

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-92.09  
Public Service Commission, on )  
its own motion, seeking to )  
administer the Nebraska )  
Universal Service Fund's ) GRANTED  
Broadband Program: Application )  
to the Nebraska Broadband )  
Program Received from Inventive )  
Wireless of Nebraska LLC d/b/a )  
Vistabeam. ) Entered: June 24, 2014

APPEARANCES:

**For Arapahoe Telephone Company:**

Jack Besse  
Knapp, Fangmeyer, Aschwege, Besse & Marsh, P.C.  
1323 Central Avenue  
Kearney, Nebraska 68848

**CenturyLink:**

Jill Vinjamuri Gettman  
Gettman & Mills, LLP  
10250 Regency Circle Suite 350  
Omaha, Nebraska 68114

**For N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless & Charter Communications:**

Loel P. Brooks  
BROOKS, PANSING BROOKS, PC, LLO  
1248 O Street, Suite 984  
Lincoln, Nebraska 68508-1424

**For Great Plains Communications, Nebraska Central Telephone Company, Eastern Nebraska Telephone Company, Rock County Telephone Company, Cable TV Company of Stanton, Cambridge Telephone Company Huntel CableVision, Inc. d/b/a Huntel Communications & Consolidated Telephone Company:**

Paul M. Schudel  
WOODS AITKEN, LLP  
301 South 13th Street, Suite #500  
Lincoln, Nebraska 68508

**For Glenwood Telephone Company, Raicom, Inc., Southeast Nebraska Communications & Diode Cable:**

Andrew S. Pollock  
Rembolt Ludtke LLP  
1201 Lincoln Mall Suite #102  
Lincoln, Nebraska 68508

**For Pinpoint Wireless, Inc. d/b/a BLAZE Wireless:**

Russell Westerhold  
Fraser Stryker Law Offices  
409 South 17<sup>th</sup> Street #500  
Omaha, Nebraska 68102

**For United States Cellular Corporation & Windstream Corporation:**

Deonne Bruning  
Deonne Bruning PC LLO  
2901 Bonacum Drive  
Lincoln, Nebraska 68502

**For the Commission:**

Shana Knutson  
1200 N Street, Suite 300  
Lincoln, Nebraska 68509

BY THE COMMISSION:

***Background***

By Application filed February 3, 2014, Inventive Wireless of Nebraska LLC d/b/a Vistabeam ("Vistabeam" or "Applicant") seeks Nebraska Broadband Program (NEBP) support. Notice of the Application appeared in the Daily Record, Omaha, Nebraska on February 7, 2014. Petitions of Formal Intervention were filed by CenturyLink, Great Plains Communications, Consolidated Telephone, and Charter Communications. On May 27, 2014, Charter Communications withdrew its Formal Intervention. On May 27, 2014, Charter Communications filed a Petition of Informal Intervention and Comments for the record.

A staff recommendation was filed on April 22, 2014. Pre-filed testimony was filed by Vistabeam on May 9, 2014.

On June 10, 2014, the Commission held a public hearing on the application in Lincoln, Nebraska. For administrative efficiency, the hearing was consolidated with the hearings in NUSF-92.01 through NUSF-92.08 and NUSF-92.10 through NUSF-92.16. Applicant was not represented by counsel at the hearing. Ms. Jill Gettman entered an appearance on behalf of CenturyLink.

Mr. Loel Brooks entered an appearance on behalf of Charter Communications.

### ***Project Overview***

Applicant is fixed wireless provider with its principal office located in Gering, Nebraska. Applicant sought broadband support for nine (9) proposed projects throughout Nebraska.

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

### ***Staff Analysis***

The Commission staff analyzed each proposed project including the nine projects filed by Vistabeam. 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>

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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.

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 project comprised completely of unserved areas received a Group Assignment value of one (1). If not identified as Group Assignment one, the highest scoring project submitted by each applicant received a Group Assignment of two (2). All remaining projects, containing some hybrid of various levels of unserved and underserved areas, received a Group Assignment of three (3) through five (5), 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 score assigns rank based on the criteria described in the Staff Recommendation.

As a result, the staff recommended approving Vistabeam's application in part, by recommending support for the proposed projects described in the application and identified as Banner, Box Butte, Cheyenne, Deuel, Garden, Kimball, Morrill, Scottsbluff, and Sioux in the amount of **\$90,810**.

### **Hearing**

Ms. Sue Vanicek, Director of the Department presented testimony at the hearing relative to the recommended adjustments

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<sup>4</sup> State Broadband Initiative Broadband Mapping Data, April 2014 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).

<sup>6</sup> All projects filed for the NEBP in 2014 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).

to funding amounts. She testified that the Department reviewed each application and identified certain costs which should be excluded. Ms. Vanicek's testimony was offered and received into the record as Exhibit No. 22.

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. 23.

Mr. Matt Larsen, President of Vistabeam, testified in support of the application. Mr. Larsen's pre-filed testimony described the proposed projects recommended for broadband support and his support for the Commission staff's recommendation. Mr. Larsen pre-filed direct testimony was received into evidence as Exhibit No. 20. Vistabeam's application was received into evidence as Exhibit No. 11. Mr. Larsen stated approval of the proposed projects would bring broadband service to existing unserved and underserved areas of the state. The targeted locations will have minimum broadband speeds of 4 Mbps downstream and 1 Mbps upstream.

Ms. Ann Prockish, Director-State Regulatory Operations, testified for CenturyLink in opposition to the Morrill and Scottsbluff projects. She testified that Centurylink has concerns with these projects as they overlap current CenturyLink coverage. In Morrill County, the Vistabeam project overlaps CenturyLink service in 24 (twenty-four) percent of the census blocks. In Scottsbluff, the Vistabeam project overlap would be 17 (seventeen) percent. Ms. Prockish stated the percentage of overlap is higher when comparing population rather than census blocks.

Charter Communications filed comments in this application rather than presenting a witness. The comments were marked and received into evidence as Exhibit No. 19.

#### 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 Vistabeam's application for NEBP program support should be approved consistent with the staff recommendation. While the Commission will consider evidence of duplicative support on a case-by-case basis, in this case, the Commission does not find the opposition to the application significant enough to deny funding for the Morrill and Scottsbluff projects. As such a denial will leave a large percentage of the census blocks unserved and underserved. Accordingly, the Commission approves support for the nine proposed projects up to an amount of **\$90,810 or the actual cost** of construction for the projects whichever amount is lower.

#### Reimbursement Process:

Vistabeam must first make the investment and then may file a request for reimbursement with the NTIPS Department. Vistabeam 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 Vistabeam for reasonable expenditures made related to project specifications detailed in the application and approved in this Order. Once the investment is made, Vistabeam 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 Vistabeam 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;

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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.

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 five (5) year period following the completion of the project to ensure the Commission's objectives for this program are being met. Vistabeam 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 Vistabeam 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 Inventive Wireless of Nebraska LLC d/b/a Vistabeam shall be, and it is hereby, granted to the extent 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(s).

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

MADE AND ENTERED at Lincoln, Nebraska, this 24<sup>th</sup> day of June, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Aune Boef*  
*Tim Schram*  
*Paul J. ...*  
*Gerald L. ...*

*Frank E. Landis*  
Chairman

ATTEST:

*Steve Meradith*  
Executive Director

//s//Frank E. Landis