

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-69.02
Public Service Commission, on)	
its own motion, seeking to)	
implement policies and)	
procedures related to providing)	ORDER GRANTING
Dedicated universal service)	APPLICATION IN PART
Support for Wireless)	
Telecommunications Services:)	
Long Lines Wireless LLC.)	Entered: February 10, 2009

BY THE COMMISSION:

By Application filed August 27, 2008, Long Lines Wireless LLC (Long Lines) of Sergeant Bluff, Iowa, seeks support from the Nebraska Universal Service Fund (NUSF) dedicated wireless program. Notice of the application appeared in the Daily Record, Omaha, on August 29, 2008.

On September 23, 2009, a Petition of Formal Intervention was filed by United Telephone Company of the West Inc. d/b/a Embarq Corporation (Embarq). On September 10, 2008, a Petition of Formal Intervention was filed by a group of Rural Independent Companies¹ (RIC). On October 30, 2008 a Petition for Informal Intervention was filed by N.E. Colorado Cellular Inc. d/b/a Viaero Wireless (Viaero).

A hearing on the application was held on December 17, 2008 in the Commission Hearing Room, Lincoln, Nebraska. In support of the Application, Long Lines presented a witness to summarize the application and to respond to questions from the Commissioners and intervenors. The formal intervenors and staff pre-filed testimony which was admitted into the record.

The Application filed by Long Lines was made part of the record as Exhibit No. 7. The Application contained information regarding the proposed cell sites, an estimation of costs to be reimbursed by the NUSF, and a Northeast Nebraska Drive Test prepared on August 21, 2008 which measured signal strength for a GSM network. The Commission staff propounded discovery requests

¹ The RIC group consists of the following rural independent telephone companies: Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

on Long Lines. The responses to discovery were marked as Exhibit No. 8 and entered into the record. The responses included a proposed depreciation schedule for the reimbursed equipment expenses and a list of wireless voice and data plans that would be offered in the areas covered by the application.

In support of the Application, Ms. Kristy McDermott, Director of Regulatory Affairs for Long Lines, testified that Long Lines mainly serves rural areas of Iowa, South Dakota and Nebraska. Long Lines offers GSM services and has a long term de facto lease with New Cingular Wireless to offer service in 17 counties in Nebraska. Most of the service areas have very low population densities. Long Lines has roaming agreements in place with all major and regional GSM carriers. Long Lines committed to entering into any new roaming agreements with any new carriers that may present Long Lines with a roaming agreement.

Ms. McDermott stated that all of the Long Lines cell sites will have Phase II, E-911 capabilities. Ms. McDermott stated that approving Long Lines' funding request will advance public safety by reducing the geographic isolation.

Long Lines has been designated as an eligible telecommunications carrier (ETC) in Iowa and South Dakota. Long Lines intends to file a Petition for designation as an ETC in Nebraska in early 2009.

Long Lines has approximately 200 cell sites. It owns less than 10 of these sites. Long Lines prefers to lease sites and co-locate on existing cell sites, water towers or elevators where possible.

Mr. Dan Davis, an employee of Consortia Consulting, testified for RIC. Mr. Davis testified the Commission should prioritize wireless funding and target unserved areas. Mr. Davis also testified in support of Commission oversight in areas such as service quality reporting and consumer protection standards, infrastructure sharing, roaming agreements, financial earnings and expense reporting limits.

Ms. Ann Prockish testified on behalf of Embarq. She also suggested the Commission adopt financial earnings and expense reporting to make sure that companies receiving dedicated wireless program support needed the support and were not earning an excessive rate of return. Ms. Prockish testified the Commission should not use NUSF funds to provide support for facilities that have already been built.

Ms. Sue Vanicek, the Director of the Nebraska Telecommunications Infrastructure and Public Safety (NTIPS) Department of the Commission, recommended the Commission adopt some general conditions for the receipt of dedicated wireless program support. Ms. Vanicek recommended the Commission require support recipients to agree to enter into roaming agreements at reasonable, market-based rates and permit other wireless carriers to co-locate equipment on NUSF funded infrastructure where technically feasible. In addition, Ms. Vanicek, recommended the Commission require dedicated wireless program recipients certify that the cell sites be Phase II E-911 capable to enhance public safety. Ms. Vanicek testified that the Commission should target the support to unserved or underserved areas.

Post-Hearing Briefs were solicited by the Commission. Briefs were filed by Long Lines, the RIC, Embarq and Viaero.

Long Lines reiterated the points made in its application and at the hearing. Long Lines argued that extending GSM service to rural areas will give the consumer more choice of service and will enhance public safety.

Embarq recommended the Commission deny Long Lines' application without prejudice arguing the Petition lacked the requisite information. Embarq argued the Commission must first determine the economic viability of the proposed locations and determine whether Long Lines would build the sites without NUSF support. Embarq further argued that prioritization was imperative and the fund must be used to support the deployment of wireless service where it is otherwise unavailable by any technology.

Viaero likewise argued that Long Lines had not demonstrated it met all the criteria for approval. Viaero argued that Long Lines was not a federal ETC and that this designation should be a condition precedent to receipt of NUSF support. In addition, Viaero argued that several of the proposed cell sites in Long Lines' application were underserved but not unserved.

RIC maintained that the Commission should adopt financial reporting and earnings limitations, consumer protection requirements, infrastructure sharing requirements, 911 requirements, roaming agreement requirements and service quality standards.

O P I N I O N A N D F I N D I N G S

The Commission allocated \$2.5 million for the 2008 funding year in which the petition was filed. N.E. Colorado Cellular Inc. d/b/a Viaero Wireless filed a Petition seeking \$3 million for 8 proposed cell towers. Long Lines requested approximately \$900,000 of the \$2.5 million allocation for six cell sites. Since the requests for wireless funding exceeded the amount of support available, it was necessary for the Commission to prioritize the support to meet public interest goals the Commission envisions for the dedicated wireless program.

Long Lines proposed co-location on tower sites in the following communities: Blair, Hubbard, Kennard, Walthill, Wakefield and Crofton. Based on the application, the testimony provided by the applicant, intervenors and the Commission staff, the Commission finds the application should be granted in part. Of the proposed locations, the Commission finds it appropriate to allocate support for three of the six cell sites. Specifically, the Commission supports giving dedicated wireless program support for the Walthill, Crofton and Hubbard cell sites.

The Commission finds the application of Long Lines to be sufficient for dedicated wireless program support. The Commission based its approval of support for these areas on the rural character of these communities, the Drive Test study highlighting the lack of sufficient wireless coverage in these areas, and the measure of public benefit received through the distribution of this support. The Commission also took into account several other factors, namely the agreement of Long Lines to several conditions outlined by the Commission staff, and the intention to file an application seeking designation as an ETC in Nebraska.

The Commission finds that dedicated wireless program support should be provided only to support tower construction or a cell site that has not yet been constructed. If a wireless carrier has commenced or completed the construction of a tower or cell site prior to requesting funding from the dedicated wireless program, it appears that the carrier anticipated that such tower or cell site would generate sufficient revenue in the absence of funding from the dedicated wireless program. Accordingly, the Commission declines to approve dedicated wireless program support for the Wakefield cell site.

In addition, the Commission finds that dedicated wireless program support should be targeted to serve high-cost unserved

and underserved areas. In order to identify high-cost areas that are least likely to provide sufficient operating revenues to support tower construction or the placement of a cell site without support, the Commission selected cell sites that serve out-of-town support areas that have less than 4.5 households per square mile. These areas were identified to be the highest-cost areas in which to provide service in the Commission's permanent high-cost support mechanism.² Using this criterion, the proposed cell sites of Kennard and Blair submitted by Long Lines were deemed as ineligible for funding.

In order to provide benefits to the greatest number of households in high-cost areas, the Commission ranked the towers and cell sites that were found to be eligible for funding from those serving the greatest number of out-of-town households to those serving the least number of out-of-town households. Using this method, the Commission prioritized dedicated wireless program support between the two applicants and finds that the following towers or cell sites should be funded:

<u>Carrier</u>	<u>Area</u>
Long Lines	Crofton Hubbard Walthill
Viaero	Lynch Niobrara Sparks Springview Verdigre

In addition to the analysis described above, the Commission also compared the tower and cell site locations selected for funding against existing locations in the state. The tower and cell site locations selected for funding were in areas where there are no towers or cell sites or where there is slight overlap with the coverage area of other existing towers and cell sites.

Providing funding for the towers and cell sites listed above will exhaust the Commission's allocation of \$2.5 million for dedicated wireless program support for the 2008 calendar year.

² See Application No. NUSF-26, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a Long-Term Funding Mechanism*, Progression Order No. 5 (June 29, 2004) at Appendix A, p. 5.

Reimbursement Process:

Long Lines estimated the construction costs to be approximately \$150,000 per site. The Commission approves reimbursement up to the estimated \$150,000 per site or the actual cost of construction on each site, whichever is lower. Long Lines must first make the investment and file a request for reimbursement with the NTIPS Department. Long Lines does not need to complete the construction process prior to seeking reimbursement; rather, it may work with the NTIPS Department to develop intervals at which reimbursement can be sought. The dedicated wireless program will reimburse Long Lines for reasonable expenditures made related to the cell sites approved in this Order. Once the investment is made, Long Lines shall file a request for support, provide the NTIPS Department with copies of the invoices and shall certify to the Department that it had made the described investment for the provision, maintenance and upgrading of facilities and services in the described rural areas.

As a dedicated wireless program recipient, the Commission finds Long Lines must meet the following conditions:

Exclusive Leasing Provisions Prohibited:

Long Lines may not enter into exclusive lease agreements with the facilities upon which it places its equipment. Owners of the facilities must not be prohibited from leasing additional space to the extent feasible to other providers. Long Lines shall provide the Commission with copies of the Lease Agreements for the approved sites prior to reimbursement.

Roaming Agreements:

Long Lines must agree to permit roaming at commercially reasonable rates. We believe this requirement to be an important policy objective. In its testimony, Long Lines indicated that it has roaming agreements with other carriers and agreed to this condition. The Commission will not require Long Lines to routinely file its roaming agreements. Entities denied roaming access at commercially reasonable or market-based rates may file a request with the Commission to make a determination as to whether this requirement is being satisfied.

Phase II Enhanced 911 Capability:

To advance public safety, the Commission requires that the cell sites funded by this approval must have the equipment and software necessary for Phase II wireless E911 capability. In addition, in a manner consistent with federal regulations, the wireless provider must provide Phase II wireless E911 service after a request has been made by a County or Public Safety Answering Point (PSAP). Long Lines must certify to the completion and commitment of these requirements prior to reimbursement from the dedicated wireless program.

Reporting Requirements:

Long Lines shall file, on an annual basis, consistent with federally designated ETCs, the information required by the Commission's Telecommunications Rules pertaining to eligible telecommunications companies and the investment information required by the Commission's Order in Docket NUSF-66.

The Commission declines to adopt the suggested financial reporting requirements at this time. The Commission believes the annual ETC reporting requirements will be sufficient for the purposes of determining that dedicated wireless program support is being used for the provision, maintenance and upgrading of facilities and services in Nebraska. Long Lines shall file its annual report on or before June 1 of each year.

In addition, the Commission expects that construction on these projects will proceed in a prompt business-like fashion. Progress reports shall be filed on an annual basis or more frequently if deemed necessary by the Commission, so that the Commission can plan for the timing of distribution for these funds.

Continuing Nature of Requirements:

The Commission will enforce these requirements for as long as the cell sites are in use and providing service to customers. The Commission may take any action it deems necessary and appropriate to enforce the requirements and conditions in this Order.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria the Commission applied in this application for dedicated wireless program support. The Commission may modify the minimum

requirements and conditions for future petitions for support from the dedicated wireless program.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of Long Lines Wireless, LLC shall be and it is hereby granted to the extent provided herein.

IT IS FURTHER ORDERED that Long Lines Wireless, LLC shall be subject to all terms and conditions adopted in this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of February, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Chairman

ATTEST:

Executive Director