

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. C-5012/
Application of Inventive)	NUSF-115
Wireless of Nebraska, LLC d/b/a)	
Vistabeam, Gering, Nebraska,)	
for Designation as an Eligible)	ORDER GRANTING APPLICATION
Telecommunications Carrier in)	
the State of Nebraska.)	
)	Entered: February 20, 2019

BY THE COMMISSION:

On October 10, 2018, Inventive Wireless of Nebraska, LLC d/b/a Vistabeam ("Vistabeam" or "Applicant") of Gering, Nebraska, filed an application seeking designation as an Eligible Telecommunications Carrier ("ETC") for the purpose of providing services supported by the FCC's Connect America Fund Phase II. Notice of the application was published in The Daily Record, Omaha, Nebraska, on October 15, 2018. No formal interventions were filed. Informal intervention was granted to the Rural Telecommunications Coalition of Nebraska ("RTCN") on January 8, 2019.

EVIDENCE

A hearing on the application was held on February 6, 2019. Loel Brooks appeared on behalf of the Applicant. Anthony Aerts appeared on behalf of RTCN. Sallie Dietrich appeared on behalf of Commission staff. Exhibits numbered 1 through 7 were offered and accepted at hearing. Following the hearing, late-filed Exhibit 8 was offered by Applicant and accepted.

Matt Larsen, CEO of Vistabeam, testified on behalf of the Applicant. Mr. Larsen testified that Applicant has applied for ETC status because it has been awarded support by the Federal Communications Commission's ("FCC") CAF II Auction ("the Auction"). Mr. Larsen testified that Vistabeam offers fixed wireless high-speed internet services in rural unserved and underserved communities in northeast Colorado, western Nebraska, and eastern Wyoming. Vistabeam has been providing services in Nebraska since 2004, originally operating under the trade name of Skybeam. Mr. Larsen testified that Vistabeam provides broadband services through fixed wireless, as well as Voice over Internet Protocol.

Mr. Larsen further testified that Vistabeam was awarded support in the Auction for two census blocks near Scottsbluff, Nebraska, and is seeking ETC designation to meet the requirements

of the Auction.¹ Since the filing of Vistabeam's Application, Vistabeam has been awarded ETC status in Colorado and Wyoming.

Mr. Larsen further testified that some construction would need to take place in order to serve the census blocks designated by the CAF II auction. Mr. Larsen testified that Vistabeam expects to have such construction completed by June 1, 2019, with construction beginning in March or April.

Mr. Larsen testified that Vistabeam's service offerings will not change in any way if it receives ETC designation. However, Vistabeam intends to offer a Lifeline broadband product for all its Nebraska customers. Mr. Larsen testified that pursuant to the requirements of the Auction, Vistabeam will begin to offer additional service packages to its customers across Nebraska, including one plan at 25/3 Mbps for \$39.99 per month. Vistabeam intends to file information regarding its Lifeline offerings with the Commission once they have been finalized.

Mr. Larsen further testified that Vistabeam currently has battery backup at all of its core sites, and intends to extend the system to offer eight hours' worth of battery backup at all of its sites. Mr. Larsen testified that some of Vistabeam's rural sites have limited battery backup, and some do not have battery backup.

No further testimony was offered. Following the hearing, the Applicant submitted its late-filed Exhibit 8, consisting of a three-year plan for Vistabeam's development in Nebraska.

FINDINGS AND OPINION

The federal Communications Act of 1934, 47 U.S.C. § 214(e), sets forth the standards and processes for a state commission to grant carriers the designation of a federal eligible telecommunications carrier. 291 Neb. Admin. Code § 5-009 of the Commission Rules contains the requirements for Commission designation of ETCs and NETCs.

The three general requirements listed in Section 214(e) are: 1) the carrier must be a common carrier; 2) the carrier must offer the services supported by the federal fund; and 3) the carrier must advertise the availability of those services. The carrier must also demonstrate the ability to fulfill the requirements throughout the service area for which the carrier is seeking ETC designation.

¹ A map of the area is attached to the Application. Exhibit 1, attachment B.

1. Common Carrier

The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either a wire or radio technology.² However, in its USF/ICC Transformation Order, the FCC found that its authority to promote universal service "does not depend on whether interconnected VoIP services are telecommunications services or information services under the Communications Act."³ Instead the FCC adopted a technologically neutral approach, allowing companies to provide voice service over any platform, including IP networks.⁴ Therefore, pursuant to the FCC's guidelines, Vistabeam, as an interconnected VoIP provider over a fixed wireless broadband network, was deemed potentially eligible for CAF funding and agreed to operate as a common carrier in the census block areas in which it sought FCC auction support.⁵

2. Supported Services

Federal regulations and Commission rules both require an ETC to demonstrate that it will offer the services that are supported by federal universal service.⁶ The FCC's requirements under 47 C.F.R. § 54.101(a)(1) are as follows:

- a. voice-grade access to the public switched network or its functional equivalent;
- b. minutes of use for local service without additional charge to the end user;
- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.⁷

The Commission finds that the Applicant meets each of these requirements, as described below.

² See 47 C.F.R. § 153(10).

³ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Reform - Mobility Fund*, 26 FCC Rcd 17633, at ¶63 (2011) ("USF/ICC Transformation Order").

⁴ USF/ICC Transformation Order at 17692-93.

⁵ See 220 Applicants Qualified to Bid in the Connect America Fund Phase II Auction (Auction 903) Bidding to Begin on July 24, 2018, Public Notice, AU Docket No. 17-182, WC Docket No. 10-91 (rel. June 25, 2018). See generally 47 C.F.R. § 54.315 relative to the CAF Phase II support competitive bidding application process.

⁶ 47 C.F.R. §§ 54.101(a), 54.202(a); 291 Neb. Admin. Code § 5-009.02A2.

⁷ See Lifeline Reform Order at 207-208.

A. Voice Grade Access to the Public Switched Network

As stated above, in its 2011 USF/ICC Transformation Order, the FCC modified the definition of a supported service to a technologically neutral approach. This definition now allows companies to provide voice service over any platform, including IP networks.⁸ The FCC's regulations now specify that the functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent.⁹ Therefore, Vistabeam provides voice grade access to the public switched network through interconnected VoIP services as required under § 54.101(a).

B. Local Usage

The FCC has defined "local usage" to mean an amount of minutes of use of exchange services provided free of charge to end users.¹⁰ Vistabeam proposes to include unlimited calling, including long distance, usage in its rate plans and has committed to complying with any minimum local usage requirements adopted by the FCC or the Commission.¹¹

C. Access to Emergency Services

The Applicant states that it provides its customers with access to emergency services by dialing 911 in accordance with federal and state requirements.¹² The Applicant acknowledges that, as a provider of VoIP technology, this access is limited to the registered service address where the subscriber is authorized to use the service, and that this service address is the only address provided to the local PSAP for purposes of emergency services. The Applicant notes that its service is not a mobile service, however.

Applicant plans to provide customers with a battery backup unit with capability to maintain dial tone and broadband access for two hours following a power failure. Customers will also be provided with the option to purchase enhanced battery backup options that are capable of running for eight or twenty-four hours.

The Commission notes here that it is concerned about the potential location accuracy issues and reliability with Vistabeam's provision of interconnected VoIP service. However, we

⁸ USF/ICC Transformation Order at 17692-93.

⁹ *Id.* See also 47 C.F.R. § 54.101(a).

¹⁰ 47 C.F.R. § 54.101(a)(2).

¹¹ See Exhibit 1, Application, at 6.

¹² *Id.*

realize this is not unique to Vistabeam's service, but a consequence of the technology. The FCC has determined not to make distinctions based on technological delivery methods of voice service and has further found Vistabeam's service plan meets the requirements of FCC rules for purposes of participating in the CAF Phase II auction program. Therefore, the Commission finds Vistabeam's service plan meets the requirements of 47 C.F.R. § 54.101(a). However, we find Vistabeam should provide information to its consumers about the limitations of VoIP-based emergency service capability, particularly with regard to battery backup in case of a power outage. The Commission therefore requires that Vistabeam will include this information in all VoIP customer billing statements or their functional equivalents for the month of June, 2019, and on a regular basis thereafter.

D. Toll Limitation for Qualified Low-Income Customers

Vistabeam has certified that toll calls are not permitted through its voice system.

3. Advertisement of Services

Federal and state regulations require an ETC to advertise the availability of supported services and related charges using media of general distribution.¹³ ETCs must also publicize the availability of Lifeline or NTAP services in a manner reasonable calculated to reach those that qualify for the service.

Based on the Application and evidence submitted, we find Vistabeam has provided sufficient commitments to advertise the availability of such services and charges using media of general distribution and in a manner that is designed to reach those likely to qualify for such services. Vistabeam's Application states that it targets its advertising to specific markets in Nebraska through locally focused online media and social media, community sponsorships, and traditional media including AM/FM radio.¹⁴ At hearing, Mr. Larsen also testified that Vistabeam commits to continue advertising the availability of its services using media of general distribution.

4. Designated Service Area

Vistabeam states in its Application that it is seeking ETC designation in its Nebraska service area, including but not limited

¹³ See 47 U.S.C. § 214(e) (1) (B); 291 Neb. Admin. Code § 5-009.02A3.

¹⁴ Exhibit 1 at 7.

to the area where it has received an award in the CAF II Auction. A map of the service area is attached to the Application as Exhibit A, and a map of the census blocks comprising that area is attached as Exhibit B. A map of the area where Vistabeam received an award in the Auction is attached as Exhibit C, and a map of the census blocks in that area is attached as Exhibit D.

We find Vistabeam has properly identified the service areas in which it is requesting ETC designation. We further find that Vistabeam should be authorized to provide the supported services throughout the entirety of its service area, as identified in Exhibits A and B to its Application.¹⁵

5. Additional Eligibility Criteria

Federal regulations, found at 47 CFR § 54.202, contain additional eligibility requirements that must be met by any carrier seeking ETC designation.¹⁶ Commission Rules substantially mirror the FCC requirements.¹⁷ To meet the additional requirements a company must:

- a. Certify it will comply with the service requirements applicable to the support it receives;
- b. Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network;
- c. Demonstrate its ability to remain functional in emergency situations; and
- d. Demonstrate that it will satisfy applicable consumer protection and service quality standards.

A. Applicable Service Requirements

Vistabeam certifies that it will comply with the service requirements applicable to the support it receives.¹⁸ Pursuant to the CAF Phase II guidelines, the FCC has established a 10 Mbps download and 1 Mbps upload speed as the threshold qualifying speed for supported broadband services. Vistabeam offered testimony that its proposed service offerings meet the FCC's minimum speed requirements.¹⁹ Vistabeam will commence offering service to all

¹⁵ Exhibit 1.

¹⁶ See 47 CFR § 54.202(a).

¹⁷ See 291 Neb. Admin. Code § 5-009.02.

¹⁸ 47 CFR. § 54.202(a)(1)(i); Exhibit 1 at 8.

¹⁹ See Hearing Transcript at 10-11. Vistabeam testified that it intends to offer a 25 Mbps package per FCC requirements.

qualified consumers upon designation as an ETC and consistent with the deployment plan filed with the FCC.

B. Five Year Service Improvement Plan

Generally, an applicant for ETC status is required to submit to the Commission a five-year plan describing its proposed service improvements or upgrades.²⁰ The Applicant in this docket has requested a waiver of that requirement, based upon the FCC's finding that the reporting requirements under the CAF II Auction are sufficient for the FCC to remain appraised of a company's build-out process during the support term.²¹ The Applicant has also submitted to the Commission a three-year plan for development in Nebraska,²² and has committed to filing annual information with the Commission detailing its progress towards meeting these plans.²³ Given this information, the Commission finds that the five-year plan requirement should be waived, and that the Applicant will be required to submit copies of its reports to the FCC on an annual basis.

C. Ability to Remain Functional in Emergency Situations

ETC applicants must demonstrate an ability to remain functional during emergency situations.²⁴ The Applicant has certified to the Commission that its network is designed to remain functional in emergency situations.²⁵ The Applicant further provided an emergency plan to the Commission.²⁶ The Applicant holds a contract with Intrado, a third-party vendor to ensure customer access to 911 services in case of an emergency.²⁷ Based on these commitments, we find Applicant has met the requirements set forth in federal and state regulations.

D. Consumer Protection and Service Quality Standards

We next examine Applicant's commitment to service quality. An ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.²⁸ In its Application, Applicant committed to satisfying all consumer

²⁰ 47 C.F.R. § 54.202(a)(1)(ii); 291 Neb. Admin. Code § 5-009.02A6.

²¹ Exhibit 1 at 8.

²² Exhibit 8.

²³ Transcript at 15.

²⁴ 47 C.F.R. § 54.202(a)(2); 291 Neb. Admin. Code § 5-009.02A7

²⁵ Exhibit 1 at 8.

²⁶ Exhibit 1, Attachment G.

²⁷ Exhibit 5 at 13.

²⁸ 47 C.F.R. § 54.202(a)(3), 291 Neb. Admin. Code § 5-009.02A8

protection and service quality standards provided by the FCC and any state specific consumer protection and service quality standards.²⁹

Accordingly, based on the evidence presented, we find that Applicant has satisfied the requirement to demonstrate it will comply with applicable consumer protection and service quality standards. The Commission also notes that in the case that Applicant's service quality is inadequate, customers will drop the service, giving Applicant an incentive to provide quality service. We also believe that the annual reporting requirements contained in the ETC annual reporting rules provide the Commission with sufficient information to evaluate the Company's service quality in the future.

6. Public Interest

Applicants for ETC status must demonstrate that such designation is consistent with the public interest, convenience, and necessity.³⁰ The public interest consideration may include the benefits of increased consumer choice and the unique advantages and disadvantages of the Applicant's service offerings.

Applicant states that its designation as an ETC will serve the public interest by facilitating the FCC's goal of developing voice and broadband networks in rural, high-cost areas.³¹ Applicant states that if it is awarded ETC status, it will be eligible to receive federal USF funding, and will use that funding to directly advance the goal of deploying voice and broadband-capable networks in rural, high-cost areas. Applicant has committed to offer high-speed, high-quality broadband and voice service provided through interconnected VoIP and fixed wireless for residents of rural Nebraska. Applicant intends to provide connectivity to consumers, businesses, and rural schools, libraries, and medical facilities.³² Applicant also notes that its designation as an ETC will promote increased competitive choice, thereby increasing innovation and incentivizing other carriers to improve their existing networks to remain competitive.³³ Applicant has further committed to comply with all applicable rules and regulations of the Commission.³⁴

²⁹ Exhibit 1 at 8-9.

³⁰ 47 C.F.R. § 54.202(b); 291 Neb. Admin. Code § 5-009.02A1.

³¹ Exhibit 1 at 10.

³² *Id.* at 11.

³³ *Id.*

³⁴ Exhibit 5 at 19.

Based on the evidence before us, we conclude that Applicant's service offerings will provide a public interest benefit and its business plan provides a unique advantage to consumers. We find Applicant has demonstrated that its designation as an ETC would be consistent with the public interest, convenience, and necessity.

7. Provision of Continuous Service

Commission Rule requires that an ETC not only demonstrate the ability and commitment to provide the supported services listed above, but must also demonstrate the ability to continuously provide such services in its designated Service Area.³⁵ We find, upon our review of the Application and testimony, that Applicant has committed to provide the supported services listed above continuously throughout the census blocks of its Service Area.

8. Provision of Service to Requesting Customers

The Commission's Rules require an ETC to demonstrate its commitment to provide service throughout the designated area to all customers who make reasonable request for service.³⁶

As demonstrated by Applicant in the Company's Application, the order contains build-out requirements for recipients of funds in the program. Following designation, if a potential subscriber is within the Company's designated ETC service area, but outside of Applicant's existing network coverage, the Company agreed and committed to follow the graduated service extension process set forth in Section 009.02A5 of the Commission Rules.

We find Applicant has demonstrated an ability and commitment to satisfy its obligation to provide service upon reasonable request throughout the Company's requested service areas.

9. Nebraska Telephone Assistance Program

The Commission Rules require carriers designated as ETC for purposes of receiving USF support to participate in the Nebraska Telephone Assistance Program ("NTAP") and comply with applicable NTAP rules.³⁷ Applicant committed to complying with the Commission's orders, rules and regulations regarding NTAP including the requirement to use only the Commission approved NTAP Application Form, requirements regarding additions and removals of NTAP subscribers from the NTAP program and the semiannual reporting

³⁵ 291 Neb. Admin. Code § 5-009.02A4.

³⁶ 291 Neb. Admin. Code § 5-009.02A5.

³⁷ 291 Neb. Admin. Code § 10-004.04.

of NTAP customer lists.³⁸ The Company also expressed an understanding that all eligibility determinations of NTAP applicants are made exclusively by the Commission. Applicant further committed to complying with those requirements adopted by the FCC in its *Lifeline Reform Order* to annually verify the eligibility of NTAP subscribers³⁹ in cooperation with the NTAP Department of the Commission.

We find that Applicant shall contact the Commission's NTAP Department prior to beginning NTAP operations in Nebraska so that it can discuss administrative and logistical issues.

Finally, in effort to prevent fraud, waste and abuse in the NTAP and Lifeline programs, the Commission will closely scrutinize Applicant's compliance with our rules and regulations and will take any and all administrative action it deems appropriate, including revocation of Applicant's ETC designation, if it becomes evident Applicant is not in compliance.

10. Conclusion

In summary, upon review of the Application and evidence presented at the hearing, we find Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e) and applicable state and federal law for the designation of eligible telecommunications carriers in the proposed census block areas for the limited purpose of participation in the FCC's Connect America Fund Phase II Program and the Lifeline and Nebraska Telephone Assistance Programs, and the Application should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-5012/NUSF-115 should be, and is hereby, granted, and Inventive Wireless of Nebraska, LLC d/b/a Vistabeam is designated as an eligible telecommunications carrier in the State of Nebraska for the limited purpose of receiving federal universal service support to participate in the FCC's Connect America Fund Phase II Program and the Lifeline program as requested in the Application consistent with the findings and conclusions made herein.

IT IS FURTHER ORDERED that Inventive Wireless of Nebraska, LLC d/b/a Vistabeam is hereby declared to be a Nebraska Eligible

³⁸ See generally Exhibit 5.

³⁹ Lifeline Reform Order at 240-242.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-5012/NUSF-115

Page 11

Telecommunications Carrier for the limited purpose of receiving state universal service support to participate in the Nebraska Telephone Assistance Program.

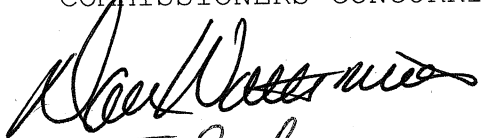


IT IS FURTHER ORDERED that Inventive Wireless of Nebraska, LLC d/b/a Vistabeam shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

IT IS FURTHER ORDERED that Inventive Wireless of Nebraska, LLC d/b/a Vistabeam shall file with the Commission copies of its annual reports filed with the FCC pursuant to 47 C.F.R. § 54.313, within thirty (30) days of the date such reports are filed with the FCC. If Applicant desires a protective order for any confidential information submitted in these reports, Applicant must request one at least sixty (60) days prior to the due date of the first filing.

IT IS FURTHER ORDERED that Inventive Wireless of Nebraska, LLC d/b/a Vistabeam shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its eligibility for receipt of federal universal service support effective as of the date of this Order.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 20th day of February, 2019.

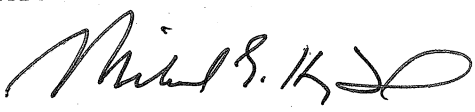
COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION


Chair

ATTEST:


Executive Director