

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-69.12
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: Petition received June 1)
2012 from N.E. Colorado Cellular,)
Inc., d/b/a Viaero Wireless.) Entered: January 15, 2013

APPEARANCES:

For the Applicant:

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For the Formal Intervenor:

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Lincoln, Nebraska 68502

For the Commission:

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Lincoln, Nebraska 68508

BY THE COMMISSION:

By Petition filed June 1, 2012, 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 7, 2012. The Commission allocated \$5 million for the 2011 NUSF calendar funding year in which this Petition was filed. On July 6, 2012, United States Cellular Corporation (US Cellular) filed a Petition seeking Formal Intervention. The Petition of Formal Intervention was granted by the Commission on July 17, 2012.

A public hearing on the application was held on December 4, 2012 in Lincoln, Nebraska in conjunction with Docket No. NUSF-69.11. In support of its application, Viaero submitted pre-filed testimony for Mr. Andrew Newell, which was entered into the record. The Commission staff submitted pre-filed testimony into the record.

Mr. Andrew Newell, is General Counsel for NE Colorado Cellular, Inc. d/b/a Viaero Wireless. In its application Viaero proposes to build seventeen (17) telecommunications towers and related infrastructure in six remote high-cost rural areas. Viaero estimates the total cost of construction, excluding any enhanced 911 related costs to be roughly \$6.3 million.

Mr. Newell provided pre-filed testimony which described the targeted areas in Viaero's application lacking sufficient wireless coverage, especially GSM coverage, to provide quality service, or in some instances, any service. Viaero committed to enter into roaming agreements with other carriers at commercially reasonable rates. Viaero also committed to enter into sharing/collocation agreements where technically feasible and at commercially and mutually-agreeable terms and conditions. Viaero will construct its NUSF supported towers to accommodate the collocation of additional equipment. Viaero committed to comply with all Commission reporting requirements.

Mr. Newell's testimony further describes Viaero's commitment to provide wireless broadband services. Viaero provides a number of voice and data plans in its service territory and will provide the same offerings in the targeted areas. Viaero will utilize technology that will be capable of providing theoretical download speeds of up to 21 Mbps and upload speeds exceeding 6 Mbps. Viaero will submit broadband availability data to the Commission and its vendors for the duration of the State Broadband Data and Development (SBDD) Program, as required by the Commission in NUSF-69, Progression Order No. 7.

In response to some concerns voiced by US Cellular, Mr. Newell stated there is no duplication in funding between what Viaero was granted by the FCC and what the staff is recommending. Mr. Newell stated Viaero recognized this issue when they submitted an application in this proceeding and also in the FCC auction. Viaero excluded NUSF-69 costs in calculating any bids in the FCC auction. In addition, Mr. Newell emphasized that these programs have different criteria which makes it

difficult to compare them. The Commission's Dedicated Wireless Fund Program provides support for capital construction of specific towers while federal support is based on a competitive auction process for providing service in areas detailed by the federal program.

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's testimony stated that staff employed a methodology similar to that adopted by the Commission in its previous findings in dedicated wireless fund orders.

Mr. Frost's testimony further described 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 ten (10) towers submitted by Viaero in the

amount requested: \$3,703,984. The remaining locations would receive no funding, as the Commission's allocation of \$5 million for dedicated wireless program support for the 2012 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 ten towers: **Chadron South, Ellsworth North, Grant South, Harrisburg West, Harrison North, Keystone, Laurel North, Mullen North, Rushville North, and Wayne South.** Remaining locations receive no funding, as the Commission's allocation of \$5 million for dedicated wireless NUSF program support for the 2012 calendar year is exhausted.

Reimbursement Process:

Viaero estimated the construction costs to be approximately \$6.3 million. The Commission approves reimbursement up to **\$3,703,984** 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.

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 and its vendors for the duration of the State Broadband Data and Development (SBDD) Program consistent with the Commission's findings in NUSF-69, Progression Order No. 7.

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.

Through counsel, Viaero offered the affidavit of Michael Felicissimo which stated Viaero will not use FCC Mobility Auction 901 Funds to construct any of the proposed tower sites described in Viaero's NUSF-69 Petition. The Commission reserved on this exhibit identified as Exhibit 7 but now finds the Exhibit shall be received into the record. Since the Commission already requires Viaero to make clear to the Commission that Viaero will not request reimbursement for equipment or tower construction where grant money was received from another source, we believe we already have a mechanism in place to ensure that state support is being used appropriately. However, we find that Viaero's NUSF-66 report should include enough detail so the Commission is made specifically aware of how federal funds were used in Nebraska.

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 15th day of January, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Chair

Anne Boyle

Del Johnson

ATTEST:

Gerald L. Vop

Steve Meredith

Executive Director

//s// Anne Boyle

//s// Frank E. Landis