

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska                    ) Application No. NUSF-69.13  
Public Service Commission,                    )  
on its own Motion, seeking to                )  
implement policies and procedures            )  
related to providing dedicated                ) GRANTED IN PART  
universal service support for                )  
wireless telecommunications                )  
services: Petition received                    )  
June 27, 2013 from Pinpoint                )  
Wireless Inc. d/b/a BLAZE                    )  
Wireless.                                        ) Entered: November 25, 2013

APPEARANCES:

**For the Applicant:**

Russell Westerhold  
Frazer Stryker, PC, LLO  
500 Energy Plaza  
409 South 17<sup>th</sup> Street  
Omaha, Nebraska 68102

**For the Formal Intervenor:**

Loel Brooks  
Brooks, Pansing Brooks, PC, LLO  
1248 "O" Street #984  
Lincoln, Nebraska 68508

**For the Commission:**

Shana Knutson  
300 The Atrium Building  
1200 N Street  
Lincoln, Nebraska 68508

BY THE COMMISSION:

By Petition filed June 27, 2013 Pinpoint Wireless d/b/a BLAZE Wireless (BLAZE), sought support from the Nebraska Universal Service Fund (NUSF) dedicated wireless program. Notice of the application appeared in the Daily Record, Omaha, Nebraska on July 3, 2013. A Petition of Formal Intervention was filed by Northeast Colorado Cellular Inc. d/b/a Viaero Wireless (Viaero Wireless). The Petition was granted on August 13, 2013. In addition, a Petition of Informal Intervention was filed by the Rural Telecommunications Coalition of Nebraska ("RTCN"). The Petition was granted by the Hearing Officer on September 18, 2013.

A public hearing on the application was held on November 4, 2013 in Lincoln, Nebraska with appearances as shown above. In support of its application, BLAZE submitted pre-filed testimony of Mr. Tom Shoemaker. The Commission staff submitted pre-filed testimony for Ms. Sue Vanicek and Mr. Tyler Frost.

Ms. Vanicek, the Director of the Commission's Nebraska Telecommunications Infrastructure and Public Safety (NTIPS) Department, presented her testimony. In her pre-filed testimony, Ms. Vanicek recommended the Commission impose several conditions upon the approval of BLAZE's application consistent with funding commitments in prior years. First, she recommended approving the towers in a high cost, unserved, and underserved areas, and that the towers be constructed to collocate public safety equipment and equipment from other carriers. Next, BLAZE should be required to enter into roaming agreements with other carriers when technically feasible. In addition, Ms. Vanicek recommended that the Commission require BLAZE to enable the towers to be capable of providing Phase II Enhanced 911 services in anticipation of a request from a Phase II capable PSAP. Finally, Ms. Vanicek described the conditions adopted by the Commission in 2011 to promote the deployment of broadband services. In NUSF-69, Progression Order No. 7, the Commission directed the staff to consider the availability of wireless broadband service among the factors used to make a recommendation to the Commission for wireless fund support. She stated the Commission staff considered BLAZE's commitment to provide broadband service in recommending approval of its application.

Mr. Tyler Frost testified on behalf of the Commission staff. Mr. Frost is the Commission's economist and cost model expert. Mr. Frost provided a review of the Commission's analysis for determining whether the proposed tower sites should be eligible for universal service support and, if so, at what level. Mr. Frost testified the staff employed a methodology similar to that adopted by the Commission in its previous findings in dedicated wireless fund orders.

Mr. Frost testified that based on location he used out-of-town household density, households per square mile, to determine eligibility for the proposed locations. Those towers located in areas with less than 4.5 households per square mile were identified as serving high-cost areas and eligible for dedicated wireless program support. In order to provide benefits to the greatest number of households in high-cost areas, Staff assigned

rankings to all towers 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. Further, Staff assigned additional proximity rankings to all towers found to be eligible for funding from those furthest from existing tower locations in the state to those closest. Together, the two rankings then determine the proposed tower's funding priority. Those towers receiving higher funding priority are funded first.

As a result, of the 20 locations identified in BLAZE's application, the staff proposed that the Commission fund ten sites submitted by BLAZE in the amount requested with the exception that the amount be adjusted for the removal of legal and permitting costs. The staff recommended support for the following locations: Culbertson, Enders, Harry Strunk Lake, Hugh Butler Lake, Max, Orafino, Perry Grain, Stratton, and Trenton. In addition, the staff proposed partial funding for Arapahoe South.

Mr. Tom Shoemaker, Executive Vice President of BLAZE, testified in support of the application. BLAZE is a Nebraska corporation and is licensed to provide Cellular Mobile Radio Service (CMRS) in the Nebraska Basic Trading Area 270. The Commission designated BLAZE as an eligible telecommunications carrier in the State of Nebraska by Order dated June 26, 2012. BLAZE had no objection to the Commission staff's recommendation.

Mr. Andrew Newell, testified on behalf of the Formal Intervenor, Viaero Wireless. Viaero expressed concerns with BLAZE's application from a technical and economic perspective. In Viaero's opinion, BLAZE possessed insufficient spectrum to deploy quality broadband service in the area. In addition, Viaero stated BLAZE provided service in some of the areas covered by the staff's recommendation through Viaero's existing infrastructure.

In response, Mr. Shoemaker testified that it possessed sufficient spectrum to deploy quality broadband services. In addition, Mr. Shoemaker testified that BLAZE believed the recommended sites covered existing unserved and underserved areas. He referenced the white areas on the map provided by Viaero as currently unserved or underserved and questioned some of the coverage depicted based on personal observation.

Mr. Newell responded in part that the loss of roaming revenue from the proposed BLAZE towers would be a critical

component in the economic viability of existing Viaero towers in the area.

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

The Commission allocated \$5 million for the 2013 NUSF calendar funding year in which this Petition was filed. Three wireless carriers filed Petitions seeking Dedicated Wireless Fund Program support. Based on the application and the evidence in the record, the Commission finds BLAZE's application for dedicated wireless universal service funds should be approved in part for the following tower sites: **Culbertson, Enders, Harry Strunk Lake, Hugh Butler Lake, Max, Orafino, Perry Grain, Stratton, Trenton.** Partial funding shall be approved for the **Arapahoe South** location consistent with the staff recommendation.

Viaero takes issue with the proposed recommendation to provide funding for the construction of BLAZE facilities near existing Viaero facilities. In 2010, the Commission adopted an objective standard to determine the appropriate allocation of dedicated wireless fund support. While we understand Viaero has concerns with the allocation of support recommended for certain BLAZE sites, the Commission does not find the arguments given or the evidence presented sufficient to warrant a deviation from the staff's recommendation. Since the inception of this program, the Commission has utilized the same methodology to objectively determine eligibility for and prioritization of wireless fund support. No carrier has, in prior years, challenged the eligibility step in the determination of wireless fund support.

The Commission staff utilizes a 4.5 square mile household density threshold as a proxy for determining areas which are high-cost unserved and underserved areas where facilities would most likely not be built absent the use of support.<sup>1</sup> Wireless

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<sup>1</sup> We note that Viaero used the "unserved" and "underserved" broadband definition in its arguments from another Commission proceeding aimed at providing broadband support in certain areas. See NUSF-77, *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Progression Order No. 4, ORDER ISSUING FINDINGS, SEEKING FURTHER COMMENTS AND SETTING HEARING (September 27, 2011) ("NUSF-77") We have not adopted those definitional standards or applied them in the current proceeding. While the Commission has decided to merge the wireless fund support into the broadband fund, the Commission's order specified this change

carriers have since relied on this threshold when preparing wireless fund applications in order to maximize the amount of wireless fund support they could potentially receive.

Next, the staff methodology ranks the eligible sites among all sites contained in the applications received. Viaero's concern appears to be directed at the proximity weight applied in the Commission staff's methodology which serves to provide a portion of the ranking score used by the Commission staff to prioritize wireless sites.<sup>2</sup> Again, this methodology has been used by the Commission staff since the start of the program and has been previously endorsed by the Commission as an appropriate method to rank all the eligible tower sites. The tower location information is based upon reported tower sites from all wireless carriers (not just the applicants) for emergency location purposes. The Commission believes that this generally is a more reliable source for data than any publicly available wireless tower database. The Commission continues to believe this to be a sound and objective way to determine the allocation of wireless fund support and therefore finds the staff recommendation should be followed.

#### Reimbursement Process:

BLAZE estimated the total construction costs for all towers proposed to be approximately \$4.9 million. The Commission staff recommended support for the following tower sites **Culbertson, Enders, Harry Strunk Lake, Hugh Butler Lake, Max, Orafino, Perry Grain, Stratton, Trenton and Arapahoe South**<sup>3</sup> in the amount of **\$2,322,140**. We agree with the staff's proposed methodology and that the amount requested by BLAZE be adjusted for the removal of BLAZE's submitted legal and permitting costs. Upon further review of the application and the costs submitted by BLAZE, the Commission approves reimbursement up to **\$2,322,140** or the **actual cost** of construction for the ten sites approved in this Order, whichever is lower. This number represents an amount consistent with staff's recommendation on the proposed tower sites.

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will apply beginning with applications filed in 2014. See NUSF-77, Progression Order No. 8 (September 4, 2013).

<sup>2</sup> The other portion of the ranking is the density analysis which ranks projects in order to provide wireless voice service to the highest number of potential households in a given high-cost area.

<sup>3</sup> The Arapahoe South location was recommended for partial funding. BLAZE's witness agreed to complete construction of this location with only partial support.

BLAZE must first make the investment and then may file a request for reimbursement with the NTIPS Department. BLAZE 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 BLAZE for reasonable expenditures made related to the cell sites approved in this Order. Once the investment is made, BLAZE 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 BLAZE must meet the following conditions:

Infrastructure Sharing:

BLAZE shall be required to construct tower facilities in a manner that would accommodate collocation and sharing of additional equipment of other wireless carriers, public safety agencies, Internet providers and other providers with technologies that qualify. Such collocation will be required where technically feasible and upon commercially reasonable terms and conditions. While the Commission will not require BLAZE to routinely file collocation agreements, if an issue is raised by public safety agency or another wireless provider, the Commission will make a determination as to whether these ordered conditions are being met.

Roaming Agreements:

BLAZE must agree to permit roaming at commercially reasonable rates. We believe this requirement to be an important policy objective. The Commission will not require BLAZE 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.

Broadband Commitments:

To encourage the deployment of wireless broadband services in Nebraska, the Commission gives priority to applicants which commit to providing wireless broadband services. BLAZE must report broadband availability to the Commission and its vendors

for the duration of the State Broadband Data and Development (SBDD) Program consistent with the Commission's findings in NUSF-69, Progression Order No. 7.

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). BLAZE must certify to the completion and commitment of these requirements prior to reimbursement from the dedicated wireless program.

Reporting Requirements:

BLAZE 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 report should make clear to the Commission that BLAZE will not request reimbursement for equipment or tower construction where grant money was also received from another source. BLAZE 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 filed by Pinpoint Wireless d/b/a BLAZE Wireless shall be and it is hereby granted, in part, as provided herein.

IT IS FURTHER ORDERED that Pinpoint Wireless d/b/a BLAZE Wireless shall be subject to all terms and conditions adopted in this Order.

MADE AND ENTERED at Lincoln, Nebraska this 25th day of November, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director