

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-69.06
Public Service Commission,)	
on its own Motion, seeking to)	
implement policies and procedures)	
related to providing dedicated)	GRANTED IN PART
universal service support for)	
wireless telecommunications)	
services: N.E. Colorado Cellular,)	
Inc., d/b/a Viaero Wireless.)	Entered: November 3, 2010

APPEARANCES:

For the Applicant:

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For the Commission:

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For the Intervenor:

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BY THE COMMISSION:

By Petition filed June 1, 2010, 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 4, 2010. The Commission allocated \$5 million for the 2010 NUSF calendar funding year in which this Petition was filed. A petition for formal intervention was filed by

United States Cellular Company (US Cellular), which was granted by the Commission.

A public hearing on the application was held on October 6, 2010 in Lincoln, Nebraska in conjunction with Docket Nos. NUSF-69.05 and NUSF-69.07. In support of its application, Viaero submitted pre-filed testimony for Mr. Michael Felicissimo, which was entered into the record. Commission staff submitted pre-filed testimony as well as the summarized testimony of Ms. Sue Vanicek and Mr. Tyler Frost from the previous hearing regarding NUSF-69.07, which were admitted into the record.

Mr. Felicissimo testified in support of Viaero's application. Mr. Felicissimo is employed by Viaero as Executive Vice President and Chief Financial Officer. He testified that Viaero has 260 cellular towers in Nebraska covering over 80 percent of the landmass 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 \$5.4 million. Viaero seeks \$5 million from the state universal service fund in this application. The proposed tower sites would be located in the areas of: Haigler DT, Pete Smith Hill, Alliance West, Eddyville, Oconto, Stockville, Callaway, Trenton, Superior, Campbell, Stella, Clarks, Dunbar, Johnson, and Auburn. Mr. Felicissimo testified that Viaero determined the proposed cell towers based on internal information showing where cell coverage using GSM technology is absent or spotty.

Mr. Felicissimo further testified that Viaero has made application to the Rural Utilities Service (RUS) and the National Telecommunications Information Administration (NTIA) for federal broadband grants and loans. Mr. Felicissimo also testified that all towers would be constructed so that they are E911 equipped and they can implement Phase II E911 upon request, and that Viaero would construct cell sites in such a manner that will permit another carrier to collocate equipment on Viaero's tower.

Ms. Vanicek is the director of the Commission's NTIPS department. In her pre-filed testimony, Ms. Vanicek recommended the Commission impose several conditions upon the approval of Viaero's application. First, she recommended approving towers in high cost, unserved, and underserved areas, and that towers be constructed to collocate public safety equipment and equipment from other carriers. Next, carriers should be

required to enter into roaming agreements with other carriers when technically feasible. Finally, Ms. Vanicek recommended that the Commission require carriers to enable towers to be capable of providing Phase II Enhanced 911 services in anticipation of a request from a Phase II capable PSAP.

Mr. Tyler Frost is the Commission's economist and cost model expert. In his pre-filed testimony, 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 that staff employed a methodology similar to that adopted by the Commission in its previous findings in dedicated wireless fund orders.

Mr. Frost testified that 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. 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 of this analysis, Staff proposed that the Commission fund seven towers submitted by Viaero in the amount requested: Alliance West, Auburn, Eddyville, Haigler DT, Pete Smith Hill, Stella, and Stockville. The remaining locations would receive no funding, as the Commission's allocation of \$5 million for dedicated wireless program support for the 2010 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 for the following

seven towers: **Alliance West, Auburn, Eddyville, Haigler DT, Pete Smith Hill, Stella, and Stockville.** Remaining locations receive no funding, as the Commission's allocation of \$5 million for dedicated wireless NUSF program support for the 2010 calendar year is exhausted.

Reimbursement Process:

Viaero estimated the construction costs to be approximately \$5.4 million. The Commission approves reimbursement up to **\$2,580,433** or the **actual cost** of construction for the tower sites approved in this order, 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 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.

MADE AND ENTERED at Lincoln, Nebraska this 3rd day of November, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director