

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-92.11
Public Service Commission, on)
its own motion, seeking to)
administer the Nebraska)
Universal Service Fund's) GRANTED, IN PART
Broadband Program: Application)
to the Nebraska Broadband)
Program Received from N.E.)
Colorado Cellular, Inc. d/b/a)
Viaero Wireless.) Entered: June 24, 2014

APPEARANCES:

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

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

For Glenwood Telephone Company:

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 17th Street #500
Omaha, Nebraska 68102

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 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 Raicom, Inc., Southeast Nebraska Communications & Diode Cable:

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

For United States Cellular Corporation & Windstream Communications:

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

For Charter Communications:

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

For the Commission:

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

BY THE COMMISSION:

Background

By Application filed February 3, 2014, N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless ("Viaero" 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, US Cellular Corporation, Pinpoint Wireless d/b/a BLAZE Wireless, Consolidated Telco, Consolidated Telephone Company, Great Plains Communications, Nebraska Central Telephone, Stanton Telecom and Glenwood Telephone Membership Corporation. On May 2, 2014, Consolidated Telco, Consolidated Telephone Company, Great Plains Communications, Nebraska Central Telephone, and Stanton Telecom withdrew their Formal Intervention. On May 9, 2014, US Cellular Corporation withdrew its Formal Intervention.

A staff recommendation was filed on April 22, 2014. Pre-filed testimony was filed by Viaero 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-92.10 and NUSF-92.12 through NUSF-92.16. Mr. Loel Brooks entered an appearance on behalf of the Applicant. Mr. Andy Pollock appeared on behalf of Glenwood Telephone Company. Mr. Russell Westerhold appeared on behalf of Pinpoint Wireless, Inc. d/b/a BLAZE Wireless.

Project Overview

Applicant is a Commercial Mobile Radio Service (CMRS) provider with its principal office located in Fort Morgan, Colorado. Applicant sought broadband support for eighteen (18) 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 eighteen 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;¹ population and household by census block;² area by census block;³ and broadband availability.⁴

The Commission staff then utilized a group assignment to prioritize areas determined as unserved,⁵ 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.⁶

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.⁷ 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.

¹ Company specific publicly filed tariffs.

² United States Census Bureau, Census 2010 Summary File 1.

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

⁴ State Broadband Initiative Broadband Mapping Data, April 2014 submission.

⁵ 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).

⁶ All projects filed for the NEBP in 2014 are independent of all other projects filed by the same applicant.

⁷ 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).

As a result, the staff recommended approving Viaero's application in part, by recommending support for the Callaway, Minor Camp, and St. Edward projects in full and partial support for the Oconto project, for a total award of support amount of **\$1,140,577.**

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 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. Eric Preston, General Counsel for Viaero, testified in support of the application. Mr. Preston's pre-filed testimony described the proposed projects recommended for broadband support and his support for the Commission staff's recommendation in that regard. Mr. Preston's pre-filed direct testimony was received into evidence as Exhibit No. 27. Viaero's application was received into evidence as Exhibit No. 13. Mr. Preston stated approval of the proposed projects would bring wireless 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.

In addition, Viaero recommended expanding the size of the broadband program to increase the number of projects funded. Viaero, in its testimony, expressed concerns about the staff recommendation and the methodology used to rank projects. Viaero further stated that it could not evaluate the staff recommendation in a meaningful manner with any mathematical certainty.

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 recommendation. The Commission approves support for the proposed Callaway, Minor Camp, Oconto, and St. Edward projects up to an amount of **\$1,140,577 or the actual cost** of construction for the projects whichever amount is lower.⁸

In relation to Viaero's concerns about the staff methodology the Commission believes adoption of the staff recommendation achieves the Commission's goal of extending access to broadband in unserved and underserved areas throughout Nebraska. That notwithstanding, the Commission has indicated that it may open a proceeding to address modifications to the program, subsequent to this round of support and prior to the next round. The Commission will consider all interested parties' suggestions during that comment period.

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 documentation⁹ and shall certify to the Department that it had made the

⁸ Counsel for Viaero filed a letter on June 20, 2014, confirming Viaero's commitment to construct a tower at the Oconto site even though the Commission's grant award does not completely cover the costs for the site. The Commission's partial grant award for this site was \$129,032. Viaero may apply any unused grant funding from other approved sites in this Order towards completion of the Oconto site.

⁹ 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.

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.

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 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, 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 24th day of June, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

Application No. NUSF-92.11

Page 8

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 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 24th day of June, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

David Boyce

Tim Schram

Red Jones
Guadalupe

Frank E. Landis
Chairman

ATTEST:

Steve Meradith
Executive Director

//s//Frank E. Landis