

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-131  
Public Service Commission, on ) Progression Order No. 3  
its own motion, to establish )  
reverse auction procedures and ) ORDER DENYING MOTION FOR  
requirements. ) LEAVE TO BID OUT OF TIME  
)  
)  
) Entered: September 5, 2024

BY THE HEARING OFFICER:

The Nebraska Public Service Commission ("Commission") initiated this proceeding on June 29, 2021, to establish reverse auction procedures and requirements in order to carry out Neb. Rev. Stat. § 86-330 (2018). On April 16, 2024, the Commission entered an order ("April 16 Order") seeking comment on a proposal to conduct a second auction in 2024 ("Second 2024 Auction") and setting a hearing in this matter for May 15, 2024. Pursuant to comments filed and a hearing in this matter, the Commission entered an order setting forth the procedures for the Second 2024 Auction, announcing qualified bidders, and adopting a procedural schedule ("June 25 Order").

Pursuant to the June 25 Order, bidding began on July 29, 2024. Each bidding window was open from 8:00 a.m. to 3:00 p.m. Central time on each bidding day. The June 25 Order stated:

Each bidding window will be open from 8:00 a.m. - 3:00 p.m. Central Time on each bidding day. During that time, bidders wishing to participate must submit a bid sheet to the Commission via email to psc.nusf@nebraska.gov for that round. **Bids for each round must be submitted by 3:00 p.m. Central Time.** Bids submitted after 3:00 p.m. will not be considered.<sup>1</sup>

A copy of the June 25 Order was sent via email and U.S. Mail to each participant in the Second 2024 Auction, and was publicly available on the Commission website.

The June 25 Order included a list of dates on which bidding rounds 1 through 10 would be conducted, and noted that if additional rounds would be necessary, Commission staff would communicate the dates for those rounds in advance. On August 16,

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<sup>1</sup> June 25 Order at 9 (emphasis in original).

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2024, following Round 8 of the auction, Commission staff provided to each bidder via email the schedule for Rounds 9 through 25 of the Second 2024 Auction. In that email, bidders were reminded: "Please submit your next bid by **3:00 PM CDT on Tuesday, August 20th**. We encourage bidders to submit their bids at their earliest convenience." (emphasis in original). The schedule for auction rounds 9 through 25 was also made publicly available on the Commission website.

Round 17 of the Auction was conducted on Tuesday, September 3, 2024. Following the close of that round, bidders were provided individual bid sheets. Again, bidders were reminded: "Please submit your next bid by **3:00 PM CDT on Wednesday, September 4th**. We encourage bidders to submit their bids at their earliest convenience." (emphasis in original).

In Round 18 of the Auction, Midstates Data Transport, LLC ("Midstates") did not submit a bid prior to 3:00 p.m. Central Time. Prior to 3:00 p.m., Commission staff repeatedly attempted to contact Midstates via phone and email, using the phone number listed on Midstates' pre-auction application form and other contact information on file with the Commission, but was unsuccessful. A bid was received from Midstates at 4:02 p.m. Central Time.

Midstates has now filed a motion for leave to file its bid for the 18th round of the Second 2024 Reverse Auction out of time. In support of its motion, Midstates states that "Due to an internal administrative mishap, Bidder was roughly a half-hour late in the filing of its 18th Round Bid." Midstates further states that no harm would be caused to the public by the granting of its motion, and that the granting of the motion would not unfairly alter the competitive auction process.

I find that Midstates' motion does not provide sufficient good cause to accept its late-filed bid. While administrative mishaps certainly do occur, the Commission and its staff made every effort to prevent exactly this type of circumstance. The 3:00 p.m. deadline was communicated to bidders through orders and via email after every round of this auction, including prior to the 18th round.<sup>2</sup> The bidding window for each round is open for the majority of a business day, allowing bidders ample time to submit their

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<sup>2</sup> The 3:00 p.m. deadline was also enforced in the previous reverse auctions administered by the Commission.

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bids - and many do, in fact, submit bids early in the day. Commission staff also made repeated attempts to contact Midstates prior to 3:00 p.m. to ensure Midstates was aware that they had not yet filed their bid for this round. Unfortunately, Midstates did not respond.

I further find that Midstates' assertion that the public interest will not be harmed by granting this motion is false. Several other bidders are competing for a limited amount of funding in this auction. Allowing a single bidder to circumvent the rules of the auction would reduce the total amount of funding available, harming other carriers' ability to compete to serve the auction's MBUs. Additionally, granting a motion for leave to file a late bid in the absence of any compelling reason or extenuating circumstances would set a precedent that the auction deadlines are flexible. Simply put, they are not. Having a set deadline each day allows Commission staff to process bids in a timely manner so that the auction may proceed efficiently. I do not find it is in the public interest to grant this motion.

However, the filing of this motion has created some administrative delay in administering the 19th round of the Second 2024 Reverse Auction. Staff has been unable to provide bid sheets to the remaining bidders in the auction during the pendency of this motion. I therefore find that in the interest of fairness to the remaining bidders, bids for the Nineteenth Round of the Second 2024 Reverse Auction may be accepted until 5:00 p.m. Central Time today, September 5, 2024. **No bids filed in the Nineteenth Round after 5:00 p.m. Central Time will be accepted.**

I further find that the remainder of the Second Reverse Auction shall proceed as previously ordered by the Commission, including the closing time for each subsequent bidding round. Except for today's bidding round, the Nineteenth Round, **bidding rounds in the Second Reverse Auction shall end at 3:00 p.m. Central Time for the remainder of this auction.**

### O R D E R

IT IS THEREFORE ORDERED by the hearing officer in the above-captioned proceeding that the motion filed by Midstates Data Transport, LLC, shall be, and is hereby, DENIED.

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IT IS FURTHER ORDERED that the Nineteenth Round of the Second Reverse Auction shall commence immediately, and that bids in this round shall be accepted until 5:00 p.m. Central Time on September 5, 2024. **No bids filed in the Nineteenth Round after 5:00 p.m. Central Time will be accepted. All other bidding rounds in the Second Reverse Auction shall end at 3:00 p.m. Central Time for the remainder of this auction.**

IT IS FURTHER ORDERED that the Second Reverse Auction shall otherwise proceed as previously ordered.

MADE AND ENTERED at Lincoln, Nebraska this 5th day of September, 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

BY:



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Tim Schram  
Hearing Officer