

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of) Application No. NUSF-77.03,
the Nebraska Telecommunications) Progression Order No. 5
Association for Investigation)
and Review of Processes and)
Procedures Regarding the)
Nebraska Universal Service Fund:) GRANTED, IN PART
Application to the Nebraska)
Broadband Pilot Program (NEBP))
received from Nyecon)
Teleservices Inc./Plainview)
Telephone Company.) Entered: June 26, 2012

APPEARANCES:

For Mobius Communications Company, Great Plains Communications & Consolidated Telephone Company:

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For Dalton Telephone Company:

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For Frontier Communications:

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For CenturyLink:

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For N.E. Colorado Cellular, Inc. d/b/a Viaero:

Mr. Loel P. Brooks
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For the Nebraska Public Service Commission:

Ms. Shana L. Knutson
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Nebraska Public Service Commission
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BY THE COMMISSION:

Background

By Application filed February 1, 2012, Nyeacom Teleservices Inc./Plainview Telephone Company (Nyeacom or Applicant) seeks Nebraska Broadband Pilot (NEBP) Program support. Notice of the Application appeared in the Daily Record, Omaha, Nebraska on February 7, 2012. On March 23, 2012, Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications (Frontier) filed a Formal Petition of Intervention in the above-captioned proceeding. On March 26, 2012, N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (Viaero) filed a Formal Petition of Intervention in the above-captioned proceeding. Those Petitions were granted on April 3, 2012.

A procedural conference was held on April 5, 2012. With the consent of the applicant, a procedural schedule was adopted. Pursuant to that Order, the staff's recommendation was filed on April 23, 2012. Pre-filed testimony was filed on May 7, 2012 and reply testimony was filed on May 21, 2012.

On May 30, 2012, the Commission held a public hearing on the application in Lincoln, Nebraska. For administrative efficiency, and with the consent of all parties, the hearing was consolidated with the hearings in NUSF-77.01, NUSF-77.02, NUSF-77.04, NUSF-77.05, NUSF-77.06 and NUSF-77.07. No one entered an appearance on behalf of the applicant. Mr. Loel Brooks entered an appearance on behalf of Viaero.

Project Overview

Nyeacom Teleservices, Inc. is a wholly-owned subsidiary of Plainview Telephone Company with its principal office located in Plainview, Nebraska. Plainview is an incumbent local exchange carrier.

Nyeacom proposes to provide voice and broadband capability to the proposed service area by constructing a WiMAX standard, 3.65 GHz wireless broadband distribution system. Nyeacom currently has existing fiber optic cable connectivity to the

Brunswick water tower for connection of the proposed system to its existing Tier 1 router/internet system in Plainview.

The WiMAX system that will be deployed is capable of delivering up to 10 Mbps service in the downstream direction and 5 Mbps in the upstream direction. The system is expandable with the capability to add additional sector electronics as needed to meet any growth needs and provide the projected broadband service packages to all subscribers requesting service in the area.

Nyecom provided a project timeline, a proposed budget showing project costs and a detailed breakdown of the cost elements. Nyecom provided a depreciation schedule showing the life of the investment. Nyecom provided a copy of its latest financial report to demonstrate financial qualifications to complete its portion of the proposed project. In addition, Nyecom provided detailed map information showing the proposed project coverage by census block.

Staff Analysis

The Commission staff analyzed each project including the project filed by Nyecom. The staff first reviewed the application to determine whether the eligibility requirements of Progression Order No. 5 had been met. Next, the staff reviewed the application to determine whether all application requirements listed in Progression Order No. 5 were fulfilled. Next, the staff grouped projects into categories based on the nature of each area being served, the existence of any intersection with another proposed project and the interdependency of each project as determined by the applicant's defined implementation schedule. The staff's group assignment created a priority hierarchy. Within each hierarchy, the project was then scored based on the criteria described in the Staff Recommendation.

The staff recommended approving Nyecom's application in part, in the amount of **\$54,107**. The revised amount was a reflection of the staff's position to exclude certain expenditures the Nebraska Telecommunications Infrastructure and Public Safety Department (Department) recommended should not be funded.¹

¹ This may have included certain personnel costs, ongoing operating expenses, and legal expenses.

Hearing

Ms. Sue Vanicek, Director of the Department presented testimony at the hearing relative to the recommended adjustments to funding amounts. She testified that the Department reviewed each application and identified certain personnel costs, ongoing expenses and legal costs which should be excluded. Ms. Vanicek's testimony was offered and received into the record as Exhibit Nos. 3 and 4.

Mr. Tyler Frost, the staff Economist presented testimony related to the staff's methodology for recommending NEBP support. Mr. Frost provided further details about how the staff reviewed and scored each application. Mr. Frost's testimony was offered and received into the record as Exhibit Nos. 5 and 6.

The application was offered and received into evidence as Exhibit No. 18.

Mr. Andy Newell, General Counsel for Viaero, also presented testimony in support of the staff's methodology. Viaero did not present testimony in opposition to Nyecom's application for NEBP support.

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

On June 14, 2011, the Commission issued Progression Order No. 3 in NUSF-77, finding that making explicit NUSF support available for broadband deployment would complement the Commission's existing goal to support networks that provide voice service as well as advanced services. In addition, the Commission found promoting ubiquitous broadband availability was a state and federal responsibility which would require both state and federal financial support. Through further progression orders the Commission adopted criteria for the NEBP program eligibility, application requirements, and provided a timeline for the consideration of NEBP projects.

Based on the application and the evidence in the record, the Commission finds Nyecom's application for NEBP program support should be approved in part consistent with the staff's recommendation. The Commission approves support up to an amount of **\$54,107** or actual cost of construction for the project whichever amount is lower.

Reimbursement Process:

Nyecom must first make the investment and then may file a request for reimbursement with the NTIPS Department. Nyecom 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 NEBP program will reimburse Nyeacom for reasonable expenditures made related to project specifications detailed in the application and approved in this Order. Once the investment is made, Nyeacom shall file a request for support, provide the NTIPS Department with copies of the invoices or other acceptable documentation² 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 area defined in the application.

As a NEBP program recipient, the Commission finds Nyeacom must meet the following conditions:

1. The supported broadband service upon completion of the deployment must be available as a service offering to all households within the area defined by the application for a minimum period of five (5) years;
2. The project must be completed within 24 months from the date of this Order unless otherwise extended by the Commission;
3. Voice grade service must be available to customers within the service area of the broadband deployment;
4. Access to emergency services must be available to customers within the service area of broadband deployment;
5. Broadband support must only be used for the purposes intended and which have been approved by the Commission;
6. Voice and broadband service in the area described in its application must be offered at reasonably comparable rates for comparable services it offers in urban areas;
7. Reporting, verification, and audit requirements adopted by the Commission for oversight of the NEBP program must be met; and
8. Adherence to all applicable Commission rules, regulations and orders.

Continuing Nature of Requirements:

The Commission will enforce these requirements throughout the period of the grant and the 5 year period following the completion of the project to ensure the Commission's objectives for this program are being met. Nyeacom shall notify the Commission in writing once the project has been completed and the proposed broadband service is being offered. The Commission

² The Commission will provide the Department with the discretion to determine the type of documentation needed to verify the expenditures made when not provided through a third-party invoice.

may take any action it deems necessary and appropriate to enforce the requirements and conditions in this Order.

To encourage public awareness about the deployment of broadband service in Nebraska, we find Nyecon should be required to report broadband availability to the Commission and its broadband mapping vendor for the duration of the State Broadband Data and Development (SBDD) Program.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria the Commission applied in this application for NEBP program support. The Commission may modify the minimum requirements and conditions for future petitions for support from the NEBP program.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Application filed by Nyecon Teleservices Inc./Plainview Telephone Company shall be and it is hereby granted in part as provided herein.

IT IS FURTHER ORDERED that Applicant shall comply with requirements set forth herein.

IT IS FURTHER ORDERED that Applicant shall submit detailed and accurate invoices and other documentation required by the Department prior to reimbursement for the supported project.

IT IS FURTHER ORDERED that Applicant shall use Nebraska Broadband Pilot Program support only for the purposes described in its application and authorized by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of June 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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COMMISSIONERS CONCURRING:

Tim Schram
Dave Boyle
Yvonne Lipp

Chairman

ATTEST:

Executive Director

//s// Rod Johnson
//s// Frank Landis