

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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
the Nebraska Legislative Bill 994
[2018].

) Rule and Regulation No. 202
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Nebraska
Public Service Commission

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

I. INTRODUCTION.

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Order Releasing Proposed Rules and Seeking Comment entered in the above captioned matter on October 8, 2019 (the “*October 8th Order*”). RIC appreciates the opportunity to provide these Comments and looks forward to continuing participation in this docket.

In 2018, the Nebraska Legislature passed LB 994 which included Section 4 that, among other things, authorized the Nebraska Public Service Commission (the “Commission”) to open a docket to consider the implementation and operation of a reverse auction program”.² The Commission has proposed to amend Title 291 of its Rules “by adding Reverse Auction and Wireless Registry Rules and Regulations as seen in the attached Appendix A . . .”³ To this end,

¹ Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco.

² See generally LB 994, § 4 (2018) codified as *Neb. Rev. Stat.* § 86-330.

³ See Order Opening Docket, Releasing Proposed Rules and Seeking Comment at 1 (Mar. 12, 2019).

the *October 8th Order* was accompanied by an attached revised second version of the Proposed Rules (the “Proposed Rules”) on which the Commission seeks comments.

II. DISCUSSION

A. Comments on Proposed Definitions in Section 001.02 of the Proposed Rules

RIC has previously advocated for inclusion of a definition of “consumer complaints” in the Proposed Rules as such terms are used in *Neb. Rev. Stat. § 86-330*. RIC reiterates its recommendation that the following definition be added to the Proposed Rules as a new Section 001.02(B):

001.02(B) The phrase “consumer complaints” as used in § 86-330 means formal complaints filed with the Commission pursuant to section 004.03 of the Rules of Commission Procedure, to be processed in accordance with the procedures set forth in such Rule as currently in effect or as may be amended or superseded in the future. To be considered as “consumer complaints” pursuant to this section, the complaint must be filed by one or more consumers together with a verified statement that the areas subject to the complaints: (i) have received Support from the Fund and (ii) do not have access to broadband Internet service at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second.

RIC believes that this definition is important in order to (a) establish the nature of a complaint that the Commission will accept; (b) establish that pursuant to the Rules of Commission Procedure the due process procedures applicable to processing of a consumer complaint; and (c) establish minimum requirements regarding the contents of a consumer complaint.

Similarly, RIC has previously advocated for inclusion of a definition of “docket” in the Proposed Rules as such term is used in Section 86-330. RIC reiterates its recommendation that the following definition be added to the Proposed Rules as a new Section 001.02(C):

001.02(C) “Docket” as used in § 86-330 or with regard to any proceeding opened by the Commission pursuant to § 86-330 is a “contested case” and is subject (a) to the Rules of Practice and Procedure set forth in section 003 of the Rules of Commission Procedure, as currently in effect or as may be amended or

superseded in the future and (b) to the statutory requirements applicable to contested cases as set forth in the Nebraska Administrative procedures Act.

RIC believes that it is important that the “docket” contemplated by Section 86-330 is clearly defined as a “contested case” and thereby is subject to the requirements of Rule 003 of the Rules of Commission Procedure as well as the statutory requirements applicable to contested cases as set forth in the Nebraska Administrative Procedures Act.⁴

B. Comments on Section 001.03 of the Proposed Rules

RIC suggests that Section 001.03(A) of the Proposed Rules be deleted in its entirety and be replaced with the following:

001.03(A) Consistent with Neb. Rev. Stat. § 86-330 and in compliance with the Commission’s Rules of Procedure referenced in sections 001.02(B) and 001.02(C), the Commission may withhold Support from an ETC for broadband Internet infrastructure deployment projects:

This revised section incorporates references to the two new definitions described in Section II.A of these Comments.

RIC also suggests a minor revision to Proposed Rule 001.03(A)(i)(a) to remove the word “telecommunications” and to insert the phrase that appears in bold face font below:

001.03(A)(i)(a) the availability, quality, or affordability of broadband service provided by the ETC is lacking; or

Similarly, RIC also suggests a minor revision to Proposed Rule 001.03(A)(i)(b) to insert the words that appear in bold face font below:

001.03(A)(i)(b) The ETC has failed to follow the criteria for successful investment of Support from the Fund;

RIC recommends the addition of the following as a new Section 001.03(B) of the Proposed Rules:

⁴ See e.g., Neb. Rev. Stat. § 84-913 which requires an opportunity for hearing after reasonable notice, preparation of an official record including testimony and exhibits and a transcript.

001.03(B) Prior to withholding Support, the Commission shall be required to provide the ETC with a reasonable opportunity to cure the deficiencies found by the Commission within a time frame that is reasonable under the circumstances.

C. Comments on Section 001.04 of the Proposed Rules

Section 001.04 of the Proposed Rules purports to establish “Community-Based Redirection of Support”. According to the explanation in the *October 8th Order*, “the Commission finds that such a pathway will be optional for the Commission and not a requirement prior to initiating a reverse auction.”⁵

Section 86-330 directs the Commission to “adopt and promulgate rules and regulations that establish standards *governing the withholding of funding* from the Nebraska Telecommunications Universal Service Fund from any recipient . . .” (emphasis added) Such section continues to provide that “the commission may use the funding that is withdrawn *to implement and operate a reverse auction program*. . .” (emphasis added)

As proposed, the “Community-Based Redirection of Support” provisions of the Proposed Rules do not fall within the subject matter parameters of the rulemaking authority delegated to the Commission by the Legislature in Section 86-330. The concept of community-based support is apparently based upon the submission of a plan or proposal for the use of withheld support to be “scored” by the Commission. There is no reference to community-based plans set forth in Section 001.05, Reverse Auctions, of the Proposed Rules. Indeed, the process for submission of a community-based plan, the scoring thereof and the possible approval thereof the by Commission as outlined in Proposed Rule Section 001.04 is unrelated to reverse auctions which is the subject concerning which the Legislature directed the Commission to formulate rules.

⁵ *October 8th Order* at 3.

While RIC does not oppose the possibility of the Commission considering this concept in a proper proceeding in the future, in light of the scope of delegation of authority to the Commission by the Legislature pursuant to Section 86-330 and the terms of Proposed Rule Section 001.04, RIC respectfully submits that implementation of “Community-Based Redirection of Support” under the Proposed Rules is beyond the authority delegated by the Legislature to the Commission regarding this rulemaking. Section 86-330 authorizes one and only one mechanism for the redirection of withheld NUSF support. That mechanism is a reverse auction program. The Commission addresses reverse auctions in Proposed Rule Section 001.05 which is appropriate. RIC respectfully submits that Proposed Rule Section 001.04 should be removed from the Proposed Rules.

D. Comments on Section 001.05 of the Proposed Rules

RIC suggests the addition of a new Section 001.05(C)(viii) to the Proposed Rules to read as follows:

001.05(C)(viii) A demonstration that, if such applicant is the successful bidder in the Reverse Auction that is subject to such application, that such applicant will use such Support for broadband Internet infrastructure deployment projects consistent with the requirements of this Chapter 16;

As a minor editing comment, RIC suggests that the last sentence of Section 001.05(C)(ix)(2) be numbered as a separate sub-section, e.g. 001.05(C)(x).

Finally, RIC suggests the addition of the following sub-section as Section 001.05(E)(iii) of the Proposed Rules:

001.05(E)(iii) All payments required by this Chapter 16 will be deposited with the Nebraska Department of Revenue (the “Department”) in an account established by the Commission in coordination with the Department for the applicable Reverse Auction, and will be so identified and used solely for purposes of the conduct of such Reverse Auction.

III. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Comments in response to the questions posed by the Commission in the *October 8th Order* and look forward to continuing participation in this docket.

Dated: December 6, 2019.

Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of December 2019 one original, five paper copies and one electronic copy of the foregoing pleading were delivered to:

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With an electronic copy delivered to other commenting parties.

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