



April 18, 2019

Executive Director Mike Hybl
Nebraska Public Service Commission
1200 N St., #300
Lincoln, Nebraska 68508

Re: Initial Comments of Windstream Nebraska, Inc.

Director Hybl and other personnel,

I have enclosed the original along with five (5) copies of the Comments of Windstream to be filed in the docket for Rule and Regulation No. 202, Order Opening Docket, Releasing Proposed Rules, Seeking Comment, and Setting Hearing.

Please do not hesitate to contact me if you have any questions or concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read "B. E. Johnson", is written over a horizontal line.

Blake E. Johnson

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 16,) Order Opening Docket, Releasing
to adopt Reverse Auction and Wireless Registry) Proposed Rules, Seeking Comment,
rules and regulations in accordance with Nebraska) and Setting Hearing.
Legislative Bill 994 [2018].)

**COMMENTS OF
WINDSTREAM NEBRASKA, INC.**

COMES NOW, Windstream Nebraska, Inc., (“Windstream”) and submits its initial comments in response to the Nebraska Public Service Commission’s (“Commission”) March 12, 2019 *Order Opening Docket, Releasing Proposed Rules, Seeking Comment, and Setting Hearing* (“March 12 Order”) implementing Nebraska Legislative Bill 994 (“LB994”). Specifically, the March 12 Order opened this Rulemaking, invited comments, and set a hearing to consider the rules providing for use of a Reverse Auction and establishing a Wireless Registry consistent with LB994 (“Proposed Rules”). Windstream’s comments are confined to the Proposed Rules definitions and sections relating to the Reverse Auction.

The statutory provisions associated with the Reverse Auction are Neb. Rev. Stat. §§ 86-1101 and 86-330. Section 86-1101 provides over-arching findings and a declaration regarding the importance of broadband service, particularly in rural areas of the State:

The Legislature finds and declares that:

(1) The availability, quality, and affordability of broadband telecommunications service is important to the residents of Nebraska; and

(2) Because availability, quality, and affordability of broadband telecommunications service is lacking in certain rural areas in Nebraska, combined with greater investment in urban areas, the state may be facing a digital divide.

It is the intent of the Legislature that broadband telecommunications service in rural areas of the state should be comparable in download and upload speed and price to urban areas in the state where possible and that state resources should be utilized to ensure that the rural residents of the state should not be penalized simply because of their rural residence. It is further the intent of the Legislature that the residents of this state should have access to broadband telecommunications

service at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second.

More pertinent for this Rulemaking is § 86-330, which provides:

Based on consumer complaints or upon its own motion, the Public Service Commission may open a docket to consider the implementation and operation of a reverse auction program that awards funding to broadband Internet service providers to support high-speed Internet infrastructure deployment projects in unserved or underserved exchanges within the State of Nebraska. The commission may, in its discretion, withhold funding from the Nebraska Telecommunications Universal Service Fund to any telecommunications company 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.

The commission shall adopt and promulgate rules and regulations that establish standards governing the withholding of funding from the Nebraska Telecommunications Universal Service Fund from any recipient, including the provision of notice and the right to a hearing prior to the issuance of an order withdrawing such funding. If the commission withdraws funding from the Nebraska Telecommunications Universal Service Fund from any telecommunications company, the commission may use the funding that is withdrawn to implement and operate a reverse auction program, except that any funding that is withdrawn shall be utilized in the exchange area for which the funding was originally granted. The commission shall have wide discretion in the design, implementation, and operation of a reverse auction program but may use as a guide the program designed by the Federal Communications Commission in its Connect America Fund Phase II Auction process.

Windstream's Introductory Comments

Windstream recognizes the strong public interest consideration of ensuring appropriate use of USF funding. As the Commission is aware, the economics of expanding broadband service to these sparsely populated locations is very difficult, thus the necessity of combining private and public funding. Also, the complexities of deploying broadband networks in rural areas makes for sometimes difficult planning and deployment estimates, and carrier good faith efforts should not be punished. This is part of the other side of the equation: Carriers like Windstream are investing

significant sums of their own funds, paired with federal CAF II and State USF funds, to extend their reach to unserved and underserved locations in rural areas. If USF funds are withheld, that action could mean a significant impediment to the carrier's ability to improve broadband deployment in areas of the state that are uneconomic to serve without support. The Commission should only consider withholding support only in the situation where they find compelling evidence that the carrier is not making good faith efforts to achieve the legislative goals of expanded broadband. Without a strict guideline for withholding support even the best performing carriers could be penalized. If the rules are structured such that withholding may occur without reference to a clear standard, the lack of such clarity could result in an unintended chilling effect on future participation by carriers – certainly the risk assessment of participation would necessarily increase.

Windstream's Proposed Changes to the Commission's Proposed Rules

With that background, Windstream proposes the following changes to the Commission's Proposed Rules:

001.01 WITHHOLDING OF NEBRASKA UNIVERSAL SERVICE FUND SUPPORT.

001.01(A) Consistent with Neb. Rev. Stat. § 86-330, the Commission may decide to withhold Nebraska Universal Service Fund Support from an eligible telecommunications carrier on a census block or telephone exchange basis which may have been otherwise deemed eligible in the following cases:

001.01(A)(i) Upon receipt of a consumer complaints consistent with § 86-330 where after notice and hearing the Commission finds the availability, quality, or affordability of broadband telecommunications service is lacking; telecommunications company 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. For purposes of these rules, "the criteria for successful investment of funding from the Nebraska Universal Service Fund" shall mean such funds are used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended;"; or

001.01(A)(ii) Based on a finding that an eligible telecommunications carrier has not provided broadband in a manner consistent with Section 001.01(A)(i) of these rules; Neb. Rev. Stat. § 86-1101; or

001.01(A)(iii) ~~Based on a finding that an eligible telecommunications carrier has not used Nebraska Universal Service Fund support for its intended purpose; or~~

001.01(A)(iv)001.01(A)(iii) Based on a finding made pursuant to Neb. Rev. Stat. § 86-324.

001.01(B) Prior to withholding support, the Commission will cause written notice to be sent to the carrier of the opening of an investigation, with such notice providing specific information regarding alleged deficiencies relative to the standard identified in 001.01(A)(i), and provide the carrier with an opportunity for a hearing no sooner than sixty (60)-days thereafter. After hearing but prior to withholding any Nebraska USF funds, the telecommunications company shall be given a reasonable opportunity to cure the deficiencies found by the Commission. Withholding shall only occur where the Commission finds compelling evidence that the telecommunications company has failed to employ good faith efforts to deploy broadband funded by the Nebraska Telecommunications Fund in a manner consistent with the legislative goal of § 86-324, or has failed to cure any such deficiency within a time which is reasonable under the circumstances.

Windstream offers the following additional comments regarding its proposed changes to the Commission's Proposed Rules:

- 001.01(A)(i)
 - The reference to consumer complaint has been made plural, to conform to the statutory requirement.
 - The standard for withholding of USF funds has been adjusted to reflect the statutory standard, and has been interpreted consistent with §86-324 to provide a clear standard (consistent with Windstream's introductory comments, above) that gives meaningful notice to a carrier as to the circumstances under which Nebraska USF funding can be withheld.
- 001.01(A)(ii)
 - As modified, Section 001.01(A)(i) is the needed reference. §86-1101 provides the general purpose of the legislature, but an independent finding of the Commission should logically be tied to the same, more concrete standard as with investigations initiated due to consumer complaints.
- 001.01(A)(iii)
 - Given that subsections (i) and (ii) cover the universe of investigations (those initiated due to consumer complaints and those initiated on the Commission's own motion) and would be subject to the more concrete standard spelled-out in the former provision, this subsection (iii) becomes redundant.

- 001.01(B)
 - Makes the notice of investigation more informative and, thus, more useful by requiring specific information regarding the nature of the alleged deficiencies; requires a minimum amount of time between notice of opening of an investigation and the hearing; provides for an opportunity to cure the alleged deficiencies prior to the withholding of USF funds; and limits withholding to situations where there is compelling evidence of a carrier's failure to adhere to the §86-324 standard or to cure a deficiency within a reasonable period of time.

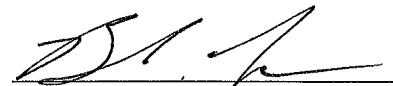
CONCLUSION

Windstream appreciates the opportunity to comment on the Proposed Rules. Given the importance of these issues, Windstream recommends a reply round of comments be allowed prior to the hearing in order to better ensure a full record. It is our firm belief that both carriers and the public will benefit from a clearer standard for the withholding of USF funding and the additional specification of procedures offered herein.

Respectfully submitted,

WINDSTREAM NEBRASKA, INC.

By:



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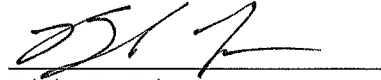
Attorneys for Windstream Nebraska, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 18, 2019, the original and five (5) paper copies of the foregoing Comments of Windstream Nebraska, Inc. were hand-delivered to the Nebraska Public Service Commission at 1200 N St. #300, Lincoln, NE 68508 and an electronic copy was emailed to the following:

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Blake E. Johnson