

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Public Service Commission
Nebraska
DEC 18 2019

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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)
accordance with Nebraska Legislative Bill)
994 [2018].)
)

REPLY COMMENTS

Introduction

The Rural Telecommunications Coalition of Nebraska (“RTCN”)¹, by and through its attorneys of record, submits these comments (“Reply Comments”) as allowed by 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.

Withholding Support

In comments filed December 6, 2019, all parties continue to be critical of the lack of detail in the proposed criteria to determine whether to withhold high-cost support. Citizens provided some language to clarify one of the criteria. Both the Rural Independent Companies (“RIC”) and RTCN proposed specific detailed criteria to replace the general criteria proposed by the Commission in the Order. The RTCN continues to believe the proposals made in its Comments would provide guidance to the Commission and all parties as to what might trigger withholding of support without unduly tying the Commission’s hands. To address 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.

legitimate concerns of all parties about lack of specificity, the RTCN urges the Commission to adopt the criteria the RTCN proposed.

Some parties were critical of the Commission's definition of "unserved area" and "underserved area." This critique is justified. The two terms were defined as the same thing – as though they are one in the same. The terms are different and should be defined separately. To address these legitimate concerns, the RTCN proposes the Commission adopt definitions consistent with those adopted by the Rural Broadband Task Force, such as:

- *Unserved area* means an area with available Internet service at speeds of less than 10 megabits ("Mbps") for download and one (1) Mbps for upload ("10/1 Mbps").
- *Underserved area* means an area with available Internet service speeds of 10/1 Mbps or greater, but less than 25 Mbps for download and three (3) Mbps for upload ("25/3 Mbps" or "Broadband").²

Several parties criticized the Commission's proposed rules as not indicating clearly what support might be withheld. Would it be only deployment support, which consists of budget-controlled reimbursement for the costs associated with deployment? Or would it include ongoing support for operations and maintenance of infrastructure capable of providing Broadband services? The parties' critique is misplaced. The Commission's proposed definition of *Support* makes clear that it applies only to deployment support, and not ongoing support.³

² See Rural Broadband Task Force, *Findings and Recommendations*, October 2019, p. 7.

³ *Order*, p. 5, proposed rule 001.02(E).

Community-Based Redirection of Support

Some parties were critical of the Commission's proposed rules for community-based redirection of support, claiming the proposal was somehow beyond the authority delegated by the Legislature. That critique ignores the statutory language granting the Commission authority.

While the operative statute clearly calls upon the Commission to establish a reverse auction program, it makes equally clear, "The commission shall have *wide discretion* in the design, implementation, and operation of a reverse auction program."⁴ The Legislature has entrusted the Commission with the responsibility of redirecting high-cost support, after a decision to withdraw support has been made. The Legislature has directed the Commission to make certain that the support is directed back to the customers in the exchange area that has not been satisfactorily served by the incumbent local telecommunications company.⁵ According to the statute, "any funding that is withdrawn shall be utilized in the exchange area for which the funding was originally granted."⁶ Nothing in the Commission's proposal exceeds the wide discretion delegated to it by the Legislature.

CenturyLink raises questions relating to community-based support, especially relating to the role of public-private partnerships. When the RTCN recommended that the existence of such partnerships be considered in scoring community-based proposals, it did *not* mean to suggest that partnerships *must* be a component of a community-based project. Rather, given the pressure to explore the potential benefits of such partnerships, it seemed prudent that they be considered as *one* factor scoring in favor of a particular proposal. The RTCN firmly agrees with CenturyLink on the following points:

⁴ NEB. REV. STAT. § 86-330 (emphasis added).

⁵ *Id.*

⁶ *Id.*

- No public policy justification exists for providing electric ratepayer assistance to locations where Broadband is available;
- All telecommunications carriers, including the incumbent local exchange carrier, should have equal and non-discriminatory access to public poles, rights-of-way, easements and leasing arrangements. In this regard, the RTCN is concerned that some public entities are restricting access to such public property and charging fees that violate state statute.⁷ If public entities want to partner to help accelerate the deployment of Broadband in rural areas, the first thing they should do is make sure they remove excessive, and potentially unlawful, regulatory burdens, taxes, and fees.
- Any community-based project involving a public power provider must prohibit the provider from utilizing revenues derived from public power to subsidize its broadband participation.

Post-Redirection Obligations

CenturyLink makes arguments about the responsibilities that should be imposed upon the eligible telecommunications carrier (“ETC”) receiving redirected support. It argues that the ETC should be required to comply the same obligations and rules imposed upon the incumbent when granted the same funding. More specifically, CenturyLink asserts that carrier of last resort responsibilities should be transferred from the incumbent to the ETC receiving the redirected support.⁸ This is an important issue, and the RTCN agrees with CenturyLink.

⁷ See NEB. REV. STAT. § 86-704(4)(a)(ii).

⁸ See NEB. ADMIN. CODE, tit. 291, ch. 10, § 004.02G2.

Windstream's Demand for Delay

Windstream spends significant space in its comments explaining why it thinks “it would behoove the Commission” to delay implementation of its reverse auction rules. Not only does this fly in the face of the Commission’s duty to promulgate rules and regulations timely, but it is inconsistent with the very bases Windstream attempts to use to support its demand for delay.

Windstream urges the Commission to delay its rule-making until the Federal Communications Commission completes its establishment of the Rural Digital Opportunities Fund (“RDOF”) program. While the RTCN agrees that federal and state support must complement one another, Windstream ignores the fact the FCC is currently consider the interrelationship between state and federal support as it develops the RDOF. To its credit, the Nebraska Commission has filed comments in the RDOF proceeding, asking the FCC to coordinate with stakeholders to understand where broadband has been deployed or planned.⁹ The Commission also recommended that the FCC prioritize robust scalable technology deployment by local broadband providers, rather than simply the cheapest technology.¹⁰

Rather than delaying its rule-making, the Commission should act quickly to build on these efforts to coordinate with the FCC wherever possible. The FCC set an ambitious timeline to complete the RDOF auction by the end of 2020, which means it likely must set its rules in the next month or two. Therefore, the Commission has a limited window of opportunity to affect change at the federal level to better leverage RDOF for rural Nebraskans. The Commission will need to develop a plan and work with the FCC to

⁹ Comments of the Nebraska Public Service Commission. Rural Digital Opportunities Fund WC Docket No. 19-126, Connect America Fund, WC Docket No. 10-90, received Sep. 19, 2019. at pp. 4-5.

¹⁰ *Id.* at p. 5.

coordinate RDOF and NUSF support to avoid potential waste and to promote robust, scalable network deployment.

Windstream also extensively cites the report of the Rural Broadband Task Force in an attempt to paint a rose-colored picture of broadband deployment in rural Nebraska and prop up its argument for delay. Windstream ignores the fact that the very purpose of the Task Force was to examine ways to accelerate Broadband deployment, as well as key findings in the report. While complimentary of the Commission's administration of the Nebraska Universal Service Fund, especially recent reforms, the Task Force squarely criticized four carriers, including Windstream for neglecting rural customers:

Broadband availability varies by incumbent carrier. Approximately 79% of those rural households which do not have broadband available reside in Windstream, CenturyLink, Great Plains or Frontier (Citizens) exchanges.¹¹

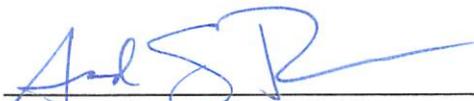
DATED: December 18, 2019

¹¹ Rural Broadband Task Force, *Findings and Recommendations*, October 2019, p. 5.

RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and five copies of the above *Reply Comments* of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on December 18, 2019, and a copy was served via electronic mail, to the following:

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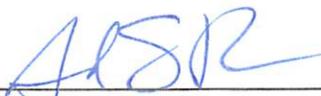
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