

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public ) Application No. NUSF-69.03  
Service Commission, on its own )  
Motion, seeking to implement )  
policies and procedures related to )  
providing dedicated universal ) GRANTED  
service support for wireless )  
telecommunications services: )  
Petition received 5-20-2009 from )  
N.E. Colorado Cellular, Inc., )  
d/b/a Viaero Wireless, for support. ) Entered: October 20, 2009

APPEARANCES:

For the Applicant:

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For the Commission:

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BY THE COMMISSION:

By Petition filed May 20, 2009, 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 June 3, 2009. The Commission allocated \$5 million for the 2009 NUSF calendar funding year in which this Petition was filed. No protest or petition of formal intervention has been filed.

A public hearing on the application was held on September 29, 2009 in Lincoln, Nebraska. Appearances were entered as indicated above.

In support of its application, Viaero called three witnesses, Andrew Newell, Kara Thielen, and Kim Bailey.

Mr. Andrew Newell is employed by Viaero as General Counsel. He testified Viaero has 248 cellular towers in Nebraska covering approximately 80 percent of the land mass of the state. Viaero seeks dedicated wireless universal service fund support to build 15 towers in unserved and underserved areas of the state. Viaero estimates its costs to construct these towers would be approximately \$5.1 million. Viaero seeks \$5 million from the state universal service fund in this application. The proposed tower sites would be located in: Dawes County, Morrill County, Chase County, Cherry County, Keya Paha County, Custer County, Arthur County, Knox County, and Holt/Boyd Counties. Mr. Newell testified that Viaero determined the proposed cell towers based on internal information showing where cell coverage using GSM technology is absent or spotty.

Mr. Newell further testified Viaero has made application to the Rural Utilities Service (RUS) and the National Telecommunications Information Administration (NTIA) for federal broadband grants and loans. Viaero seeks \$134 million in federal funding to build 126 cell towers capable of providing high-speed broadband services. Under cross examination Mr. Newell indicated that the proposed tower locations in the RUS and NTIA application did not include the proposed tower locations in Viaero's Petition before the Commission.

Ms. Thielen, Viaero's E911 Regulatory Director, testified generally regarding E911 capability of the proposed tower sites. She testified that all towers will be constructed so that they are E911 equipped and they can implement Phase II E911 upon request. Ms. Thielen also testified that Viaero will construct cell sites in such a manner that will permit another carrier to collocate equipment on Viaero's tower. Viaero is aware that collocation is a condition of dedicated wireless fund support.

Ms. Thielen also testified that tower locations were also chosen based on requests for service. She testified that Viaero customers have contacted Viaero about specific coverage issues.

Ms. Kim Bailey, Viaero's Construction Inventory Purchasing Manager, also testified. She is responsible for estimating the construction costs and seeking reimbursement. She testified that the construction estimates are fairly accurate based on prior experience. She further testified that Viaero has worked with staff on fulfilling the requisites for reimbursement.

Mr. Tyler Frost testified on behalf of the Commission staff. Mr. Frost is the Commission's economist and cost model expert. Mr. Frost provided a review of the Commission's analysis for determining whether the proposed tower sites should be eligible for universal service support and, if so, at what levels. Mr. Frost testified the staff employed a methodology similar to that adopted by the Commission in its previous findings in dedicated wireless fund orders.

Mr. Frost testified that based on location he used out-of-town household density, households per square mile, to determine eligibility for all proposed locations. 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. All proposed towers submitted for funding by Viaero are identified as serving said high-cost areas and are therefore eligible for dedicated wireless program support under Staff's methodology.

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 out-of-town households to those serving the least number of out-of-town 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. Together, the two rankings then determine the proposed tower's funding priority. Those towers receiving higher funding priority are funded first.

As a result, he testified, of the 15 proposed towers, 13 are identified as eligible for funding in the amount requested. The 13 tower sites include: Wayside, Emmett, Brocksburg, Reddington, Burton West, Champion, Chadron, Butte West, Creighton, South Arnold, Verdel, Arnold, and Wood Lake. In addition, one tower site would be approved for funding in part. That tower site is the Arthur location. The remaining location, Loup River, would receive no funding as the Commission's allocation of \$5.0 million for dedicated wireless program support for the 2009 calendar year would be exhausted.

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

Based on the application and the evidence in the record, the Commission finds Viaero's application for dedicated wireless

universal service funds should be approved. Viaero requested more funding than that made available by the Commission in its Order. Accordingly, the Commission will approve the application up to the \$5 million allocated for the 2009 calendar year. Viaero's witness testified that should the Commission approve Viaero's request for \$5 million in dedicated wireless fund support, Viaero would construct all 15 towers described in its application and not seek reimbursement over and above the \$5 million amount. Viaero should construct the 15 towers as indicated. Reimbursement will be limited however to the \$5 million allocated or the actual cost of the construction as demonstrated by the invoices, whichever is lower.

If Viaero chooses to build fewer than the 15 tower sites, then we require Viaero to seek funding for towers listed by order of priority. The Commission uses the staff's recommendation to determine the priority of funding as follows:

<u>Order of Priority</u>	<u>Tower Location per Application</u>
1	Wayside
2	Emmett
3	Brocksburg
4	Reddington
5	Burton West
6	Champion
7	Chadron
8	Butte West
9	Creighton
10	South Arnold
11	Verdel
12	Arnold
13	Wood Lake
14	Arthur
15	Loop River

#### Reimbursement Process:

Viaero estimated the construction costs to be approximately \$5.1 million. The Commission approves reimbursement up to \$5 million or the actual cost of construction for the tower sites contained in the application, whichever is lower. 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

dedicated wireless program will reimburse Viaero for reasonable expenditures made related to the cell sites 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 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 must meet the following conditions:

Infrastructure Sharing:

Viaero 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 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. In its testimony, Viaero indicated that it has roaming agreements with other carriers and agreed to this condition. 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.

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 will not request reimbursement for equipment or tower construction where grant money was also received from another source.

The Commission declines to adopt financial reporting requirements at this time. The Commission believes the annual ETC reporting requirements will be sufficient for the purposes of determining that dedicated wireless program support is being used for the provision, maintenance and upgrading of facilities and services in Nebraska. 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 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 sites are 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 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.

MADE AND ENTERED at Lincoln, Nebraska this 20th day of October, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director