

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-92.59  
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 7, 2021

### BY THE COMMISSION:

By Application filed August 31, 2021, N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero Wireless or Applicant) seeks wireless fund support. Notice of the application appeared in The Daily Record, Omaha, on September 7, 2021. On September 23, 2021 and pursuant to 291 Neb. Admin. Code, Ch. 1, § 002.12A, United States Cellular Corporation (U.S. Cellular) filed a Petition for Formal Intervention in the above-captioned proceeding. The Petition for Formal Intervention was granted on September 30, 2021.

Viaero Wireless requested NUSF support for nine (9) discrete and separate projects and sought approximately \$4 Million in support. In support of its application Viaero Wireless also committed to providing a ten (10) percent match towards the cost of each project.

The staff evaluated and analyzed all information filed pursuant to the historic methodology used by the staff and approved by the Commission. On October 26, 2021 the staff released a proposed recommendation. Since that time, both Viaero Wireless and U.S. Cellular have been in communication, and as a result, negotiated a resolution which was filed with the Commission on November 11, 2021. Based on that proposed resolution which included the withdrawal of the Reynolds tower for consideration, the staff agreed to amend its proposed recommendation so that the full amount of allocated support could be awarded.

In consideration of the foregoing, the staff recommended that the Commission approve grant support for the following six (6) tower sites submitted by Viaero Wireless: Foster, Plymouth,

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Berwyn, Meadow Grove, Bee, and Oakdale. The staff recommended support in the amount of \$2,853,784.22 be awarded to Viaero Wireless for the construction of the aforementioned tower sites. On November 12, 2021 counsel for Viaero Wireless indicated that Viaero Wireless and U.S. Cellular consented to having the Commission proceed with the Applications filed without the necessity of a hearing. While U.S. Cellular has filed a Formal Intervention in this proceeding, an agreement has been reached whereby based on the amended recommendation released by the staff, no hearing on the amended recommendation is warranted.

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

The Commission allocated \$5.2 million for the 2021 NUSF calendar funding year in which this Petition was filed. Two wireless carriers filed Petitions seeking Wireless Fund Program support. Based on the application and the staff recommendation, the Commission finds Viaero Wireless' application for dedicated wireless universal service funds should be approved for the **Foster, Plymouth, Berwyn, Meadow Grove, Bee, and Oakdale** tower sites.

#### Reimbursement Process:

The Commission approves reimbursement up to **\$2,853,784.22** or the **actual cost** of construction for the sites approved in this order, whichever is lower.

Viaero Wireless must first make the investment and then may file a request for reimbursement with the NUSF Department. Viaero Wireless does not need to complete the construction process prior to seeking reimbursement; rather, it may work with the 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 Department with copies of the invoices and shall certify to the Department that it has 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:

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### 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 Wireless 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 Wireless 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 Wireless must certify to the completion and commitment of these requirements prior to reimbursement from the dedicated wireless program.

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### Reporting Requirements:

Viaero Wireless 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.

## 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 Viaero Wireless shall be subject to all terms and conditions adopted in this Order.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 7th day of December, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Rob Johnson*  
*Crystal Broadus*  
*Mary Kiddy*  
*Tim Schram*

*Don Watson*  
Chair

ATTEST:

*Shanice Khutson*  
Deputy Director