

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of	)	Application No. NUSF-77.06,
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 N. E. Colorado	)	
Cellular, Inc., d/b/a Viaero	)	
Wireless.	)	Entered: June 26, 2012

APPEARANCES:

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

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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 the Nebraska Public Service Commission:

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BY THE COMMISSION:

Background

By Application filed February 1, 2012, N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (Viaero 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, Consolidated Telco, Inc., Consolidated Telephone Company, Great Plains Communications, Inc., Dalton Telephone Company, and United Telephone Company of the West d/b/a CenturyLink filed Formal Petitions of Intervention in the above-captioned proceeding. These 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 the procedural 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-77.03, NUSF-77.04, NUSF-77.05 and NUSF-77.07. Mr. Loel Brooks entered an appearance on behalf of the applicant. Mr. Paul Schudel entered an appearance on behalf of Dalton Telephone Company. Mr. James Overcash entered an appearance on behalf of Consolidated Telco, Inc., Consolidated Telephone Company, and Great Plains Communications. Mr. William Hendricks entered an appearance on behalf of CenturyLink.

Project Overview

Viaero is a wireless carrier with its principal office located in Fort Morgan, Colorado. Viaero has been designated as an eligible telecommunications carrier (ETC) by the Commission.

Viaero applied for NEBP support to serve the Nebraska panhandle via wireless broadband. Viaero's projects consist of a "Core Project" and five (5) "modules." The project consists of three discrete elements (1) installation of media gateway equipment allowing for the delivery of aggregated data to the internet; (2) upgrading existing licensed microwave paths to ensure adequate "middle mile" throughput; and (3) upgrading existing tower infrastructure with Base Station Controllers and radios for WCDMA. While other equipment and systems investments are necessary to enable a functioning broadband system, Viaero will absorb those costs and has not included them in either the overall cost of the project or its 25 percent match.

According to Viaero's application its "Core Project" must be completed prior to the "modules." The five (5) "modules" would then progressively extend wireless coverage east and north from the "Core Project" and must be in sequential order.

Viaero provided a project timeline, a proposed budget showing project costs, a 25 percent match, and a detailed breakdown of the cost elements. Viaero provided a depreciation schedule showing the life of the investment. Viaero provided a copy of its latest financial report to demonstrate financial qualifications to complete its portion of the proposed project. In addition, Viaero provided detailed map information showing the proposed project coverage in census blocks.

Staff Analysis

The Commission staff analyzed each project including the projects filed by Viaero. 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 Viaero's application, in part, up to the amount of **\$2,180,265**. The staff's recommendation would include partial funding for the third "module" described in its application. The staff recommended the Commission require Viaero to determine in advance of the project whether to build

the remaining portion of the third "module" using its own funds or whether to forfeit NEBP funding for the partial portion of the third "module".

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.

Mr. Andy Newell, General Counsel for Viaero, sponsored the testimony in support of Viaero's application. Mr. Newell's pre-filed testimony was admitted into the record as Exhibit No. 14. Mr. Newell stated Viaero was supportive of the staff's recommendation for NEBP support. Viaero's application describes a "Core Project" which includes the area surrounding Scottsbluff and then the modules extended out from that area to Lake McConaughy. Viaero's application for NEBP support was admitted into the record as Exhibit No. 17.

Mr. David Shipley, Vice President and General Manager of Dalton Telephone Company, testified in opposition to Viaero's application to the extent that the Commission would authorize support for Viaero to extend wireless broadband in areas where Dalton had existing wireline broadband service available in its exchange. Mr. Shipley's pre-filed testimony and reply testimony were admitted into the record as Exhibit Nos. 12 and 13. Mr. Shipley testified Dalton has wireline broadband availability to all but 11 subscribers in its exchange at speeds of 4 Mbps download and 1 Mbps upload. The 11 customers are currently provided internet access at 1½ Mbps download and 1 Mbps upload. Mr. Shipley further stated it appeared to him that approximately two-thirds of Dalton's service area would intersect with Viaero's broadband service area recommended to be approved by the staff in its recommendation.

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 Viaero's application for NEBP program support should be approved in part consistent with the staff's recommendation. The Commission recognizes Dalton's concerns with the staff recommendation and with the fact that Viaero's supported broadband coverage area will overlap Dalton's wireline broadband coverage area. However, we agree with the staff that projects areas that intersect with existing broadband coverage cannot be reasonably carved out. The Commission finds in this particular instance that providing wireless broadband support to Viaero for this project will promote greater broadband availability to Nebraskans using mobile broadband services. Approval of this application supports an important public interest. Accordingly, the Commission approves support up to an amount of **\$2,180,265** or actual cost of construction for the project whichever amount is lower.

Reimbursement Process:

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 NEBP program will reimburse Viaero for reasonable expenditures made related to project specifications detailed in the application and 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 or other acceptable documentation¹ and shall certify to the Department that it had made the described investment for the provision, maintenance and

¹ 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.

upgrading of facilities and services in the area defined in the application. In addition, the Commission finds Viaero must notify the Commission prior to accepting support whether it plans to complete the build-out of Module Three using its own funds or whether it will accept NEBP support for the Core Project and Modules One and Two only.

As a NEBP program recipient, the Commission finds Viaero 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. Viaero shall notify the Commission in writing once the project(s) have been completed and the proposed broadband service is being offered. The Commission 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 Viaero 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 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 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