

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, ) Rule and Regulation No. 207  
on its own motion, seeking to )  
amend Title 291, Chapter 16, ) ORDER RELEASING SECOND  
Reverse Auction and Wireless ) PROPOSED RULES, SEEKING  
Registry rules and regulations ) COMMENT, AND SETTING HEARING  
in accordance with Nebraska )  
Legislative Bill 338 (2021). ) Entered: January 31, 2023

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") opened this proceeding on September 27, 2022 on its own motion to adopt rules and regulations governing the redirection of Nebraska Telecommunications Universal Service Fund ("NUSF") funding through rural-based plans in Title 291, Chapter 16 of the Nebraska Administrative Code ("Chapter 16") in accordance with Legislative Bill 338 (2021). The Commission proposed to amend Chapter 16 by adding language governing rural-based plans to the Reverse Auction and Wireless Registry Rules and Regulations. An initial draft of the proposed changes to Chapter 16 was attached to the September 27 Order.

Comments from interested parties on the proposed changes were accepted until November 11, 2022. Comments were received from one party, the Nebraska Rural Independent Companies ("RIC"). Following the submission of comments on the proposed changes to Chapter 16, a hearing was held in the Commission Hearing Room on December 12, 2022. Sallie Dietrich appeared on behalf of the Telecommunications/NUSF Department of the Commission ("Department"). Paul Schudel appeared on behalf of RIC. Andy Pollock appeared on behalf of the Nebraska Rural Broadband Alliance ("NRBA"). Exhibits 1-6 were offered and accepted.

Cullen Robbins testified on behalf of the Department. Mr. Robbins presented the proposed rule changes, noting that the concept of rural-based plans was put into statute in 2021 through LB 338. Mr. Robbins testified that the proposed amendments to Chapter 16 follow the language of LB 338 closely, with one addition. The Department proposed the addition of a sixty-day window after funding has been withheld, during which time an ETC can submit a rural-based plan. Mr. Robbins noted that in comments, RIC suggested extending the window to 90 days. Mr. Robbins stated

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Rule and Regulation No. 207

Page 2

that the Department thought the suggestion was a good one and recommended its adoption.

Mr. Schudel then testified on behalf of RIC. Mr. Schudel noted that RIC recommends that following the closure of the instant proceeding, the Commission open a docket presenting detailed issues with regard to rural-based plans for comment. Mr. Schudel specifically noted that additional comments should be allowed regarding the scoring of rural-based plans, scheduling and reporting requirements, and other relevant implementation details that would be outside the scope of this rule and regulation proceeding. Mr. Schudel also recommended the Commission further examine the difference between NUSF support that has been withheld versus support that has been withdrawn, and where that support might be redeployed.

Mr. Schudel further testified regarding the sixty-day window set forth in the proposed changes to Chapter 16. Mr. Schudel stated that RIC would prefer a window of at least ninety days, and suggested that it could be longer than ninety days. Mr. Schudel stated that extending this window would help eligible telecommunications carriers develop a rural-based plan for filing.

Following Mr. Schudel's testimony, no other testimony was presented, and the hearing was closed.

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

Based upon the written comments submitted and the testimony offered at hearing, the Commission finds that the proposed amendments to Chapter 16 should be modified. A second set of proposed amendments is hereby released. A copy of the second set of the proposed amendments is attached hereto as Appendix A.

Comments on the proposed amendments shall be filed by interested parties on or before **Friday, February 24, 2023 at 3:00 p.m. Central Time**. Parties filing comments should email a copy to [brittany.roos@nebraska.gov](mailto:brittany.roos@nebraska.gov) and [psc.nusf@nebraska.gov](mailto:psc.nusf@nebraska.gov).

The Commission finds that this matter should be set for hearing on **Tuesday, March 14, 2023, at 1:30 p.m. Central Time** in the Commission Hearing Room, 300 The Atrium, 1200 N Street,

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Rule and Regulation No. 207

Page 2

Lincoln, Nebraska and via WebEx videoconference, available at <https://psc.nebraska.gov/stream>.

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 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 second set of proposed amendments to Title 291, Chapter 16 of the Nebraska Administrative Code with regard to rural-based plans for funding redirection be, and are hereby, opened for comment.

IT IS FURTHER ORDERED that interested parties may file comments in this proceeding on or before **Friday, February 24, 2023 at 3:00 p.m. Central Time.** as set forth above.

IT IS FURTHER ORDERED that this matter be set for hearing on **Tuesday, March 14, 2023, at 1:30 p.m. Central Time** in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska and via videoconference as described above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 31st day of January, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
  


  
Chair

ATTEST:

  
Executive Director

NEBRASKA ADMINISTRATIVE CODE

EFFECTIVE DATE: \_\_\_\_\_

SECOND EDITION

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 16 - REVERSE AUCTION AND WIRELESS REGISTRY RULES AND REGULATIONS

**Index**

001. SCOPE, DEFINITIONS, AND STATE CODE.....	1
001.01 SCOPE AND APPLICATION.....	1
001.02 DEFINITIONS.....	1
001.02(A).....	1
001.02(B).....	1
001.02(C).....	1
001.02(D).....	1
001.03 WITHHOLDING OF NEBRASKA UNIVERSAL SERVICE FUND SUPPORT.....	1
001.03(A).....	1
001.03(B).....	1
001.04 REVERSE AUCTIONS.....	1
001.04(A).....	1
001.04(B).....	1
001.04(C).....	1
001.04(D) APPLICATION PROCESSING.....	2
001.04(E) FULL AND TIMELY PERFORMANCE.....	3
001.05 WIRELESS REGISTRY.....	4
001.05(A).....	4
001.05(B).....	4
001.06 RURAL BASED PLANS.....	4
001.06(A).....	4
001.06(B).....	4
001.06(C).....	4
001.06(C).....	4
001.06(D).....	5
001.06(E).....	5

## 001. SCOPE, DEFINITIONS, AND STATE CODE.

001.01 SCOPE AND APPLICATION. The scope and applicability of these rules and regulations is described in Neb. Rev. Stat. §§ 75-160 and 86-330.

001.02 DEFINITIONS. The terms and definitions in Neb. Rev. Stat. §§ 86-319 through 86-322 and in Neb. Admin. Code Title 291, Chapter 10, are hereby incorporated into this chapter. Such terms not specifically identified in statute or existing rules are defined below.

001.02(A). “Reverse Auction” as used in § 86-330 means an auction process to determine redistribution of support from the fund.

001.02(B). “Support” means payments from the fund allocated by the Commission to an eligible telecommunications carrier (ETC) for such ETC’s eligible expenses associated with broadband Internet infrastructure deployment in an Unserved Area or an Underserved Area within the State of Nebraska.

001.02(C). “Unserved Area” or “Underserved Area” means any location in the State of Nebraska that does not have access, or adequate access, to broadband Internet service as defined by the Commission.

001.02(D) “Rural Based Plan” means a proposal for redirecting funding as described Nebraska Revised Statutes Section 86-330 which is made by rural residential and business users of telecommunications and broadband services in high-cost areas of an exchange.

## 001.03 WITHHOLDING OF NEBRASKA UNIVERSAL SERVICE FUND SUPPORT.

001.03(A). Consistent with Neb. Rev. Stat. § 86-330, after notice and hearing, the Commission may withhold Support from an eligible telecommunications carrier (ETC):

001.03(A)(i). On the basis of consumer complaints or on the Commission’s own motion, after making a finding that:

001.03(A)(i)(a). The availability, quality, or affordability of broadband or telecommunications service provided by the ETC is lacking; or

001.03(A)(i)(b). The ETC has failed to follow the criteria for successful investment of support from the fund;

001.03(A)(ii). Where an ETC has failed to comply with the requirements established by the Commission in orders pursuant to Neb. Rev. Stat. § 86-324; or

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

001.03(B) If support is withheld pursuant to § 001.03(A), the Commission shall publicly announce the amount of support withheld and available for use in a reverse auction or a rural based plan. Such notice shall include a description of the geographical area in which the available funding may be used.

#### 001.04 REVERSE AUCTIONS.

001.04(A). If pursuant to Neb. Rev. Stat. § 86-330 and the rules set forth in this Chapter, the Commission withdraws Support provided to an ETC, the Commission may use such withdrawn Support to implement and operate a Reverse Auction program, provided that such withdrawn Support is required to be utilized in the same area for which the Support was originally granted. No Reverse Auction program shall be initiated until at least ninety (90) days have passed since the announcement of available funding pursuant to § 001.03(B).

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

001.04(B)(i). Released to the public by the Commission in a notice published in accordance with the Commission's Rules of Procedure which includes the specific timeframe for Reverse Auction application submittals and any other information relevant to the Reverse Auction process.

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

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

001.04(C)(ii). Evidence that the applicant is financially and technically qualified to meet the public interest obligations for each relevant area for which it seeks Support;

001.04(C)(iii). Evidence to confirm applicant's status as an ETC or that, should it be the successful bidder for the Reverse Auction, will seek such ETC status within thirty (30) days after the close of the Reverse Auction;

001.04(C)(iv). Confirmation that the applicant plans to provide access to broadband Internet service at speeds defined by the Commission in the area or areas subject to the Reverse Auction;

001.04(C)(v). A description of the technology or technologies that will be used to provide service in the area or areas subject to Reverse Auction;

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

001.04(C)(vii). To the extent that an applicant plans to use licensed or unlicensed spectrum to offer its voice and broadband services in the area or areas subject to Reverse Auction, a demonstration that it has the proper authorizations to use such spectrum, that use of such spectrum will not cause any interference with existing users, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve the Fund-eligible area or areas defined in the Reverse Auction, and certify that it will retain its access to and the use of the spectrum for at least 10 years from the date of the Support authorization;

001.04(C)(viii). A description of how the required construction will be funded, including financial projections to demonstrate, if applicable, that the applicant can cover the necessary debt service payments over the life of any loan obtained to fund construction;

001.04(C)(ix). Specified operational and financial information including:

001.04(C)(ix)(1). A certification that the applicant has provided a voice and/or broadband Internet service for at least two years or that it is affiliated with such an entity, and specifying the number of years the applicant or its affiliate has been operating, and submission of the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant's financial statements are not audited in the ordinary course of business, in lieu of submitting audited financial statements, the applicant must certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the review process.

001.04(C)(ix)(1)(a). If the applicant or an affiliate has provided a voice and/or broadband Internet service it must certify that it or its affiliate has filed FCC Form 477s as required during the relevant time period that such voice or broadband Internet service has been provided.

001.04(C)(ix)(1)(b). If the applicant has operated in other states, applicant is required to submit evidence that the applicant is in good standing in those states.

001.04(C)(x). If an applicant cannot meet the requirements in section 001.04(C)(ix)(1) above, in the alternative it must submit the audited financial statements from the three most recent fiscal years; and such additional information as the Commission may require.

001.04(D) APPLICATION PROCESSING.

001.04(D)(i). No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time will be accepted or considered.

001.04(D)(ii). Any application that, as of the submission deadline, either does not identify the applicant seeking Support as specified in the public notice announcing application procedures or does not include required certifications will be denied.

001.04(D)(iii). An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

001.04(D)(iv). Applications to which major modifications are made after the deadline for submitting applications will be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

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

001.04(D)(vi). Once all applications for a Reverse Auction have been accepted by the Commission as meeting the criteria established in this Chapter 16, the Commission will issue an order announcing the timing and conduct of the Reverse Auction.

001.04(E) FULL AND TIMELY PERFORMANCE. Authorization to receive auction Support is conditional upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the Support was granted.

001.04(E)(i). Failure by a recipient of Support from a Reverse Auction to meet its service milestones will trigger reporting obligations and the withholding of Support. Failure to come into full compliance within 12 months will trigger a recovery action. If the recipient does not repay the requisite amount of Support within six months thereafter, the Commission will be entitled to seek recovery through any means available and may disqualify the recipient from the receipt of any, all or additional Support.

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



## 001.05 WIRELESS REGISTRY

001.05(A). The Commission will maintain a wireless registry to be used for the purpose specified in Neb. Rev. Stat. § 75-160.

001.05(B). The Commission will make available on its website or through paper filing a repository for any person or company to file information indicating a lack of appropriate coverage as defined in Neb. Rev. Stat. § 75-160. The form will include the following information:

001.05(B)(i). The name of the person filing the informal complaint

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

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

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

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

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

001.05B(vii). The Commission may further investigate to determine the existence of or the lack of adequate coverage. In doing so, the Commission may utilize other publicly available data and crowd-sourced data to determine the reliability of the information provided for purposes of the registry.

## 001.06 RURAL BASED PLANS.

001.06(A). The Commission may redirect funding through a rural based plan pursuant to Neb. Rev. Stat. § 86-330.

001.06(B). A rural based plan may be presented to the Commission by application within ninety (90) days following the Commission's announcement of funding available for redirection. No application for a rural based plan may be accepted if a Reverse Auction program is in process.

001.06(C). An application for a rural based plan must be submitted as a partnership with an eligible telecommunications company.

001.06(C). An application for a rural based plan will be scored according to the following criteria:

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

001.06(C)(ii). The capability of the eligible telecommunications company to use the proposed technology to provide broadband services to every location in the exchange area on a reasonably comparable basis;

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

001.06(C)(iv). Other sources of funding;

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

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

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

001.06(D). If a rural based plan is approved, the Commission shall enter an order stating the amount of funding approved, the geographic area in which funding shall be used, and establishing a timeline for deployment that includes periodic milestones for ensuring timely deployment.

001.06(E). An eligible telecommunications company which is awarded funding through a rural based plan must file reports and documentation as required by the Commission in order to assess compliance with deployment milestones.