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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION **Received & Scanned**

In the Matter of the Nebraska)	Application No. NUSF-131
Public Service Commission, on its)	Progression Order No. 1
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 in this docket on April 14, 2023.

I. RIC’S PROPOSAL FOR REVERSE AUCTIONS SHOULD BE ADOPTED.

RIC respectfully requests that the Commission take action consistent with the positions stated herein and in the RIC Comments as a means of advancing the success of any anticipated future reverse auctions associated with the Nebraska Universal Service Fund (“NUSF”).² As demonstrated by the following, the adoption of the fine-tuning proposals suggested in the RIC Comments should not be delayed based on the contentions raised by other commenting parties.

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 References to all comments in response to *Progression Order No. 1*, including the comments of CTIA – The Wireless Association (“CTIA”); the Nebraska Rural Broadband Alliance (“NRBA”); the Nebraska Rural Independent Companies (“RIC”); and Windstream Nebraska, Inc. and its affiliates (“Windstream”) – will be referenced as follows: “[PARTY NAME] Comments.”

1. **Minimum Bidding Units and**
2. **MBU Reserve Pricing**³

As a general matter, RIC agrees with NRBA that the current process of defining “minimum bidding units” (“MBUs”) has not created an environment for “incentivizing broadband deployment” and that allocation of dollars to an MBU must be “carefully done” based on “serious examination.”⁴ RIC’s proposals address these assertions.

It is only logical that “incentivizing broadband deployment” will occur through the creation of an environment for qualified applicants to submit applications. RIC’s proposal achieves this result.⁵ RIC outlined the factual reasons why, in its members’ experience, participation in the August 2022 reverse auction was low.⁶ As outlined in the RIC Comments, RIC’s proposal is aimed at increasing qualified applications through a combination of: (1) limiting the geographic size of an MBU; (2) defining contiguous areas as MBUs (thus increasing the potential level of broadband investment within that newly defined MBU); and (3) using the time-honored, Commission-vetted State Broadband Cost Model (“SBCM”) as the

³ Consistent with the RIC Comments, RIC has organized these comments according to the subject areas used by the Commission in *Progression Order No. 1* with references to “NUSF” intended to refer to the NUSF High Cost Program unless stated otherwise.

⁴ NRBA Comments at 2.

⁵ The Commission should reject CTIA’s inference that the prior lack of participation in the reverse auction process was based on the Commission following the Nebraska statutory framework. *See* CTIA Comments at 2. While CTIA acknowledges that such statutory guidelines must be followed (*see id.*), the effect that CTIA’s suggested “streamlining” of the reverse auction regulations will have on these statutory guidelines is unclear. While CTIA claims that the Commission should not “unnecessarily exclude qualified providers from bidding in reverse auction[s] for NUSF funding” (*id.* at 3), that result can only be tested through the application of the existing Nebraska-specific statutory and decisional framework.

⁶ RIC Comments at 2-6.

starting point to address increased investment levels based upon inflation adjustments, rural area purchasing power and the need for middle mile facilities to serve the entirety of the MBU.⁷

Thus, the objectives stated in NRBA's Comments are met through the application of RIC's reverse auction fine-tuning proposal. Likewise, RIC respectfully submits that its reverse auction proposal adequately addresses Windstream's concerns regarding application engineering and financial returns through proper MBU sizing and increasing MBU investment levels.⁸

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

Windstream supports the ability of the incumbent local exchange carrier (the "ILEC") providing voice service within the MBU prior to the reverse auction to participate in a reverse auction.⁹ Subject to the caveats outlined in the RIC Comments,¹⁰ RIC generally agrees. However, Windstream's request that the ILEC within a given MBU area be provided a right of first refusal ("ROFR") once sizing and financial issues associated with the MBU are addressed may introduce delay into the reverse auction process.¹¹

In addition, RIC questions Windstream's contention that "complications" could arise

⁷ See *id.*

⁸ See Windstream Comments at 1-2.

⁹ See *id.* at 2-3.

¹⁰ See RIC Comments at 7.

¹¹ See Windstream Comments at 1-2.

with the transfers of COLR obligations.¹² Not only is the assertion untested, but the statutory process is sufficiently clear to avoid any such result.¹³ Moreover, should overbuilding by another provider create issues for the Commission as inferred by Windstream,¹⁴ RIC questions why those issues cannot be more rationally addressed based on the specific facts before the Commission at the time that any transfer of COLR obligations is sought.

4. Participation by Fixed Wireless Providers

There appears to be general agreement between RIC and Windstream that fixed wireless providers should be able to participate in the reverse auction process subject to speed testing requirements for such fixed wireless providers.¹⁵ Nonetheless, Windstream conditions that position by suggesting that “speed testing account for varying distances from the radio and other evidence that may enable the Commission to determine the success of widespread deployment in meeting symmetrical speed requirements”¹⁶ but fails to address how such conditions – distance effects on speed testing and “other” evidence – may impact the mandate for being capable of

¹² *Id.* at 3.

¹³ *See* RIC Comments at 12; *see also* *Neb. Rev. Stat.* §86-134 that requires: (1) a hearing if determined necessary by the Commission ; (2) a demonstration that at least one other provider provides “comparable wireline telecommunications service”; (3) is a designated Eligible Telecommunications Carrier within the area at issue; and (4) as applicable timely consumer notification of the withdrawal of service by the ILEC in this instance including refunding of any prepaid payment and carrier change charges).

¹⁴ *See* Windstream Comments at 3.

¹⁵ *Compare* Windstream Comments at 3 and RIC Comments at 8-10. Although not mentioned by Windstream, placing all reverse auction awardees on the same footing vis-à-vis the NUSF, logically supports RIC’s positions that such awardees should comply with the Commission’s Capital Projects Fund requirements, as well as ensuring that any application properly demonstrates the geographic area of coverage associated with the reverse auction application.

¹⁶ Windstream Comments at 3.

providing 100/100 Mbps speed.¹⁷ Thus, RIC respectfully submits that Windstream's speed testing conditions be rejected.

5. Ongoing Support

NRBA contends that ongoing support levels associated with reverse auction MBUs be revisited and examined.¹⁸ Windstream contends that ongoing support should be addressed within the overall NUSF program.¹⁹ As a general matter, RIC agrees with both the NRBA and Windstream regarding these points.

As RIC noted, the need for ongoing support in a reverse auction area is based on the fact that "no private business case exists to warrant such deployment absent NUSF support. Or, put another way, the area can only rationally sustain one network, and then only with state (and federal) funding."²⁰ Thus, it was within this context that RIC respectfully submitted that the

Commission should use the existing SBCM methodology to determine ongoing expense support amounts until the Commission approves an update to such methodology that reflects reduced broadband deployment needs (due to the increasing percentage of broadband build out in the State), and concomitantly reflects the increased need to allocate NUSF support to the operating expenses associated with the expanded broadband network.²¹

¹⁷ *Accord In the Matter of Nebraska Public Service, on its own Motion, to establish reverse auction procedures and requirements*, Application No. NUSF-131, Order Establishing Reverse Auction Procedures and Scheduling Workshop, p. 23 (Feb. 1, 2022); Reverse Auction and Wireless Registry Rules and Regulations, Title 291, Chap. 16, Sec. 001.04(C)(vii); RIC Comments at 8 and n.20; *Neb. Rev. Stat.* §86-324.01; RIC Comments at 8-9 and fns. 20 21, and 22.

¹⁸ NRBA Comments at 2.

¹⁹ Windstream Comments at 3.

²⁰ RIC Comments at 10.

²¹ *Id.* at 11.

RIC is confident that further Commission investigation can achieve the “earnest consideration” of ongoing support levels that the NRBA requests,²² and the use of the SBCM to make any such determination fits squarely within the overall NUSF program design suggested by Windstream. Consequently, by relying on the SBCM for some interim period of time, no basis exists for NRBA’s concerns that reevaluation of deployment/ongoing NUSF allocations will be based on some “superficial study” or the lack of “expert economic analysis.”²³

6. Carrier of Last Resort

In addition to the COLR comments provided above in Section I.3 above, RIC requests that the Commission reject Windstream’s concern that a Commission proceeding altering COLR obligations within a given area may be cumbersome and resource intensive.²⁴ Specifically, as experience is gained in the COLR transfer process, RIC anticipates that the Commission and all parties will be able to identify efficiencies in such transfer process. Consequently, that experience can be used to tailor the COLR transfer process moving forward, a result which should amply address Windstream’s overarching concerns.

II. CONCLUSION

In summary, RIC respectfully requests that the Commission take action consistent with the positions stated herein and in the RIC Comments as a means of advancing the success of any anticipated future reverse auctions associated with the NUSF.

²² NRBA Comments at 2.

²³ *See id.* at 3.

²⁴ Windstream Comments at 3.

Dated: May 5, 2023.

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 (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of May 2023, an electronic copy of the foregoing pleading was delivered to the Nebraska Public Service Commission at psc.nusf@nebraska.gov and to the parties of record in this proceeding.

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