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April 16, 2019

Mr. Mike Hybl
Executive Director
Nebraska Public Service Commission
300 The Atrium, 1200 N Street
Lincoln, Nebraska 68508

Subject: In the Matter of the Commission, on its own motion, seeking to establish Title 291, Chapter 16, to adopt Reverse Auction and Wireless Registry rules and regulations in accordance with Nebraska Legislative Bill 994 [2018].

Rule and Regulation No. 202
Order Opening Docket, Releasing Proposed Rules, Seeking Comment, and Setting Hearing.

Dear Mr. Hybl:

In response to the Commission's March 12, 2019 *Order Opening Docket, Releasing Proposed Rules, Seeking Comment, and Setting Hearing* in this docket, Citizens Telecommunications Company of Nebraska, d/b/a Frontier Communications of Nebraska is submitting the attached Comments.

If you have questions relating to this matter, I can be contacted at (952) 491-5534, or at scott.bohler@ftr.com.

Very truly yours,

A handwritten signature in cursive script that reads "Scott Bohler".

Scott Bohler

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Nebraska
Public Service Commission

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own)	Rule and Regulation No. 202
motion, seeking to establish Title 291, Chapter)	Order Opening Docket, Releasing
16, to adopt Reverse Auction and Wireless)	Proposed Rules, Seeking Comment,
Registry rules and regulations in accordance with)	and Setting Hearing.
Nebraska Legislative Bill 994 [2018].)	

COMMENTS OF CITIZENS TELECOMMUNICATIONS COMPANY OF NEBRASKA D/B/A FRONTIER COMMUNICATIONS OF NEBRASKA

On March 12, 2019, the Nebraska Public Service Commission (the "Commission") issued its *Order Opening Docket, Releasing Proposed Rules, Seeking Comment, and Setting Hearing* ("March 12 Order"), opening the above-captioned proceeding to adopt Reverse Auction and Wireless Registry rules and regulations in accordance with Legislative Bill 994 [2018]. In the March 12 Order, the Commission invited parties to comment on this proposal. Citizens Telecommunications Company of Nebraska, Inc. d/b/a Frontier Communications of Nebraska ("Frontier") files the following Comments in response to the March 12 Order.

Statutory basis

The substance of Legislative Bill 994 addressed a number of topics, but the specific matters related to March 12 Order upon which these Comments will touch are provisions that:

- Authorized the Commission to consider a reverse auction program,
- Authorized the Commission to withhold funding from the Nebraska Telecommunications Universal Service Fund (the "NUSF") in certain instances,
- Required the Commission to adopt rules and regulations to establish standards governing any withholding of NUSF funding.

These specific provisions are incorporated in §86-330 of the statute. Frontier's Comments will address these matters in the order they are reflected in the Commission's proposed rules.

001.02 Definitions

This section of the proposed rules does not supply any definitions of terms, but rather points to §86-330 as the source for definitions. However, §86-330 and the proposed rules use an important and specific term that is not defined in §86-330: “successful investment of funding”. This term is fundamental in the consideration of any possible withholding of NUSF support, and it is imperative that the Commission define the term in these rules.

The statute allows the Commission to withhold NUSF support to a carrier that has not “served, to the commission’s satisfaction, those areas with service that meets the criteria for successful investment of funding from the Nebraska Telecommunications Universal Service Fund.” However, the statute provides no guidance regarding what “successful investment of funding” means. A clear understanding of the definition of that phrase is vital because that test is the sole basis upon which the Commission may base a decision to withhold NUSF support.

Frontier suggests that the most appropriate definition of “successful investment of funding” would be similar to the language used in §86-324 (1) where recipients of NUSF support are required to use that support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Therefore, Frontier suggests that the Commission should include the following language in the 001.02 Definitions section:

Successful investment of funding means “Support from the Nebraska Telecommunications Universal Service Fund has been used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”

001.03 Withholding of Nebraska Universal Service Fund Support

This section identifies four cases in 001.03(A) which would be a basis for withholding NUSF support. Frontier believes that the first two listed cases do not comport with the statute, and should be deleted from the proposed rule.

Proposed Rule 001.03(A)(i) would allow the Commission to withhold NUSF support in situations where the Commission finds that “the availability, quality, or affordability of broadband telecommunications service is lacking”. This requirement regarding broadband service availability, quality, or price is not found in §86-330. As mentioned above, the only basis identified in §86-330 upon which the Commission can withhold NUSF support is a finding

that “successful investment of funding” has not occurred. The availability of a specific service at a specific location is not evidence of a lack of “successful investment of funding”. As the Commission is aware, the cost to deploy broadband ubiquitously in Nebraska will be extraordinarily high and current NUSF funding comes nowhere near the amounts that would be required for widespread deployment. Simply because broadband service is not available at a specific location does not mean that a carrier has improperly or “unsuccessfully” used the limited amount of NUSF support that it may have received.

Proposed Rule 001.03(A)(ii) would allow the Commission to withhold NUSF support in situations where the Commission finds that a carrier has not “provided broadband in a manner consistent with Neb. Rev. Stat. §86-1101”. Again, this requirement involving broadband deployment is not included in §86-330; rather, the single basis for withholding support is a finding that a carrier has failed to produce a “successful investment of funding”. §86-1101 does not lay any specific requirement upon carriers to deploy broadband. Rather, it sets out a state goal for broadband deployment “where possible”, and lays out an intention that state funds be used to further that goal. The provision of sufficient state resources to accomplish this goal is not within the control of the carriers, but will depend upon the actions of the Legislature and other state agencies. Carriers themselves, without sufficient state support, will be unable to economically deploy broadband to all areas in the state. For example, if a carrier is using the support available to it to deploy broadband in certain area, it would be unreasonable and counterproductive to withhold support because the carrier is not simultaneously deploying broadband in other areas.

The third case listed, in 001.03(A)(iii), correctly addresses the single basis for withholding support, but Frontier would suggest a change to the language to more closely tie to the “successful investment of funding” standard, and to allow for the possibility of situations where an entity receiving NUSF support may not be an eligible telecommunications carrier. Frontier suggests that the wording be revised to say:

001.03(1)(iii) Based on a finding that a recipient of Nebraska Universal Service Fund support has not used that support to achieve a successful investment of funding because that support has not been used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Frontier believes that the fourth case listed, in 001.03(A)(iv), is redundant. That case would allow the Commission to withhold NUSF support based upon a finding made pursuant to §86-324. However, §86-324 already provides the Commission the ability to withhold funding if it finds a carrier is not complying with the requirements of §86-324. Therefore, there is no need to include that in this section of proposed rules.

In rule 001.03(B), the Commission proposes that prior to withholding support, the Commission will notify the affected carrier. This arrangement appears to anticipate a process under which the Commission would begin an investigation of a particular carrier's operation in a particular area, gather information regarding the carrier's operations in that area, determine whether that carrier's operations warranted withholding of NUSF support, and determine the amount of support to be withheld all before soliciting input from the carrier, or perhaps even notifying the carrier that the investigation was underway. At that point, the carrier would essentially be presented with a belated opportunity to respond to a decision that the Commission has already made. This approach is inappropriate.

If the Commission has concerns about a carrier's service provision in specific area, the most efficient process would be for the Commission make those concerns known to the carrier. The Commission should notify the carrier, in detail, what the specific concerns are and why the Commission believes that the concerns have merit. The carrier should then have an opportunity, either formally or informally, to respond to the Commission's stated concerns directly. Frontier anticipates that in many, maybe most, cases this additional input and explanation from the carrier will address and alleviate the Commission's concerns. This type of approach will head off unwarranted investigations before the Commission expends too much time and resources unnecessarily.

To that end, the language of 001.03(B) should be modified to make clear that the impacted carrier will be part of any withholding investigation from the outset, and will have the opportunity to explain its operations and position to the Commission before any decisions are made. Frontier suggests that this rule be revised as follows:

001.03(B) Prior to initiating an investigation considering the withholding of support, the Commission will cause written notice to be sent to the carrier explaining in detail the subject and scope of the investigation. As part of the investigation, the carrier will have the opportunity to respond and participate in the investigation.

There are a number of other aspects of this topic of withholding NUSF support that the Commission should explicitly and fully address in these proposed rules to adequately establish the standards and procedures that would apply.

First, the proposed rules should describe how the Commission will identify a specific area where it feels a NUSF support recipient has not accomplished a “successful investment of funding”. Will this be on based on a census block, a telephone exchange, county, or some other basis?

Second, what information and standards will the Commission use to determine whether the NUSF recipient has achieved a “successful investment of funding” using the NUSF support it has received?

Third, how will the Commission correlate NUSF support amounts to specific areas it may identify as problematic?

Fourth, assuming the Commission does determine that the NUSF recipient has not achieved a “successful investment of funding” in a specific area, what parameters or criteria will the Commission use to determine how much NUSF support will be withheld? Relatedly, current NUSF support is bifurcated into a portion to support ongoing operations and a portion set aside to support the new deployment of broadband. How will the withheld amount impact those two segments of NUSF support? Will the withheld support impact only the portion for ongoing operations, only the portion for new broadband deployment, or both?

Fifth, what will be the procedural steps and timeline for an investigation? How will the NUSF recipient be enabled to provide relevant information to the Commission and demonstrate that it has achieved a “successful investment of funding”.

All of these issues need to be made clear in the proposed rules so that recipients of NUSF support will know what is expected of them, and what the Commission’s requirements are for NUSF support. The possible withholding of anticipated NUSF support is a weighty

matter for providers, and there must be a clear and complete description of the withholding process in the proposed rules to avoid any uncertainty and misunderstanding.

001.04 Reverse Auctions

While the proposed rules do address certain filing expectations and requirements related to reverse auctions, they are silent about many basic and fundamental aspects of reverse auctions that should be clearly identified and explained in the rules. A fundamental matter is how much funding the Commission will set aside to fund the auction winners. Additional important topics include: what services would be the focus of the auctions, what geographical areas may be offered in the auctions, how the auction will be run and the procedures for implementing the auction, and similar matters.

Apparently, the proposed rules anticipate that these basic matters would be addressed on an ad hoc basis through a Commission order. However, the proposed rules offer no direction or standards regarding what any such future orders would contain or how they might address these matters. Allowing such significant matters to be handled on an ad hoc basis runs the risk that they will have to be re-argued each time the Commission initiates a reverse auction process in the future. Laying these basic matters out permanently in rule would clarify the process for all and minimize future confusion or argument about these basic aspects.

As a preliminary matter, the rules should identify in some way how much funding will be available to fund the auctions. While this amount may vary from instance to instance or year to year, the rules should provide some guidance regarding when and how much funding the Commission will create and set aside to fund the auctions. Will the Commission create this “reverse auction fund” amount on an annual basis in connection to its annual budgeting for the NUSF in general, to support auctions to be conducted during the year? Identifying in advance how much money will be available for funding reverse auctions will drive decisions regarding the expanse of areas to be auctioned as well as the services that will be required of auction winners.

The rules should state what services the winner of an auction would be required to provide and for how long the winner would have to provide those services. Presumably, the

Commission's focus would be on the provision of broadband services in the foreseeable future. In that regard, the rules should state the specifications of the service that is expected: i.e., download/upload speeds, pricing, and other technical specifications. If it is anticipated that voice services will be provided in conjunction, then specifications regarding the voice service should also be identified.

The rules should also identify how the geographic areas or blocks that will be subject to the auction will be created or specified. How will the Commission determine that the desired services are not currently available within those areas or blocks? What opportunity will there be for parties to comment upon or dispute the Commission's findings for these areas or blocks?

The rules should also address what would happen in the event that there is no "winner" in an auction; that is, when all bids exceed the amount of funding available. Would revised auction opportunities be created, with smaller geographic areas or more limited service provision requirements?

It appears that much of the substance of the proposed rules in this section are drawn from the Federal Communications Commission's rules regarding reverse auctions. Perhaps as a result, there are certain terms or concepts that are mentioned in the proposed rules that do not have a clear definition. For example, rules 001.04(C)(iv), 001.04(D)(ii)(2), and 001.04(D)(ii)(3) speak of "tiers of bids" or "for each tier" or "relevant tier" but the proposed rules do not offer any explanation or definition of what is meant by the term "tier". In addition, rule 001.04(D)(ii)(3) references "the Commission's reasonable comparability benchmarks", but there is no explanation or definition of that term. Definitions for these terms should be included in the rules in some fashion.

Conclusion

The proposed rules provide a good initial framework for putting the substance of Legislative Bill 994 into formal rules. But, as discussed above, the Commission should modify and expand the proposed rules to more fully accomplish that goal.

Given the importance of the matters addressed in this rulemaking, Frontier suggests that the Commission's review might be enhanced by allowing for a round of reply comments. This

would give the interested parties a chance to deliberatively consider and respond to the initial comments of other parties, and would provide the Commission with a fuller and more complete record of the parties' comments, concerns, and recommendations to its initial proposed rules.

April 16, 2019

Respectfully submitted,

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d/b/a Frontier Communications of Nebraska

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