

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its) Rule and Regulation No. 202
own motion, seeking to establish Title 291,)
Chapter 16, to adopt Reverse Auction and)
Wireless Registry rules and regulations in) **COMMENTS**
accordance with Nebraska Legislative Bill)
994 [2018].)
)

Introduction

The Rural Telecommunications Coalition of Nebraska (“RTCN”)¹, by and through its attorneys of record, submits these comments (“Comments”) in response to the Order Releasing Proposed Rules and Seeking Comment (“Order”), entered by the Public Service Commission (“Commission”) in the proceeding docketed Rule and Regulation No. 202 on October 8, 2019.

The RTCN appreciates the work the Commission has put into this proceeding and commends the progress made, particularly the Commission proposals that would allow for community-based collaboration as an alternative to a reverse auction. The RTCN has only a few specific recommendations.

Withholding Support

Under Section 001.03(A) of the proposed rules and regulations, the Commission enumerates the bases upon which it may withhold support from an eligible telecommunications carrier (“ETC”) on a census block or telephone exchange basis. While the

¹ For purposes of this proceeding, the RTCN is made up of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cambridge Telephone Company, Cozad Telephone Company, Diller Telephone Company, Glenwood Network Services, Inc., The Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Mainstay Communications, Pierce Telephone Company, Plainview Telephone Company, Southeast Nebraska Communications, Inc., Stanton Telecom, Inc., Wauneta Telephone Company and WesTel Systems f/k/a Hooper Telephone Company.

version of rules released October 8 with regard to withholding criteria is clearer than the original version, it still lacks sufficient specificity. As the RTCN said in comments filed April 18, 2019, in this proceeding, the rules should be sufficiently detailed to ensure a transparent and judicious process for making decisions as important as withholding support. Criteria should ensure that withholding decisions are not arbitrary or capricious.

The RTCN recommends the following language to replace the proposed rules under section 001.03(A):

(A) Consistent with NEB. REV. STAT. § 86-330 and NEB. ADMIN. CODE tit. 291, ch. 1, the Commission may withhold Nebraska Universal Service Fund support from an incumbent local exchange carrier on a census block or telephone exchange basis. Support may be withheld on the basis of consumer complaints or on the Commission's own motion after public hearing upon a Commission finding that clear and convincing evidence demonstrates:

(A)(i) Quality or affordable services are lacking; or

(A)(ii) Based on a finding that the incumbent local exchange carrier has not used Nebraska Universal Service Fund support for its intended purpose as set forth in Nebraska statute, or rules, regulations, or orders of the Commission; or

(A)(iii) Based on a finding made pursuant to NEB. REV. STAT. § 86-324.

(B) Prior to withholding support, the Commission will:

(B)(i) Comply with the requirements of NEB. ADMIN. CODE tit. 291, ch. 1, including those rules of practice and procedure for hearings in contested cases;

(B)(ii) Determine the amount of support allocated for the area at issue;

(B)(iii) Review records and reports of the incumbent local exchange carrier that the Commission considered in certifying the carrier as a Federal eligible telecommunications carrier and Nebraska eligible telecommunications carrier for at least the past five years;

(B)(iv) Consider mitigating factors such as the extent of existing broadband-capable facilities in the area; support commitments made by the Commission; Federal Universal Service support commitments; the incumbent local exchange carrier's obligations to lenders; the extent of plant depreciation.

(B)(v) Conduct a hearing in the area at issue.

Several terms used in the rules the RTCN proposes above warrant definition to ensure consistent application. The RTCN recommends defining terms as follows:

- *Affordable services* mean services at rates that are reasonably comparable to rates charged for similar services in urban areas.
- *Incumbent local exchange carrier* means the carrier responsible for serving an area before support is withheld.

- *Quality services* mean broadband and telecommunications services provided without unreasonable interruptions, outages, or speed losses caused by the providing carrier's own plant failure.

Community-Based Redirection of Support

The Commission proposed rules for community-based redirection of support, a concept the RTCN has advocated. The RTCN strongly supports the Commission's proposed rules for such redirection of support.

As mentioned above, a reverse auction should be the last resort, and used only when there is no other feasible plan for redirection of support. A reverse auction is, in essence, a race to the bottom. Reverse auctions at the federal level have resulted in winning bidders that are providing Internet services using technologies that offer less reliable and robust services than fiber.

The Commission, on the other hand, has declared its preference for fiber as a long-term and economical means of providing Broadband service across Nebraska:

The Commission also sought comments on its desire to support fiber-based networks everywhere in high cost rural areas. We sought comment on this goal as we believed fiber may be the better long term investment. Again, we recognize the need to balance this goal with other objectives, making sure that communications services are affordable and reasonably comparable throughout the state. To the extent that other long term wireline broadband solutions are scalable for the future and meet the Commission's objectives that broadband be developed based upon a comprehensive deployment plan that will coalesce with the needs of consumers, including but not limited to those imposed in a Next Generation 911 environment, the Commission will consider those alternatives.²

² In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology, App. No. NUSF-100/PI-93, Order and Order *Seeking Further Comments and Setting Hearing* (February 22, 2017), p. 19.

The Commission recently reiterated its position that fiber deployment should be prioritized:

Moreover, the Commission has expressed a preference for scalable long-term deployment with NUSF support. To that end, the Commission's strategic plan for NUSF support includes a goal where fiber deployment is extended as far as possible with NUSF support. That goal was intended to encourage all carriers to seek support for extending fiber further into their networks, replacing aging copper lines with fiber technology.³

The RTCN believes community-based plans for redirecting NUSF support are superior to reverse auctions. Once a determination by the Commission has been made to withhold support from the ILEC for an exchange, the Commission should accept applications for community-based support redirection plans.

The Commission's rules, as proposed, do not require consideration of community-based plans. The rules would permit the Commission to move directly into a reverse auction after withholding support. While the RTCN understands the Commission's desire to maintain flexibility, requiring consideration of community-based plans would not unduly tie the Commission's hands and will not delay the redirection process. To ensure the process moves along, the Commission should adopt rules such as the following:

- Upon entry of an order withholding support in accordance to section 001.03 of these rules, the Commission will publish notice of its intent to redirect support to an eligible telecommunications carrier and accept community-based plans for redirection of support in the area.

³ In the matter of the Nebraska Public Service Commission, on its own Motion to Administer the Universal Service Fund High-Cost Program; Windstream Nebraska Inc. Broadband Grant Requests, App. No. NUSF-99.48 (November 13, 2019), p. 9.

- Proposals for community-based plans shall include all information required by the Commission.
- If the Commission does not receive any proposal for a community-based plan containing all information required by the Commission within 30 days after published notice, then the Commission may determine the area eligible to receive Nebraska Universal Service Fund support through a reverse auction process.

Reverse Auctions

The only change the RTCN would recommend in the rules relating directly to reverse auctions would be the following modification to the financial information that must be submitted by an applicant for support redirected through a reverse auction process.

001.05(C)(ix) Specified operational and financial information including:

001.05(C)(ix)(l) 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. If the applicant or its immediate parent company has not provided voice and broadband services in the State of Nebraska to subscribers within the state of Nebraska for two or more years, then the financial statements must be

~~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.

The proposed changes would be consistent with the Federal Communications Commission's process and requirements.⁴

Conclusion

The RTCN appreciates the forum the Commission has provided for public comment in this important rule-making and looks forward to working with the Commission and other carriers as the proceeding continues.


⁴ Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903, Public Notice, FCC 18-6, pp. 17-18.

DATED: December 6, 2019

RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA

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Telephone Company, Inc., Cambridge
Telephone Company, Cozad
Telephone Company, Diller
Telephone Company, Glenwood
Network Services, Inc., The
Glenwood Telephone Membership
Corporation, Hartman Telephone
Exchanges, Inc., Hemingford
Cooperative Telephone Co., Mainstay
Communications, Pierce Telephone
Company Plainview Telephone
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Telecom Inc., Wauneta Telephone
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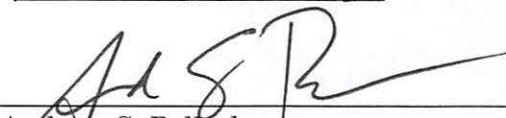
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and five copies of the above *Comments* of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on December 6, 2019, and a copy was served via electronic mail, to the following:

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