

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-92.48
Public Service Commission, on its)
own motion, seeking to administer)
the Nebraska Universal Service)
Fund's Broadband Program:) GRANTED IN PART
Application to the Nebraska)
Broadband Program received from)
N.E. Colorado Cellular, Inc.,)
d/b/a Viaero Wireless.) Entered: December 20, 2016

APPEARANCES:

For the Applicant:

Loel P. Brooks
Brooks, Pansing, Brooks PC LLO
Wells Fargo Center, Suite 984
1248 O Street
Lincoln, Nebraska 68508

For the Commission:

Shana Knutson
300 The Atrium Building
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

By Petition filed on or around March 31, 2016 N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (Viaero), sought support from the Nebraska Universal Service Fund (NUSF) dedicated wireless program. Notice of the application appeared in the Daily Record, Omaha, Nebraska on April 6, 2016.

A public hearing on the application was held on November 10, 2016 in Lincoln, Nebraska with appearances as shown above. In support of its application, Viaero submitted pre-filed testimony from Mr. Loel Brooks. The Commission staff submitted pre-filed testimony for Ms. Sue Vanicek and Mr. Cullen Robbins.

Ms. Vanicek, the Director of the Commission's Nebraska Telecommunications Infrastructure and Public Safety (NTIPS) Department, presented her testimony. In her pre-filed testimony, Ms. Vanicek recommended the Commission approve application for support. Ms. Vanicek further testified that Staff and Department reviewed each application to determine whether all five Commission adopted application requirements were fulfilled, and determined that they were.

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Mr. Cullen Robbins testified on behalf of the Commission staff. Mr. Robbins is the Director of the Communications Department at the Commission. Prior to being named the director of the department, he was the IT/Telecom/GIS Analyst in the Communications Department. Mr. Robbins provided testimony describing the Staff's recommendations, and the methodology developed by the Staff to determine the use of Nebraska Broadband Program support and to recommend the Commission adopt the Staff's methodology. Mr. Robbins testified the staff employed a methodology consistent with Commission findings.

Mr. Robbins testified that information used to determine program support eligibility included location of the proposed tower(s) with longitude and latitude coordinates, county, and census block identification numbers, and 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 population and households by census block; area by census block, and road traffic data. Those towers located in areas with less than 4.5 households per square mile were identified as serving high-cost areas and eligible for dedicated wireless program support. In order to provide benefits to the greatest number of households in high-cost areas, staff assigned rankings to all towers found to be eligible for funding from those serving the greatest number of households to those serving the least number of households. Further, staff assigned additional proximity rankings to all towers found to be eligible for funding from those furthest from existing tower locations in the state to those closest. The staff also assigned additional rankings to all towers with higher daily traffic of all measured roadways within the tower footprint. Together, the three rankings then determine the proposed tower's funding priority. Those towers receiving higher funding priority are funded first.

As a result, the staff proposed that the Commission fund the tower sites submitted by Viaero Wireless in the amounts of \$306,884.87 for the Ruskin project, \$295,663.68 for the Deshler project, and \$313,396.20 for the Humboldt project.

Mr. Loel Brooks testified on behalf of Viaero Wireless. Mr. Brooks is employed by Viaero Wireless as State Regulatory Counsel. He testified that while he supports the Commission staff's recommendations to support three of its projects, it was Viaero Wireless's position that the Commission should consider additional factors used in previous orders in assessing support priority. Particularly, Viaero Wireless objected to the use of

the tower proximity factor, the use of traffic data in all tower projects, and not prioritizing projects with a matching component.

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

The Commission allocated \$4 million for the 2016 NUSF calendar funding year in which this Petition was filed. Three wireless carriers filed Petitions seeking Dedicated Wireless Fund Program support. Based on the application and the evidence in the record, the Commission finds Viaero Wireless's application for dedicated wireless universal service funds should be approved for the **Ruskin, Deshler, and Humboldt** tower sites.

At the hearing Viaero raised concerns about to the staff's recommendation relative to the use of the tower proximity factor and the use of traffic data for all projects. Viaero also thought the Commission should have prioritized projects with a match component. We have taken Viaero's arguments relative to tower proximity, road traffic data and match under consideration. In this case, however, those factors would not have had a determinative effect on the outcome of the staff's recommendation. Four of the seven proposed tower sites did not meet the required density calculation utilized as the first step of the Commission staff's recommendation and included in Mr. Robbin's testimony.¹ The first step in the Commission staff's methodology considers density of less than 4.5 households per square mile as qualification of dedicated wireless program support in a high-cost area.² This standard has historically been

¹ The four sites above the 4.5 household density per square mile calculation were the Hebron, Tecumseh, Falls City West and Lake Wa Con-Da sites.

² See NUSF-92, *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, ORDER (January 26, 2016) (Finding consistent with the Commission's methodology in NUSF-69 the Commission will first determine whether the area is rural and in need of support using household density information, and then use information on the number of households to rank projects to provide the benefits of wireless broadband service to the greatest number of households in a given rural area.) See generally, Staff Recommendations filed in the NUSF-69 proceedings where those towers located in defined areas with less than 4.5 households per square mile were identified as serving high-cost areas and eligible for dedicated wireless program support. See also NUSF-26 *In The Matter of the Nebraska Public Service Commission, On Its Own Motion, Seeking To Establish A Long-Term Universal Service Funding Mechanism, Findings and Conclusions* (November 3, 2004) (where it was determined that high-cost support would be targeted in areas with less than 4.5 households per square mile.)

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used in the Commission staff's calculation in the NUSF-69 proceedings and the Commission stated it would be utilized again to determine whether the area is rural and in need of support. To determine the density calculation in its analysis, the Commission staff has historically relied upon publically available census block information. A proposed project that does not meet the density criteria, does not move forward in the consideration to be weighed against other projects.³

At the hearing, Viaero argued the Commission's January 2016 Order was unclear relative to how a match would be considered. In that decision we determined that a match was not a bright line requirement. However, we did not specifically say how a match would be considered if at all. We agree that it would be helpful to clarify how a match will be considered going forward. On the one hand a match provided by a carrier does serve the public interest as we are able to leverage more use of the available support. On the other hand, however, we want to encourage the submission of proposals that may not be economically viable without grant support. Therefore, we clarify that going forward a carrier's proposed match will not be used to give priority in the ranking and scoring of projects unless there is a tie between two carriers where one would receive support and the other would not because of the exhaustion of support. The match and the degree of match will break a tie in that instance.

Reimbursement Process:

The Commission staff recommended support for these tower sites submitted by Viaero. We agree with the staff's proposed methodology. Upon further review of the application and the costs submitted by Viaero Wireless, the Commission approves reimbursement up to **\$306,884.87** or the **actual cost** of construction for the Ruskin site approved in this order, whichever is lower, up to **\$295,663.68** or the **actual cost** of construction for the Deshler site approved in this order, whichever is lower, and up to **\$313,396.20** or the **actual cost** of construction for the Humboldt site approved in this order, whichever is lower. These numbers represent an amount consistent with staff's recommendation on the proposed tower site costs.

Viaero Wireless must first make the investment and then may file a request for reimbursement with the NTIPS Department.

³ However, we note that the use of the traffic data had very little impact on the overall analysis and would not have had an impact on Viaero's proposed towers in comparison to other competing grant requests.

Viaero Wireless 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 dedicated wireless program will reimburse Viaero Wireless for reasonable expenditures made related to the cell site approved in this Order. Once the investment is made, Viaero Wireless shall file a request for support, provide the NTIPS Department with copies of the invoices 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 described rural areas.

As a dedicated wireless program recipient, the Commission finds Viaero Wireless must meet the following conditions:

Infrastructure Sharing:

Viaero Wireless shall be required to construct tower facilities in a manner that would accommodate collocation and sharing of additional equipment of other wireless carriers, public safety agencies, Internet providers and other providers with technologies that qualify. Such collocation will be required where technically feasible and upon commercially reasonable terms and conditions. While the Commission will not require Viaero Wireless to routinely file collocation agreements, if an issue is raised by public safety agency or another wireless provider, the Commission will make a determination as to whether these ordered conditions are being met.

Roaming Agreements:

Viaero must agree to permit roaming at commercially reasonable rates. We believe this requirement to be an important policy objective. The Commission will not require Viaero to routinely file its roaming agreements. Entities denied roaming access at commercially reasonable or market-based rates may file a request with the Commission to make a determination as to whether this requirement is being satisfied.

Broadband Commitments:

To encourage the deployment of wireless broadband services in Nebraska, the Commission gives priority to applicants which commit to providing wireless broadband services. Viaero Wireless must report broadband availability to the Commission upon request.

Phase II Enhanced 911 Capability:

To advance public safety, the Commission requires that the cell sites funded by this approval must have the equipment and software necessary for Phase II wireless E911 capability. In addition, in a manner consistent with federal regulations, the wireless provider must provide Phase II wireless E911 service after a request has been made by a County or Public Safety Answering Point (PSAP). Viaero must certify to the completion and commitment of these requirements prior to reimbursement from the dedicated wireless program.

Reporting Requirements:

Viaero shall file, on an annual basis, consistent with federally designated ETCs, the information required by the Commission's Telecommunications Rules pertaining to eligible telecommunications companies and the investment information required by the Commission's Order in Docket NUSF-66. The report should make clear to the Commission that Viaero Wireless will not request reimbursement for equipment or tower construction where grant money was also received from another source. Viaero Wireless shall file its annual report on or before June 1 of each year.

In addition, the Commission expects that construction on these projects will proceed in a prompt business-like fashion. Progress reports shall be filed on an annual basis or more frequently if deemed necessary by the Commission, so that the Commission can plan for the timing of distribution for these funds.

Continuing Nature of Requirements:

The Commission will enforce these requirements for as long as the cell site is in use and providing service to customers. The Commission may take any action it deems necessary and appropriate to enforce the requirements and conditions in this Order.

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

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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 N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless shall be subject to all terms and conditions adopted in this Order.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 20th day of December, 2016.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Gerald Ledy
Crystal Quader
Joe Justice

Tim Schram
Chairman

ATTEST:

Sharon
Deputy Director

//s//Frank E. Landis
//s//Tim Schram