

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

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

On October 8, 2019, the Nebraska Public Service Commission (the "Commission") issued its *Order Releasing Proposed Rules and Seeking Comment* ("October 8 Order"), in the above-captioned proceeding to adopt Reverse Auction and Wireless Registry rules and regulations in accordance with Legislative Bill 994 [2018]. In the October 8 Order, the Commission discussed its efforts to propose rules in accordance with Legislative Bill 944 and released a revised version of its proposed rules. In the October 8 Order, the Commission invited parties to comment on this revised version of its proposed rules. Citizens Telecommunications Company of Nebraska, Inc. d/b/a Frontier Communications of Nebraska ("Frontier") files the following Comments in response to the October 8 Order.

Commission explanation of its reasoning and findings

As the Commission described in the October 8 Order, this docket has provided parties opportunities to comment and participate, both with written comment and through a workshop event. Frontier was able to participate in both those avenues, and appreciates the Commission considering the input provided.

As the Commission noted, parties recommended that the Commission provide more definition and direction in the rules regarding the processes that would be undertaken in

considerations of withholding NUSF support. The Commission declined to include those specifics in the revised version of the proposed rules. Frontier understands the Commission's desire to limit the expanse of the proposed rules, but is concerned that if or when the Commission undertakes a docket to evaluate a decision to withhold Support there will be confusion or misunderstanding regarding the basic framework of the process.

Without some generic direction in rules, in each instance of a Commission investigation regarding a withholding of Support there will be several topics that will need to be individually decided by the Commission, and which could be subject to dispute by parties. These include:

- How will the Commission identify a specific area where it feels a Support recipient has failed in its obligations?
- What information and standards will the Commission use to determine whether the Support recipient has followed "the criteria for successful investment of Support", failed to comply with Rev. Stat. §86-324(2), or failed to complete Commission-approved projects according to Commission requirements?
- How will the Commission correlate Support amounts to specific areas?
- What will be the procedural steps and timeline for an investigation?

001.02 Definitions

The revised rules include several new definitions. One of the newly defined terms is "Support", which is defined as support associated with new broadband deployment in Unserved or Underserved Areas. The Commission's past actions have essentially bifurcated the total amount of a carrier's NUSF support into two buckets. One bucket is intended to support the ongoing expenses related to existing network and services of the carrier. The second bucket has been designated to reimburse the carrier for the costs of deployment of new facilities to provide broadband service. In Frontier's understanding of the proposed rules, it is only this second bucket of funding that equates to the "Support" described in the proposed rules, and which would be at risk for withholding subject to some Commission finding. If that reading of the proposed rules is mistaken, Frontier would urge revision to the definition to more clearly identify the Commission's intent.

001.03 Withholding of Nebraska Universal Service Fund Support

This section of the proposed rules identifies four cases in 001.03(A) which would be a basis for withholding Support. Frontier believes that the first two listed cases are problematic, and should be either revised or deleted from the final rule.

Proposed Rule 001.03(A)(i)(a) would allow the Commission to withhold Support in situations where the Commission finds that “the availability, quality, or affordability of broadband telecommunications service is lacking”. It is Frontier’s understanding that the express purpose of the Support funding is to support the deployment of new broadband service to Unserved and Underserved Areas; i.e., areas where the availability, quality, or affordability of broadband telecommunications service is lacking. It is the Commission’s recognition that there are still areas within Nebraska where “broadband telecommunications service is lacking” that is the predicate for the creation of the Support funding. It seems incongruous then to withhold Support from a carrier on the basis that a need for the Support exists within that carrier’s service territory. In effect, the Commission would be creating funding for Support because it recognizes that there are Unserved and Underserved Areas in the state. But then, in a sort of self-defeating circular logic, when Unserved or Underserved Areas are identified within a carrier’s service territory, the Commission could decide to withhold the remedy it has created for the lack of broadband service (the Support funding) because of the lack of broadband service.

Proposed Rule 001.03(A)(i)(b) would allow the Commission to withhold Support in situations where the Commission finds that a carrier has “failed to follow the criteria for successful investment of Support from the Fund”. As Frontier mentioned in its earlier comments, the language in Rev. Stat. §86-330 states the single basis for withholding support as a finding that a carrier has failed to produce a “successful investment of funding”. The statute does not define what “successful investment of funding” means. Previously, Frontier suggested 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.”

The proposed rules do not contain any definition of “successful investment of funding”, but rather introduce this new, but still undefined, term in Rule 001.03(A)(i)(b): “criteria for successful investment of Support from the Fund”. What, specifically, those “criteria” are is unclear. There is no discussion or explanation of what the term means, either in the proposed rules themselves or in the October 8 Order. It is important that the Commission make clear what it means by these terms so that recipients of Support will know what is expected of them, and what the Commission’s requirements are for that Support. The possible withholding of anticipated Support is a weighty matter for providers, and there must be a clear and complete description in the proposed rules to avoid any uncertainty and misunderstanding.

Conclusion

Frontier appreciates the Commission’s attention and consideration of the input of the parties. But, as discussed above, Frontier believes the October 8 version of the proposed rules warrants further modification and expansion. Specifically, the rules should include some clear definition of the terms “successful investment of funding” and “criteria for successful investment of Support from the Fund”. Further, Frontier continues to believe that the Commission and parties would be well served by including in these rules all the general parameters and procedures related to any Commission evaluation of withholding Support.

December 3, 2019

Respectfully submitted,

Citizens Telecommunications Company of Nebraska, Inc.
d/b/a Frontier Communications of Nebraska

By: \s\ *Scott Bohler*

Scott Bohler
Manager, Government and External Affairs
Frontier Communications
2378 Wilshire Boulevard
Mound, Minnesota 55364
(952) 491-5534