

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-92.62
Public Service Commission, on its)
own motion, seeking to administer)
the Nebraska Universal Service) ORDER GRANTING APPLICATION,
Fund's Broadband Program:) IN PART
Application to the Nebraska)
Broadband Program received from)
N.E. Colorado Cellular, Inc.,)
d/b/a Viaero Wireless.) Entered: August 16, 2022

BY THE COMMISSION:

By Application filed on or around April 20, 2022, N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless ("Viaero" or "Applicant"), 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 22, 2022. No protests were filed; therefore, this docket was processed pursuant to the Commission's Rules of Modified Procedure.

Viaero Wireless' application requested NUSF support for twelve proposed tower sites and sought \$8,063,416.19. Viaero states that it is a mobile broadband provider that offers both mobile and fixed broadband services in Nebraska. Viaero states that it operates an extensive wireless network in Nebraska, including 4G LTE broadband in some areas. Viaero states that it monitors the performance of its voice and data network on a site-by-site basis from its Network Operations Center in Fort Morgan, Colorado.

In support of its application, Viaero commits to provide a ten percent match to any project selected for funding by the Commission. Commission staff has evaluated and analyzed all information filed pursuant to the historic methodology used by the staff and approved by the Commission. Based on that evaluation, the staff recommends that the Commission approve grant support for the following four tower sites submitted by Viaero: Filley, De Witt, Goehner, and Diller. The staff recommended support in the amount of \$2,675,805.00 be awarded to Viaero for the construction of the aforementioned tower sites.

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

The Commission allocated \$8 million for the 2022 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's application for dedicated wireless universal service funds should be approved in part, with funding granted for the Filley, De Witt, Goehner, and Diller tower sites.

Reimbursement Process:

The Commission approves reimbursement up to \$2,675,805.00 or the actual cost of construction for the sites approved in this order, whichever is lower. Viaero must first make the investment and then may file a request for reimbursement with the NUSF Department. Viaero does not need to complete the construction process prior to seeking reimbursement; rather, it may work with the NUSF Department to develop intervals at which reimbursement can be sought. The dedicated wireless program will reimburse Viaero for reasonable expenditures made related to the cell site approved in this Order. Once the investment is made, Viaero shall file a request for support, provide the NUSF 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 must meet certain conditions, as described below.

Infrastructure Sharing:

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

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Roaming and Co-Location Agreements:

Viaero must agree to permit roaming and co-location of facilities on state-funded towers at commercially reasonable rates. We believe this requirement to be an important policy objective. Viaero shall file with the Commission a list of all roaming agreements in place in Nebraska that would cover the supported towers at the time of construction completion. This information may be filed confidentially. Entities denied roaming access or co-location at commercially reasonable or market-based rates may file a request with the Commission to determine 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 must report broadband availability to the Commission upon request.

Adherence to State and Federal Requirements:

As a condition of receiving this grant, Viaero must adhere to all state and federal regulations and requirements pertaining to the provision of wireless broadband services. Viaero must not use equipment or facilities prohibited by the FCC within its network.¹ Viaero must certify, at the completion of each of the projects listed herein, that it has met those obligations.

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, once a request has been made by a County or Public Safety Answering Point ("PSAP"), the wireless provider must provide Phase II wireless E911 service in a manner that is consistent with federal regulations. Viaero must certify to the completion and commitment of these requirements prior to reimbursement from the dedicated wireless program. Viaero must also provide evidence that demonstrates the tower is Phase II wireless E911 capable within

¹ This includes, but is not limited to, equipment listed by the Federal Communications Commission in the following public notices: *FCC List of Equipment and Services That Pose National Security Threat*, WC Docket No. 18-19, DA 21-309 (March 12, 2021); *Announcement of Additions to the Covered List*, WC Docket No. 18-19, DA 22-320 (March 25, 2022).

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ninety days of project completion. If information proving the capability is not provided within ninety days, reimbursement for project costs may be withheld.

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 will not request reimbursement for equipment or tower construction where grant money was also received from another source. Viaero 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 and 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 is hereby granted in part as provided herein.

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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 16th day of August, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Crystal Brader
Mary Kidden
Tim Schram

De Waterman

Chair

ATTEST:

Thomas W. Golden
Executive Director