



AUG 13 2021

Nebraska 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 reverse)
auction procedures and requirements.)

REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies ("RIC")¹ submit these Reply Comments in response to the comments filed by other interested parties² regarding the Order Opening Docket, Seeking Comment and Setting Hearing entered by the Nebraska Public Service Commission (the "Commission") in this docket on June 29, 2021 (the "NUSF-131 Order"). RIC appreciates the opportunity to provide these Reply Comments and looks forward to continuing its participation in this docket regarding the establishment of reverse auction procedures and requirements.

General Standards for NUSF Reverse Auctions

The comments filed by other interested parties do not undermine or detract from the relevance and applicability of the following Commission-established standards for NUSF reverse auctions:³

1 Arlington Telephone Company, Blair Telephone Company, Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, LLC, Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Sodtown Communications, Inc. and Three River Telco.

2 In addition to RIC, five sets of comments were filed in responses to the NUSF-131 Order by Cox Nebraska Telcom, LLC ("Cox"), the Nebraska Rural Broadband Association ("NRBA"), Qwest Corporation d/b/a CenturyLink QC ("CenturyLink"), Skywave Wireless, Inc. ("Skywave") and USTelecom - The Broadband Association ("USTelecom"). In addressing these parties' comments, RIC will use the party's name followed by the word "Comments". The same structure will be used to refer to the comments submitted by RIC.

3 See RIC Comments at 2-3.

- (1) NUSF support will be auctioned in the area where the original allocation was not utilized by the carrier to which it was allocated;
- (2) Eligible locations in which such support may be used
 - (a) will be those that are defined as rural;
 - (b) are not eligible for federal Rural Digital Opportunity Fund (“RDOF”) support;⁴
 - (c) are not already built to 25/3 Mbps or greater; and
 - (d) do not already have competitive service, defined as broadband at 25/3 Mbps and voice service offered.⁵

Likewise, the record reflects the need for the Commission, to the extent possible, to avoid the distribution of NUSF support through the reverse auction process for locations that will receive or are likely to be eligible to receive funding for broadband build out from other federal or state sources.⁶ Scarce NUSF resources should be used to build out broadband in eligible locations that would remain unserved or underserved following distribution of funding from other sources.

Pre-Auction Vetting Process

⁴ See generally *In the Matter of the Rural Digital Opportunity Fund, et al., Report and Order*, WC Docket Nos. 19-126, 10-90, FCC 20-5, released February 7, 2020 (“*FCC RDOF Order*”).

⁵ See *In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Universal Service Fund High-Cost Program*, Application No. NUSF-99, Progression Order No. 2, Order Adopting Findings and Conclusions and Initiating Challenge Process at 36 (Nov. 4, 2020) (“*November 4th NUSF 99 Order*”). Section 86-330(4), which became effective as of May 6, 2021, provides that if an ETC provides infrastructure which the Commission finds to be capable of reliably providing broadband service at minimum speeds of 100/20 Mbps, NUSF support may not be withheld, and therefore, eligible locations in which NUSF support may be used will include those locations not already built to 100/20 MBPS or greater.

⁶ See US Telecom Comments at 5; accord RIC Comments at 3.

The importance of implementing a robust pre-auction vetting process was endorsed by nearly all commenters.⁷ Succinctly stated, “[e]stablishing a thorough pre-auction vetting process is more important and effective than enforcing post-auction penalties as a means of preventing the state from investing in providers that will not be able to deliver the services and speeds promised during the bidding process.”⁸ RIC endorses this principle and reiterates its recommendations regarding pre-auction vetting of bidders.⁹

Additionally, RIC agrees with USTelecom that the following additional guidelines will be useful aids in the Commission’s pre-auction vetting process: (1) all potential bidders/applicants should have a minimum of two years’ history of providing broadband service at speeds for which they are bidding; (2) applicants should explain the technology that is planned for use;¹⁰ and (3) current subscribership information should be provided to demonstrate the ability to successfully provide the proposed broadband services.¹¹ In RIC’s view, these indices will help ensure the *bona fides* of any applicant and will prove useful in evaluating the likelihood of fulfillment of service commitments. Likewise, these indices coupled with the vetting process outlined by RIC should help ensure that the objective of the reverse auction process – new broadband service provisioning

⁷ See Cox Comments at 2; NRBA Comments at 2-3; RIC Comments at 4-5; Skywave Comments at 1; and USTelecom Comments at 2.

⁸ USTelecom Comments at 2.

⁹ See RIC Comments at 4-6.

¹⁰ RIC notes that this guideline is critically important based on the need for demonstrated scalability to 100/100 Mbps for any NUSF distribution beginning January 1, 2022. See LB 388; see also RIC Comments at 6 and fn. 15.

¹¹ See US Telecom Comments at 2.

– is met¹² while, at the same time, avoiding the commitment of administrative resources and delay that would be associated with claw back efforts that would be necessary in cases where a winning bidder’s service commitments are not fulfilled.

Term of Support

Consensus exists among commenters that a 24-month build out period for projects funded through the reverse auction process is appropriate.¹³ Coupled with the traditional “good cause” showing, RIC submits that its force majeure test for extensions¹⁴ reasonably accommodates concerns stated by the parties such as the deployment delay issues associated with permitting processes and supply chain disruptions.¹⁵

Budget

Logically, the budget for a particular reverse auction cannot be established until the Commission knows the amount of withheld NUSF support that is available to be redirected from an existing Eligible Telecommunications Carrier (“ETC”) to a new ETC planning to serve the same area from which the support was derived. Once a budget is established based on available withheld support, the Commission will have the baseline fact necessary to determine the geographic area associated with a reverse auction or rural-based plan, subject to statutory restrictions.¹⁶

¹² See RIC Comments at 4-6.

¹³ See NRBA comments at 2-3; CenturyLink Comments at 2; RIC Comments at 7-8; Skywave Comments at 1; and USTelecom Comments at 3.

¹⁴ See RIC Comments at 7.

¹⁵ See USTelecom at 3.

¹⁶ *Neb. Rev. Stat.* § 86-330(2) requires that “any funding that is withdrawn shall be utilized in the exchange area for which the funding was originally granted.”

Commenters voiced support for designation of small geographic areas for auction.¹⁷ RIC generally supports this position but also submits that development of the details relating to eligible areas and the budget that is established for such areas are all subjects that warrant further discussion and development at one or more workshops to be conducted by the Commission.¹⁸

RIC also suggests that the lack of detail and clarity regarding some positions associated with budget setting are best addressed in an industry workshop format if such positions are to be considered for adoption. RIC is confident that the Commission will follow the law and precedents it has set. Yet, the interpretation and implementation thereof may well present issues that could be constructively addressed in one or more industry workshops.

For example, RIC takes issue with NRBA's claim that redirection of "unused" support pursuant to a rural-based plan "should trump an incumbent local exchange carrier's election of BDS for the same area."¹⁹ NRBA cites Section 86-330(3) as purported support for this proposition. However, the lack of clarity associated with NRBA's proposition requires that it be rejected or, at the very least be included as an issue for discussion in an industry workshop.

First, NRBA appears to suggest that the concepts of "unused" and "withheld" via-a-vis the reverse auction statute are one and the same. RIC disagrees with this position. Section 86-330(3) addresses "funding that has been *withheld*" (emphasis added) from an ETC. NUSF support may be withheld only in compliance with the Commission's Reverse Auction Rules.²⁰ In the *NUSF-131*

¹⁷ See Cox Comments at 2; Skywave Comments at 3; and CenturyLink Comments at 2.

¹⁸ See RIC Comments at 8-9 for further discussion of this topic.

¹⁹ NRBA Comments at 4.

²⁰ See 291 Neb. Admin. Code Ch. 16, Sec. 001.03.

Order at page 2, the Commission addresses budget setting relating to support allocated to price cap carriers that is “*unused*”.²¹

Second, RIC is rightfully concerned as to how NRBA’s proposition would comply with the geographic limitation for redistribution of NUSF support provided by the Legislature with regard to reverse auctions. RIC respectfully submits that a reasonable reading of Section 86-330(2) is that in the redirection of NUSF support the Commission shall utilize the support “in the exchange area for which the funding was originally granted.” Thus, the withdrawn or unused support should be redirected to that carrier’s exchange area from which the funds were unused or withheld.

Finally, Section 86-330(3) does not support NRBA’s claim that redirection of support to a rural-based plan “trumps” any other distribution of NUSF support. Rather, the section states that in the redirection of support, “the Commission *may consider* rural-based plans.”²² The NRBA’s proposition, unsubstantiated by law, as to the relative status of a rural-based plan relative to areas eligible for redirection of support should not be afforded any weight by the Commission.

Deployment Obligations/Service Offerings and Reasonable Comparability

CenturyLink rightly concludes that any carrier receiving NUSF support must be an ETC and thus, must offer adequate voice service throughout the carrier’s service area.²³ RIC agrees that any carrier with ETC status must meet all other requirements imposed on ETCs. Contrary to

²¹ For example, on July 15, 2021, Frontier Communications submitted a notification letter to the Commission that it would accept only \$6,368,563 of its allocated NUSF High Cost support totaling \$9,553,092.10 attributable to the period of 2017 through 2021. This support is *unused* but not as yet formally *withheld* by the Commission, the latter of which triggers the reverse auction processes.

²² *Neb. Rev. Stat.* § 86-330(3)(a) (emphasis added).

²³ See CenturyLink Comments at 2-3.

USTelecom's position,²⁴ however, should an existing ETC seek to remove itself from its state carrier of last resort ("COLR") obligations, processes are already in place for those decisions to be made independent of the reverse auction award.²⁵

Areas Eligible for Auction Support

The consensus among commenters seems to be that areas eligible for reverse auction support should be less than the exchange level.²⁶ RIC submits that, as a practical matter, the amount of NUSF support available for reverse auction or redirection will need to be premised on broadband deployment being achieved to all unserved and underserved areas of an exchange. Therefore, at least conceptually, auction areas for bidding that are smaller than the exchange level may make sense. However, such concepts, in turn, logically raise methodological issues associated with defining an area subject to a reverse auction. Such issues, in RIC's view, may be best handled

²⁴ See USTelecom Comments at 3-4.

²⁵ See, e.g., 47 U.S.C. § 214(e)(4) ("Relinquishment of universal service" requirements); *Neb. Rev. Stat.* § 86-134 (Providing criteria that must be satisfied by a carrier prior to receiving Commission approval to discontinue service.) As to these requirements, RIC notes that the *FCC RDOF Order* stated the following.

Commenters make only vague, unsubstantiated claims about burdensome state obligations in support of these requests. Price cap carriers must continue to comply with state requirements, including carrier of last resort obligations, to the extent applicable. We similarly defer to the states' judgment in assuring that the local rates that price cap carriers offer in the areas from which we forbear remain just and reasonable. Price cap carriers will remain subject to ETC obligations other than those covered by our forbearance unless or until they relinquish their ETC designations in those areas pursuant to section 214(e)(4).

See *FCC RDOF Order* at ¶ 136 (footnote omitted).

²⁶ See Cox Comments at 3; NRBA Comments at 5-6 (however, NRBA also incongruously advocates that withholding and redirecting of support should occur at an exchange level).

in an industry workshop since the area associated with a reverse auction is an integral component of the method by which a “reserve” price could be established as discussed below.

Budget/Reserve Pricing

Notwithstanding comments made regarding the budget and reserve pricing,²⁷ RIC continues to assert²⁸ that the Commission’s discussion of reserve pricing for a reverse auction requires additional input based on the need to balance various competing objectives such as: (1) the fact that NUSF is a scarce resource and any allocated budget may not meet the State Broadband Cost Model investment levels for remaining unserved or underserved areas that are anticipated to be more costly to serve;²⁹ (2) ensuring the availability of broadband to all rural end users; and (3) whether any mandated governmental discount of the investment levels based on the available NUSF budget should supplant an applicant’s judgment as to how it can best deploy a scalable network in the given reverse auction area. Thus, as suggested above with regard to establishing budgets, the balancing of these concepts may best be achieved through a workshop or series of workshops on focused topics on which robust discussion can occur and alternatives can be identified and debated among all interested parties, the Commission and its Staff.

II. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Reply Comments in response to the *NUSF-131 Order*. RIC looks forward to participation in the hearing in this proceeding.

²⁷ See, e.g., CenturyLink Comments at 5; NRBA comments at 6.

²⁸ See RIC Comments at 8-9.

²⁹ See *NUSF-131 Order* at 8.

Dated: August 13, 2021

Arlington Telephone Company, Blair Telephone Company, Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, LLC., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Sometown Communications, Inc. and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of August 2021, an electronic copy and one paper copy of the foregoing pleading were delivered to:

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and to legal counsel for the parties filing Comments in this proceeding.



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