

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of ) Application No. NUSF-77.20  
the Nebraska Telecommunications )  
Association for Investigation )  
and Review of Processes and )  
Procedures Regarding the ) GRANTED, IN PART  
Nebraska Universal Service Fund: )  
Application to the Nebraska )  
Broadband Pilot Program (NEBP) )  
received from N.E. Colorado )  
Cellular Inc., d/b/a Viaero ) Entered: November 25, 2013  
Wireless.

APPEARANCES:

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BY THE COMMISSION:

### ***Background***

By Application filed March 1, 2013 N.E. Colorado Cellular Inc., d/b/a Viaero Wireless (Applicant or Viaero) seeks Nebraska Broadband Pilot (NEBP) Program support. Notice of the Application appeared in the Daily Record, Omaha, Nebraska on March 8, 2013.

Petitions of Formal Intervention were filed by Eastern Nebraska Telephone Company ("Eastern"), Hartelco, Inc. d/b/a Hartington Telecommunications Co. Inc. ("Hartelco"), Northeast Nebraska Telephone Co. ("Northeast"), Stanton Telecom, Inc. ("Stanton") Great Plains Communications, Inc. ("Great Plains"), and United States Cellular Corporation ("US Cellular"). A Protest was filed by Hooper Telephone Company d/b/a WestTel System ("WestTel"). The Interventions of Eastern, Hartelco, Northeast, Stanton and Great Plains were subsequently withdrawn.

A procedural conference was held on June 19, 2013. With the consent of the applicant, a procedural schedule was adopted. Pursuant to the Procedural Order, the staff's recommendation was filed on August 28, 2013. Pre-filed testimony was filed on September 27, 2013 and reply testimony was filed on October 11, 2013.

On November 5, 2013 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 NUSF-77.08 through NUSF-77.19 and NUSF-77.21 through NUSF-77.23. Mr. Loel Brooks entered an appearance on behalf of the applicant.

### ***Project Overview***

Viaero is a wireless carrier which provides Commercial Mobile Radio Service (CMRS) throughout many areas of Nebraska. Viaero provides Internet access through GSM EDGE technology (EDGE) with the exception of areas that have already been upgraded to 4G. Viaero's principal office is located in Fort Morgan, Colorado. Viaero originally applied for NEBP support for seven broadband projects (Core plus six Modules) across the State of Nebraska. Viaero amended its application on July 8, 2013. As a result, Viaero applied for four broadband projects.

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 had been met. Next, the staff reviewed the application to determine whether all application requirements listed in Progression Order No. 5 were fulfilled. Each project was then scored.

To score this application, the Commission staff took various pieces of information directly from the applications submitted for each project and utilized in factor development. This data included; retail monthly recurring and nonrecurring end-user rates for the provisioning of broadband service; the speed (Mbps) of the respective service being offered; and the total grant request amount for each project.

Additionally, the staff obtained various other data, from publicly available sources, also used in factor development. This data included: residential monthly recurring rates for voice service and subscriber line charges, if applicable;<sup>1</sup> population and household by census block;<sup>2</sup> area by census block;<sup>3</sup> and broadband availability.<sup>4</sup>

The Commission staff then utilized a group assignment to prioritize areas determined as unserved,<sup>5</sup> using the broadband mapping data as a starting point for its review. Staff triaged the projects into categories, or groups, based on the nature of each area being served and the total cost of each project. Any

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<sup>1</sup> Company specific publicly filed tariffs.

<sup>2</sup> United States Census Bureau, Census 2010 Summary File 1.

<sup>3</sup> United States Census Bureau, 2010 Tiger/Line Shapefiles.

<sup>4</sup> State Broadband Initiative Broadband Mapping Data, April 2013 submission.

<sup>5</sup> See *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*, Docket No. NUSF-77, Progression Order No. 5, ORDER at 7 (November 21, 2011).

project comprised completely of unserved areas received a group assignment value of one (1). All remaining projects, containing some hybrid of various levels of unserved and underserved areas, received a group assignment of two (2) through (4), based on the total cost of the project.<sup>6</sup>

The Commission staff noted the dramatic increase in the number of projects submitted resulting in demand which significantly outpaced supply. As such, the Commission staff utilized total cost in the determination of the group assignment in an effort to advance the objectives of the NEBP; expanding broadband service availability to the greatest number of Nebraskans.<sup>7</sup> 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's recommendation.

The staff recommended approving Viaero's application, in part, as it related to Module 7, in the amount of **\$378,963**.

### ***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 No. 19.

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 No. 20.

Mr. Andrew Newell testified in support of the application. Mr. Newell generally described Viaero's request for NEBP support as well as its commitment to offer broadband service as specified by the Commission in Progression Order No. 5. His

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<sup>6</sup> All projects filed for the NEBP in 2013 are independent of all other projects filed by the same applicant.

<sup>7</sup> See *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*, Docket No. NUSF-77, Progression Order No. 7, ORDER at 5 (January 15, 2013)(describing the NUSF Act's goal to ensure all Nebraskans have comparable access to advanced services).

pre-filed testimony was offered and received into evidence as Exhibit No. 28. Mr. Newell was asked whether Viaero would complete the project even though the recommendation was for partial funding. Mr. Newell stated he did not know Viaero's position on that question.

No party testified in opposition to the Viaero request for NEBP support as recommended by the Commission staff.

#### 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 for Module 7 consistent with the staff's recommendation. The Commission approves support up to an amount of **\$378,963** or actual cost of construction for the project whichever amount is lower. Because projects are funded on an all or nothing basis, Viaero would need to commit to completing the entirety of Module 7 in exchange for receipt of the broadband grant support. We note counsel for Viaero filed a late-filed hearing exhibit on November 20, 2013 stating Viaero would decline the partial funding award for Module 7 as it was not economically feasible for Viaero to construct all of Module 7 with the partial funding recommended herein.

While the Commission adopts the staff recommendation as it pertains to Viaero and grants a broadband award for partial support of Module 7 based upon the record, Viaero will be required to formally accept or reject the award for Module 7 within fifteen (15) days following the date this Order is entered. If grant funds are accepted, Viaero would be required to complete all of Module 7 and would be required to comply with the conditions set forth in this Order.

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 documentation<sup>8</sup> 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 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.

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<sup>8</sup> 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.

Continuing Nature of Requirements:

The Commission will enforce these requirements throughout the period of the grant and the five (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 further 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, to the extent provided herein.

IT IS FURTHER ORDERED that Applicant shall have fifteen (15) days following the date of this Order to formally accept or reject the broadband grant award.

IT IS FURTHER ORDERED that if the broadband grant award is accepted, Applicant shall comply with requirements set forth herein.

IT IS FURTHER ORDERED that if the broadband grant award is accepted, 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 if the broadband grant award is accepted, 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 25<sup>th</sup> day of  
November, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director