Reverse Auction shall proceed as set forth herein, beginning on Monday, January 22, 2024.

IT IS FURTHER ORDERED that the Pre-Auction Application Form attached hereto as Attachment A be adopted. Interested parties must submit this form to the Commission on or before Friday, December 8, 2023 to participate in the 2024 Reverse Auction.

IT IS FURTHER ORDERED that the initial Bid Sheet attached hereto as Attachment B and released on the Commission website be adopted. Bidders must submit a new Bid Sheet for each round of the Reverse Auction in which they wish to participate.

IT IS FURTHER ORDERED that the Post-Auction Commitment Form attached hereto as Attachment C be adopted. Successful bidders must submit this form and receive final approval from the Commission to receive support.

IT IS FURTHER ORDERED that the Speed Test Certification form attached hereto as Attachment D be adopted. Successful bidders will be required to use this form to report required Reverse Auction speed testing.

IT IS FURTHER ORDERED that a Quiet Period shall begin on Friday, December 8, 2023, and any Participant who directly or

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131, PO #2

Page 16

indirectly communicates information regarding bids or bid strategies to one another shall be subject to penalties as described above.

IT IS FURTHER ORDERED that any person or entity who makes or causes to be made a false record, statement, or claim during the 2024 Reverse Auction shall be subject to penalties as determined by the Commission.

IT IS FINALLY ORDERED that the Procedural Schedule attached hereto as Attachment E be adopted.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 7th day of November, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Eric M. Hamler*  
*[Signature]*  
*Tim Schram*  
*Kevin Stocker*

*[Signature]*  
Chair

ATTEST:

*Thomas W. Golden*  
Executive Director

## NUSF-131 2024 Reverse Auction Pre-Auction Application Form

### Section I: Applicant Details

1. Applicant/Entity name:	Click to enter text.
2. Applicant NE Code:	Click to enter text.
3. NETC Status: NOTE: Post auction, winning bidders must pursue any ETC application/amendment process that may need to be completed prior to support authorization.	Choose an item.
4. Applicant address:	Click to enter text.
4a. Applicant city:	Click to enter text.
4b. Applicant state:	Click to enter text.
4c. Applicant zip code:	Click to enter text.
5. Applicant contact (first and last name):	Click to enter text.
6. Applicant e-mail:	Click to enter text.
7. Applicant phone number:	Click to enter text.
8. Legal representative name (must be an attorney licensed to practice law in Nebraska):	Click to enter text.
9. Legal representative e-mail:	Click to enter text.
10. Legal representative phone number:	Click to enter text.

### Section II: Bidding Details

11. Indicate the speed tier or tiers in which applicant intends to bid, and the proposed technology for the respective speed tier. Technologies other than fiber to the premise need to provide supporting documentation, including speed tests, proving that the technology can meet the required speed thresholds:

A. Baseline: $\geq 100/100$ Mbps; - Low Latency ( $\leq 100$ ms)	Yes/No
Technology for Baseline tier	Click to enter text.
B. Gigabit $\geq 1$ Gbps/500 Mbps; - Low Latency ( $\leq 100$ ms)	Yes/No
Technology for Gigabit tier	Click to enter text.

12. Please provide the names and email addresses of the bidders authorized to bid (up to 3 bidders per applicant/entity allowed):

	Name of Bidder (Last, First)	E-mail Address
Authorized Bidder 1:	Click to enter text.	
Authorized Bidder 2:	Click to enter text.	
Authorized Bidder 3:	Click to enter text.	

**Attach/Include:**

Please label attachments as follows: “[Applicant Name]\_[Attachment Letter].” If it is necessary to submit multiple attachments under one attachment letter category, label the attachments to identify the separate attachments. Ex. “[Applicant Name]\_[Attachment Letter]\_1”, “[Applicant Name]\_[Attachment Letter]\_2”, etc.

- Technical Capability: Attach a detailed network proposal in addition to documents showing a demonstrated history of at least two (2) years of service at the speeds for which the applicant proposes to bid and with the technology to be used to complete the proposed deployment. (Attachment Letter: A)
- Financial Capacity: Attach documentation of financial information showing the applicant’s financial capability to bid on the proposed service areas. This should include audited financial statements along with an opinion letter when the applicant or its parent company are audited in the ordinary course of business. If the company is not audited in the ordinary course of business, unaudited financial statements from the prior fiscal year must be provided. If unaudited financial statements are provided with the pre-auction application, the applicant must also provide a statement certifying that if it is identified as a winning bidder, the audited financial statements and opinion letter will be provided with the post-auction commitment form. (Attachment Letter: B)
- Operational Capacity: Provide subscribership information for an existing network that currently provides the speeds in which the applicant intends to bid are currently being offered to customers. This information is required to demonstrate the ability of the applicant to run a successful broadband operation and serve its customers. Applicant should identify existing services in Nebraska, and the number of customers that subscribe to their services, separated by exchange. (Attachment Letter: C)
- The proposed Lifeline and Affordable Connectivity Plan service plans of the applicant. (Attachment Letter: D)
- Information relative to whether the applicant participates in the FCC’s Affordable Connectivity Program (formerly Emergency Broadband Benefit Program) and how that participation may impact proposed service offerings to subscribers in auctioned areas. (Attachment Letter: E)
- Applications proposing to use technology other than fiber or proposing to use a combination of fiber and other technologies, must include an attestation from a qualified engineer describing the speed capabilities of the proposed technology, as well as speed test data complying with the requirements of NUSF-133 for at least ten Nebraska customers subscribing to the product, demonstrating the ability of the provider to meet the speed requirements of the program. (Attachment Letter: F)
- Attach documentation with details of the standalone voice plan and service plan currently offered by the application that provides broadband at the relevant performance tier and latency requirements at rates that are reasonably comparable to rates offered in urban areas. (Attachment Letter: G)

**APPLICANT CERTIFICATION:** By signing this statement, the applicant certifies that the information submitted on the application and all supporting documents are true and correct. The applicant agrees to refrain from any discussion of eligible areas, bids, bidding strategies, or agreements to bid or not bid on eligible areas with other participants at any point during the auction. The applicant agrees to perform and adhere to all requirements for funding, and to comply with all state and federal regulations and requirements pertaining to this program. The applicant agrees not to use equipment prohibited by the FCC within the network, to offer rates in the project area that are comparable to the rates offered by the applicant in urban areas outside the project area and as compared to the FCC’s national rate survey, to submit network performance testing information as prescribed by the Commission, and to complete the project build within two (2) years following the grant award unless granted an extension. The applicant acknowledges that failure to comply with the requirements of the Auction may result in penalties as determined by the Commission, including but not limited to civil penalties pursuant to Neb. Rev. Stat. § 75-156.

[Click to enter text.](#)

Printed Name of Authorized Person

[Click or tap to enter a date.](#)

Date

[Click to enter text.](#)

Title of Authorized Person

Signature of Authorized Person

## NUSF - 131 Bid Sheet Overview

**Reminder - Bid Sheets must be submitted each round by 3:00 CDT to be considered**

### To Bid:

1. Fill in Bidder ID in cell "C4" on the "Bid Sheet" Tab
2. Insert the Bid Unit ID in Column B on the Bid Sheet for ALL MBUs that you want to bid on. MBUs can also be viewed at <https://broadbandmap.nebraska.gov>
3. Select the service tier for each MBU that you're bidding on. The service tier options consist of: Baseline Tier 100Mbps/100Mbps or Gigabit Tier 1Gbps/500Mbps. Latency measurements for both tiers must be at or below 100 milliseconds.
4. The bid sheet must be emailed to: [psc.nusf@nebraska.gov](mailto:psc.nusf@nebraska.gov) by **3:00 CDT** to be considered
5. For each successive round, you may re-bid on an MBU you bid on in the previous round at the lowered support amount. If you do not re-affirm your bid on an MBU in the current round, your interest in the MBU will be considered withdrawn.
6. Once the budget clears, applicants with winning bids will be notified of those MBUs that they have won. No further bidding is required for those MBUs.
7. MBUs with competing bids will still proceed into successive rounds until there is a winning bidder.

### NUSF-131 Bid Sheet

**Reminder - Bid Sheets must be submitted each round by 3:00 CDT to be considered**

<b>Bidding Round Number:</b>	
<b>Bidding Round Date:</b>	
<b>Bidder ID:</b>	

	<b>Minimum Bidding Unit (MBU) ID</b>	<b>Service Tier</b> <i>(select from list)</i>
	Ex.: North_Platte_1000	
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2		
3		
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## NUSF-131 2024 Reverse Auction Post-Auction Commitment Form

### Section I: Applicant Details

1. Applicant/Entity name:	Click to enter text.		
2. Applicant NE Code:	Click to enter text.		
3. Applicant's Nebraska ETC status:	Choose an item.		
4. Applicant address:	Click to enter text.		
4a. Applicant city:	Click to enter text.		
4b. Applicant state:	Click to enter text.		
4c. Applicant zip code:	Click to enter text.		
5. Applicant contact (first and last name):	Click to enter text.		
6. Applicant e-mail:	Click to enter text.		
7. Applicant phone number:	Click to enter text.		
8. Legal representative name (must be an attorney licensed to practice law in Nebraska):	Click to enter text.		
9. Legal representative e-mail:	Click to enter text.		
10. Legal representative phone number:	Click to enter text.		
11. Does the applicant currently report through FCC Form 477 the speeds they are committing to provide through this deployment?	Choose an item.	11a. If yes, does the applicant clearly offer the minimum speeds required on their public-facing website:	Choose an item.
11b. Provide the service provider's public-facing website URL that reflects the currently available speeds:	Click to enter text.		
12. Project Name:	Click to enter text.		
13. Estimated project completion date:	Click to enter text.		
14. Total number of locations to be served:	Click to enter text.		

**Attach/Include:**

**Please label attachments as follows: “[Applicant Name]\_[Attachment Letter].” If it is necessary to submit multiple attachments under one attachment letter category, label the attachments to identify the separate attachments. Ex. “[Applicant Name]\_[Attachment Letter]\_1”, “[Applicant Name]\_[Attachment Letter]\_2”, etc.**

- A business plan for the proposed network that includes details of the project including a description of the network design, how the service area will be maintained throughout the useful life of the facilities, a description of any legal challenges that must be addressed prior to or during the project in question, such as local zoning, right of way, and permitting processes, and demonstrates capability to maintain the network over the long run. The plan should also include deployment timelines, financial analysis for the project, including a description of how project costs and expected revenue will result in financial viability of the project over the expected useful life of the facilities. (Attachment Letter: A)
- A funding breakdown must be attached in Excel format. This should include a proposed budget reflecting a clear and detailed breakdown of cost elements based on total project costs. This should also include the winning bid amount for the project area. (Attachment Letter: B)
- Auction participants are required to offer Lifeline service and participate in the FCC’s Affordable Connectivity Program (ACP). Attach documentation reflecting the Lifeline service plan and ACP offerings that will be made available to customers in the project area. (Attachment Letter: C)
- A statement from the applicant attesting that they will comply with all ETC certification requirements. (Attachment Letter: D)
- A statement from the applicant attesting that they will offer service to customers within the project area at the proposed speeds and at affordable rates as compared to the FCC’s national rate survey? (Attachment Letter: E)
- A statement from the applicant describing how the construction will be funded. (Attachment Letter: F)
- A statement from the applicant attesting that they will have available funds for all project costs that exceed the amount of NUSF reverse auction support within the two-year term of support. (Attachment Letter: G)
- If not provided with short-form application, a winning bidder must provide audited financial statements and opinion letter from the prior fiscal year. (Attachment Letter: H)

**APPLICANT CERTIFICATION:** By signing this statement, the applicant certifies that the information submitted on this form and all supporting documents are true and correct. The applicant agrees to perform and adhere to all requirements for funding, and to comply with all state and federal regulations and requirements pertaining to this program. In addition, the applicant agrees not to use equipment prohibited by the FCC within the network, to offer rates in the project area that are comparable to the rates offered by the applicant in urban areas outside the project area and as compared to the FCC’s national rate survey, to submit network performance testing information as prescribed by the Commission, and to complete the project build within two (2) years following the grant award unless granted an extension. The applicant acknowledges that failure to comply with the requirements of the Auction may result in penalties as determined by the Commission, including but not limited to civil penalties pursuant to Neb. Rev. Stat. § 75-156.

Click to enter text.

Printed Name of Authorized Person

Click or tap to enter a date.

Date

Click to enter text.

Title of Authorized Person

Signature of Authorized Person



## NUSF-131 2024 Reverse Auction Speed Test Certification

As required by order of the Nebraska Public Service Commission in Docket NUSF-131, Progression Order #2, winning bidders in the 2024 NUSF-131 Reverse Auction must conduct speed testing and submit results of speed tests within thirty (30) days of project completion.

The questions below should be filled out with the most accurate information currently available. When describing locations currently served, each location included in the totals below must be part of the project area and must be able to be served at a minimum of 100/100 Mbps speed as of the date of this report.

Date of Report:	
Participating Entity Name:	
Participating Entity NE Code:	
Contact Person:	
Mailing Address:	
Email Address:	
Phone Number:	

Project Name:	
Project Completion Date:	
Total number of locations to be served:	
Number of locations currently capable of being served at 100/100 Mbps:	
Number of customers currently subscribing to 100/100 Mbps service:	
Number of locations at which speed testing was performed:	
Percentage of total locations at which speed testing was performed:	

The following table reflects the total number of locations to be tested based on the number of locations in the application.

Number of Locations in Application	Number of Test Locations
50 or Fewer	10
51-500	10 or 10% of total number of locations, whichever is greater
Over 500	50*

\*To the extent possible, grant recipients serving more than 500 locations in a project area should attempt to test at least 10% of served locations.

## NUSF-131 Reverse Auction Program Speed Test Certification

Participating Entity Name:	[Will auto-populate from the prior page]
Project Name:	[Will auto-populate from the prior page]

Please attach documentation supporting speed testing information for the project listed above. Documentation attached should demonstrate that the tests reflect actual download and upload speeds experienced by household users, that the tests were performed using a random sample of locations of consumers who subscribe to the network, including testing performed during times of peak usage. At least one test per hour must be conducted during the test window, with one week of testing for each project. Relevant documentation and supporting information should be attached as needed.

Speed test results should be summarized in tabular format and attached to this certification. The table must include service address, test start (date/time), test end (date/time), download speed result, and upload speed result. In addition to the summary table, supporting documentation must be provided to support the speed test results for individual locations.

*Speed Test Summary Example:*

Service Address	Test Start (date/time)	Test End (date/time)	Download Speed Result	Upload Speed Result
123 Main St, Hometown NE 68000	7/10/2023; 5:33:00 PM	7/10/2023; 5:34:00 PM	124.33 Mbps	112.46 Mbps
890 Mockstreet, Hometown NE 68000	7/10/2023; 6:35:00 PM	7/10/2023; 6:36:00 PM	120.45 Mbps	110.76 Mbps

Should an applicant’s testing fail to reflect that the entire project area is capable of being served at the required speeds, the applicant must submit along with speed test results a written proposal to remedy the deficiencies. This proposal must include the date upon which speed testing will be conducted a second time, which must be no later than sixty (60) days following the initial speed testing.

*Please select one of the following:*

- I hereby certify that the attached speed test results reflect that the entire project area is capable of being served with a minimum of 100/100 Mbps service.
- The attached speed testing does not reflect that the entire project area is capable of being served with a minimum of 100/100 Mbps service. A plan for remediation is attached.

Thank you for your participation in the 2024 NUSF-131 PO#2 Reverse Auction Program. The Commission may contact you with follow-up questions as needed.

**ATTESTATION:** By signing this document, I attest under penalty of perjury that the information contained in this form and all supporting documents are true and accurate, and that I have undertaken due diligence to obtain knowledge regarding these claims. I understand that the submission of false information in this document shall be considered a violation of an order of the Commission, and may be subject to civil and/or criminal penalties.

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Printed Name of Officer or Agent Date

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Title of Officer or Agent

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Signature of Officer or Agent

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. NUSF-131  
Progression Order #2

Attachment E

## 2024 Reverse Auction Procedural Schedule

<u>Event</u>	<u>Date</u>
NUSF-131 PO#2 order entered	Tuesday, November 7, 2023
Eligible bidding areas released	On or before Wednesday, November 22, 2023
Pre-Auction Application Forms due	Friday, December 8, 2023
Qualified bidders released	Tuesday, January 9, 2024
Bidding begins	Monday, January 22, 2024
List of successful bidders released	<i>TBD; Approximately 2 weeks post Auction</i>
Post-Auction Application Forms due	<i>Date will be announced in a future Commission Order</i>
Final award of bids released	<i>Following review of Post-Auction Applications</i>