

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. NUSF-69.14
Public Service Commission,	)	
on its own Motion, seeking to	)	
implement policies and procedures	)	
related to providing dedicated	)	
universal service support for	)	GRANTED IN PART
wireless telecommunications	)	
services: Petition received	)	
July 1, 2013 from N.E. Colorado	)	
Cellular, Inc. d/b/a Viaero	)	
Wireless.	)	Entered: November 25, 2013

APPEARANCES:

**For the Applicant:**

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

**For the Intervenor:**

Russell Westerhold  
Fraser Stryker, PC, LLO  
409 South 17<sup>th</sup> Street, Suite #500  
Omaha, Nebraska 68102

**For the Commission:**

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

BY THE COMMISSION:

By Petition filed July 1, 2013 N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero), 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 8, 2013. A Petition of Formal Intervention was filed by Pinpoint Wireless, Inc. d/b/a BLAZE Wireless ("BLAZE"). Said Petition was granted on August 13, 2013. 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, Viaero submitted pre-filed testimony from Mr. Andrew Newell. 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 Viaero's application consistent with funding commitments in prior years. First, she recommended approving the tower in a high cost, unserved, and underserved area, and that the tower be constructed to collocate public safety equipment and equipment from other carriers. Next, Viaero should be required to enter into roaming agreements with other carriers when technically feasible. In addition, Ms. Vanicek recommended that the Commission require Viaero to enable the tower 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 Viaero'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 site 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 location. 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, the staff proposed that the Commission provide support for 5 of the 17 requested tower sites submitted by Viaero. These sites included: **Ainsworth South, Atkinson South, Brewster North, Minatare, and Valentine SW**. In addition, the staff proposed the Commission partially fund the **Taylor** tower site.

Mr. Andrew Newell testified on behalf of Viaero in support of the application. He testified that Viaero had requested support for 17 sites located in 12 rural Nebraska areas. Mr. Newell testified that the targeted areas lack sufficient wireless coverage. Viaero has entered into numerous roaming agreements with national and international carriers on commercially reasonable terms and conditions and is willing to add additional roaming partners at commercially reasonable rates as needed to accommodate access for additional wireless users. The towers to be constructed at each of the proposed sites will be equipped to provide broadband in the targeted areas.

#### 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 Viaero's application for dedicated wireless universal service funds should be approved in part for the following tower sites: **Ainsworth South, Atkinson South, Brewster North, Minatare, and Valentine SW**. In addition, Commission finds it appropriate to partially fund the **Taylor** tower site.

#### Reimbursement Process:

Viaero estimated the total construction costs for all 17 towers proposed to be approximately \$7.3 million. The Commission approves support for **Ainsworth South, Atkinson South,**

**Brewster North, Minatare, and Valentine SW.** In addition, the Commission approves partially funding the **Taylor** tower site consistent with the staff recommendation.<sup>1</sup> Upon review of the application and the costs submitted by Viaero, the Commission approves reimbursement up to **\$2,279,001** or the **actual cost** of construction for the tower sites approved in this order, whichever is lower.

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

Infrastructure Sharing:

Viaero 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 Viaero 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:

Viaero must agree to permit roaming at commercially reasonable rates. We believe this requirement to be an important policy objective. In its testimony, Viaero indicated that it has

---

<sup>1</sup> Viaero filed a late-filed exhibit on November 13, 2013 reflecting its agreement to construct the Taylor tower site with partial support.

roaming agreements with other carriers and agreed to this condition. The Commission will not require Viaero 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. Viaero 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 site 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). Viaero must certify to the completion and commitment of these requirements prior to reimbursement from the dedicated wireless program.

#### Reporting Requirements:

Viaero 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 Viaero will not request reimbursement for equipment or tower construction where grant money was also received from another source. Viaero 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 site is 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 N.E. Colorado Cellular Inc. d/b/a Viaero Wireless shall be and it is hereby granted, in part, as provided herein.

IT IS FURTHER ORDERED that N.E. Colorado Cellular Inc. d/b/a Viaero 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