BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE NEBRASKA PUBLIC SERVICE COMMISSION, ON ITS OWN MOTION, TO IMPLEMENT PROVISIONS OF LB 1222 [2006] AND TO ESTABLISH A PERMANENT FUNDING MECHANISM FOR WIRELESS ENHANCED 911 SERVICE	)))))))	**Application No. 911-019/PI-118**

COMMENTS
OF
N.E. COLORADO CELLULAR, INC.
d/b/a VIAERO WIRELESS

N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless ("Viaero"), by counsel and pursuant to the Order Seeking Comment and Establishing Procedural Schedule, dated July 7, 2009 ("Order Seeking Comment"), in the above-referenced Docket, is pleased to submit the following Comments.

I. INTRODUCTION

Viaero is a "telecommunications carrier" as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5, and for the purposes of Part 54 of the FCC's Rules (47 C.F.R. § 54.1, et seq.), Viaero is considered a common carrier. Viaero holds authorizations from the FCC to provide Personal Communications Services ("PCS") in the Norfolk, Nebraska, Grand Island-Kearney, Nebraska, North Platte, Nebraska and Hastings, Nebraska Basic Trading Areas and is a commercial mobile radio service ("CMRS") provider pursuant to the definition of "mobile service" provider in 47 U.S.C. § 153(27). Viaero provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.5 and was designated an Eligible Telecommunications Carrier ("ETC") by Commission Order entered on October 18, 2005 in Application C-3324. Viaero acquired its first FCC license in Colorado over fifteen years ago, and over the past several years Viaero has acquired spectrum to expand its network into Colorado, Wyoming, South

Dakota and Kansas and has expanded its coverage area in Nebraska. Viaero is licensed to serve almost all of Nebraska, except for its more populated eastern markets. See Viaero's coverage maps attached hereto **Exhibit A**.

II. THE DEVELOPMENT OF A PERMANENT FUNDING MECHANISM FOR WIRELESS ENHANCED 911 SERVICE IS A VITAL STEP IN THE CONTINUED DEVELOPMENT OF A RELIABLE WIRELESS PUBLIC SAFETY SYSTEM THROUGHOUT THE STATE.

In developing a permanent funding mechanism for wireless enhanced 911 service, pursuant to its statutory obligations established under the Enhanced Wireless 911 Service Act ("911 Act"), the Commission has reviewed information and recommendations from a host of interested parties, including Viaero,[1] concerning how such a funding mechanism should be constructed and the nature of costs that should be eligible for reimbursement from the Enhanced Wireless 911 Fund ("911 Fund).

The Commission's proposed Wireless 911 Support Allocation Model ("911-SAM") is the first step towards defining how a permanent funding mechanism would work based on the information evaluated to date. Viaero appreciates the Commission's efforts and is delighted to respond to the numerous questions posed by the Commission in this Docket. While Viaero is interested in the PSAP and LEC Funding Support mechanisms contained in the 911-SAM, Viaero's primary focus in these Comments will be on the proposals dealing with wireless carrier funding.

III. WIRELESS CARRIER FUNDING ISSUES

1) SHOULD PAYMENTS TO WIRELESS SERVICE PROVIDERS ("WSPs") BE MADE ON A MONTHLY OR QUARTERLY BASIS?

Viaero believes that monthly payments to WSPs would be preferred and would permit WSPs like Viaero to best manage their capital equipment needs and facilitate their coordination

[1] Comments in Application 911-038/PI-142.

with vendors. Since wireless E-911 facilities do not provide revenue for WSPs, but rather constitute mandated expense obligations, monthly reimbursement payments would ease the economic burden on all WSPs, especially smaller Tier III carriers like Viaero, who are actively deploying wireless E-911 infrastructure in the State.

2) THE COMMISSION HAS PROPOSED THE ESTABLISHMENT OF A WSP GRANT PROGRAM WHICH WOULD BE AVAILABLE TO ALL WSPs FOR RECOVERY OF CERTAIN ELIGIBLE COSTS INCURRED IN THE PROVISION OF ENHANCED 911 SERVICE. WHAT SHOULD BE THE PARAMETERS OF THE WSP GRANT PROGRAM, INCLUDING PERMISSIBLE PURPOSES, ELIGIBILITY CRITERIA AND APPLICATION PROCESSES AND STANDARDS?

The WSP Grant Program constitutes a creative and valuable mechanism for utilizing allocated but unclaimed E-911 funds for other eligible costs incurred in the provision of wireless enhanced 911 services. Due to the fact that the initial allocation of available E-911 funds under the 911-SAM is based on a cost proxy representing costs previously paid to WSPs for eligible costs, (a significant portion of which is comprised of recurring costs which the E-911 Fund is obligated to continue paying), combined with the forecasted decline in the support amount which will be available for allocation, it is unlikely that support funding from the initial allocation will permit significant expenditures of a nature not previously approved by the Commission. Therefore, the WSP Grant Fund will constitute an important source of revenue for costs not previously approved by the Commission for reimbursement to WSPs, such as costs of implementing Phase II enhanced wireless 911 service ("Phase II service") and next generation costs. It is undisputed that the ultimate objective of the FCC's mandate to deploy a national wireless 911 system is to achieve universal Phase II capability, requiring all WSPs to deploy automated location identification services to the PSAP which would enable the call taker (PSAP dispatcher) to receive both the carrier's wireless phone number and the caller's specific location

by latitude and longitude,[2] regardless of the technology used. The FCC also recognizes that the growing market penetration of both wireless telephone service and Voice over Internet Protocol ("VoIP") telephony requires the nation's 911 system to deploy new technology to handle the text, data, images and video that are currently utilized in personal communications and that are essential to emergency response objectives.[3]

Even though implementation of Phase II E-911 service is the stated national goal of the FCC, as well as the articulated state goal of the Nebraska Public Service Commission ("Commission"), the Commission's Orders to date have precluded all WSPs from receiving E-911 Funding for the deployment of Phase II services, citing the need to focus priority on the state-wide deployment of Phase II infrastructure at the PSAP level first.[4] However, after eight years of direct funding from the E-911 Fund, according to the Commission's 2008 Annual Report 78% (essentially all) of the State's PSAPs are Phase II compliant. Further, the Commission recently applied for federal funds under the federal Enhanced 911 Act[5] for funding to equip the four remaining rural PSAPs for Phase II wireless 911 service and to assist in the funding for the completion of intertandem trunking between Grand Island and Scottsbluff. If this federal grant is approved, matching funds will be provided through the 911 Fund. Therefore, the Commission's goal of provisioning the state's PSAPs for Phase II capability is nearly complete, opening up the opportunity for utilization of the available wireless E-911 support funds for other critical wireless E-911 implementation costs, such as Phase II implementation costs and costs for migrating to IP-enabled emergency services.

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[2] *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94-102, *Third Report and Order*, FCC 99-245 (rel. October 6, 1999) (*"Third Report and Order"*).
[3] 47 C.F.R. 400, E-911 Grant Program.
[4] PSC Order Denying Application of N.E. Colorado Cellular, d/b/a/ Viaero Wireless, Inc., November 13, 2008.
[5] Docket No. 911-040/PI-152.

Viaero has consistently advocated to the Commission and the Nebraska Legislature that any funding mechanism developed by the Commission should include some form of cost recovery for wireless carriers for their costs of implementing Phase II service. Viaero's position is based on the Nebraska Legislature's expression of public policy when considering the enactment of the 911 Act in 2001, and on the interests of consumers across the State of Nebraska who desire the benefits of a reliable wireless public safety system throughout the State and not just in urban areas and along highways.

It is now essential that the Commission permit 911 Funds to be directed to support WSP costs associated with implementation and operation of Phase II E-911 services, using whatever new access technology may develop in the marketplace. The introduction of each new technology will require new engineering and system modification for WSPs and PSAPs alike. Therefore, the 911 Fund must not be restricted by limiting cost reimbursement to any specific wireless technology or any specific networked communication device due to the rapid evolution of technology platforms and communication devices. Nor should the Commission design and implement eligibility criteria which ignores the essential role of WSPs in the origination of E-911 calls from consumers throughout the state, especially in rural areas where ubiquitous wireless service coverage is a fundamental pre-condition to the operation of a meaningful and reliable wireless E-911 emergency network.

The WSP Grant Program should be constructed with the same eligibility criteria which the Commission has employed for receipt of 911 Fund support in the past. Each WSP must be a "telecommunications carrier" as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5 and for the purpose of Part 54 of the FCC's Rules (47 C.F.R. § 54.1 et seq.). Each WSP must hold authorization for the FCC to provide personal communication services ("PCS") and must be a commercial mobile radio service ("CMRS") provider pursuant to the definition of "mobile

service" provider in 47 U.S.C. § 153(27). Each WSP must provide interstate telecommunication service, as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.5. Further, every WSP must be licensed to provide wireless telecommunications service in a service area within the State of Nebraska. A WSP should not, however, be required to have been designated as an Eligible Telecommunications Carrier (ETC) by the Commission prior to receiving support from the 911 Fund.

Any WSP desiring reimbursement from the 911 Fund should submit a written application for support to the Commission setting forth, at a minimum, the following information:

a) Intended funding request by county, including anticipated future tower construction in each county;
b) Supporting documentation for each location (facility) to be funded including:
   i) Actual Invoices
   ii) Vendor bios
   iii) Construction contracts
   iv) Purchase orders
   v) Equipment/Software lists
c) Itemized recurring and non-recurring costs;
d) Maintenance costs and contracts;
e) Applicant's qualifications and background;
f) WSP licensed service area and maps;
g) Other sources of funding for E-911 costs and/or cost reimbursement and amounts received or applied for;
h) Certification regarding utilization of 911 Funds

3) SHOULD WSPs HAVE TO DEMONSTRATE COMPLIANCE WITH FEDERALLY ESTABLISHED TESTING AND ACCURACY STANDARDS AS SET FORTH IN 47 C.F.R. § 20.18(H)?

WSPs are required to comply with federally established testing and accuracy standards for Phase II E-911 service pursuant to 47 C.F.R. 20.18 (h). Applicants for 911 Fund support should certify that such requirements will be met in accordance with applicable rules and regulations. Failure to demonstrate compliance with such requirements could result in suspension of further support payments until compliance is achieved and certified to the Commission.

4) **PRIOR TO RECEIVING FUNDING FROM THE 911 FUND, SHOULD WSPs HAVE TO REPORT AND ACCOUNT FOR ANY ADDITIONAL FUNDING THAT MAY SUPPORT 911 SERVICES, INCLUDING BUT NOT LIMITED TO FEDERAL AND STATE UNIVERSAL SERVICE FUNDS AND REVENUES GENERATED THROUGH SURCHARGES INVOKED BY THE WSP ITSELF?**

The permanent E-911 funding mechanism should be structured in a fashion that takes into account revenue received by wireless carriers through alternative sources which is used to pay for Phase II implementation costs. These other revenue sources would include self-recovery surcharges imposed directly on wireless customers used to fund Phase II costs and monies received through other grants or surcharges from federal or state agencies or governmental subdivisions. The goal would be to limit cost recovery from the 911 Fund to those costs which are not otherwise recovered from other sources. This "offset" mechanism would not only reduce the demand on the 911 Fund, but it would allow the Commission to better determine the level of funding that is appropriate to accomplish the public policy objectives of the 911 Act, while recognizing and reacting to the different economic challenges facing wireless carriers which are deploying Phase II service in areas of the state where service is needed the most.

5) **SHOULD FUNDING TO WSPs BE SUSPENDED FOR FAILURE TO (i) TIMELY FILE REQUIRED ANNUAL OR QUARTERLY REPORTS; (ii) TIMELY SUBMIT REIMBURSMENT OR REMITTANCE WORKSHEETS, AND (iii) COMPLY WITH COMMISSION AUDIT REQUIREMENTS?**

Viaero believes that E-911 Fund support payments should be suspended for failure to (i) timely file required annual or quarterly reports to the Commission or (ii) timely submit reimbursement or remittance worksheets and (iii) comply with Commission audit requirements <u>only</u> if the Commission finds, through a formal complaint proceeding, that such failure(s) warrants suspension or termination of such support payments.

6) SHOULD WSPs HAVE TO PROVIDE SPECIFIC COST INFORMATION?

Viaero believes that WSPs applying for support from the 911 Fund should provide specific cost information concerning the requested costs sought to be reimbursed from the 911 Fund.

7) WHAT WSP COSTS SHOULD BE DESIGNATED AS "ELIGIBLE COSTS" FOR FUNDING FROM THE GRANT PROGRAM?

The Order Seeking Comment in this Docket acknowledges that the 911 Act identifies various costs which "may" be deemed to be "eligible costs" for WSPs, as determined from time to time by the Commission.[6] Further, the Commission has proposed that eligible costs also include costs for database upgrades and management and certain "transportation and facility charges" incurred in the implementation and provision of enhanced 911 services. While the phrase "transportation and facility charges" is not specifically defined, the phrase seems sufficiently directed to the provision of enhanced wireless 911 services to fit within the broad definition of "other costs of establishing enhanced wireless 911 service" as set forth in the 911 Act.

The actual character of costs historically deemed by the Commission to be "eligible" for reimbursement from the 911 Fund has followed a rather logical progression dictated by the requirements of physically developing and deploying, from scratch, a statewide enhanced wireless 911 network. The Commission began the process in 2003 with a policy that was directed toward four major initial objectives: (1) deploying a statewide GIS system for use by WSPs and PSAPs in order to ultimately achieve the FCC's mandated location identification (Phase II) enhanced wireless 911 system; (2) establishing Phase I capability at all PSAPs in the state, (3) establishing tandem trunking throughout the state and (4) supporting the state-wide implementation of Phase I services by WSPs. As this process evolved through 2006, the

[6] Viaero supported the legislative changes in 2006 (LB1222). See 911-038/PI-142 Comments.

Commission repeatedly determined that the initial priority of the 911 Fund was to implement a viable Phase I system throughout the State, thereby assuring the deployment of the necessary infrastructure for the implementation of the ultimate objective, Phase II E-911.[7] Viaero supported the Commission's initial determinations of priority for use of the E-911 Fund.[8]

In 2006 and 2007, the Commission began funding the deployment of Phase II equipment and software for PSAPs, while deferring Phase II reimbursement to WSPs. The Commission's Interim Policy, initially proposed in 2006 and adopted on January 9, 2007, made support for WSP Phase II costs a secondary objective while continuing to focus on the deployment of Phase II capability to all PSAPs in the State, and the development of a permanent funding E-911 mechanism mandated by the Legislature in LB1222 in 2006, that continues to this day by virtue of the Commission's Order denying Viaero's application for reimbursement of Phase II costs, entered on November 13, 2008,[9] and the subsequent modification of its Interim E-911 Funding Policy on December 16, 2008 to conform the Interim Policy with the Viaero Order.[10]

Without regard to the merits of the Commission's determination in the Viaero Order, and its subsequent conforming amendment to the Interim Policy, the history of the Commission's decisions concerning the utilization of E-911 funds demonstrates a progressive change in the nature of the actual eligible costs being supported from the 911 Fund; from basic Phase I capability, to fundamental GIS mapping systems, to Phase II capability of PSAPs, to intertandem trunking, and now towards next generation applications. While some of the recurring costs for Phase I services will transition automatically to Phase II services, other costs were "one-time" costs which were necessary to build the basic infrastructure necessary for transition to Phase II

[7] In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Establish Interim Policies, January 30, 2006.
[8] Id.
[9] PSC Order Denying Application of N.E. Colorado Cellular, d/b/a/ Viaero Wireless, Inc., November 13, 2008.
[10] PSC Progression Order, December 16, 2008.

services. Therefore, the determination by the Commission of what constitutes "eligible costs" under both the pool of money initially allocated to each WSP, as well as the WSP Grant Program pool, must reflect the current status of the statewide E-911 system and the ongoing needs to maintain and enhance the system in the future. With nearly all PSAPs now Phase II capable,[11] and the balance likely soon to become Phase II capable,[12] the focus must necessarily turn to the challenge of migrating to an IP-enabled E-911 network and to the objective of ensuring that the rural and high cost portions of the State have access to the same level E-911 services as those living in urban areas, an objective mandated by the FCC and the State itself. The later objective can only now be fully realized by supporting the deployment of ubiquitous wireless signal coverage throughout the State, which can, in turn, only be accomplished through the construction of more cell towers which are Phase II capable in rural and high costs areas of the State by WSPs willing and able to make that capital investment. Where there is no signal coverage, or inadequate signal coverage, there can be no meaningful and reliable E-911 system, in spite of all the E-911 funds which have been spent to date to enable all the State's PSAPs to receive and process Phase II calls.

The Commission has long recognized that its mission is to oversee the deployment of a reliable statewide public safety system. Commissioner Vap articulated the Commission's view of its mission under the E-911 Act in testimony before the Legislature in 2006:

> It's a statewide public safety system we're talking about and if you're going to have a statewide system, it's going to cost more money. And part of our problem is getting wireless carriers to continue to deploy towers and coverage across the western half of the state so that people in McPherson County, for example, Tryon could have cell phone coverage and consequently wireless E-911 coverage. You're got Lincoln County, you've got Cherry County, you've got a huge number of those counties up there that have very limited coverage today. [13]

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[11] See PSC Order Designating Projects for Federal Grant Application No. 911-040/PI-152, July 28, 2009.
[12] 2006 Neb. Laws, LB 1222, January 18, 2006, Committee on Transportation and Telecommunications, Public Hearing, p. 8
[13] Id. at p. 7.

. . .

> . . . our primary interest is public safety. We've been given a job to deploy a public safety system and we want to do it as efficiently as we can. But at the same time it's got to be done properly and so that the system works for anyone travelling across this state, regardless of whether they're in Tryon, Nebraska, or Omaha.[14]

Commissioner Vap's comments also highlight the other critical component of deploying a statewide wireless public safety system, the essential need for wireless coverage throughout the State. As noted by Commissioner Vap, there is a continuing challenge to get wireless carriers to continue to deploy towers and coverage across the western half of the State so that people in rural areas have cell phone coverage and consequently wireless E-911 coverage. And the challenge for wireless carriers dedicated to the deployment of wireless infrastructure in rural areas of the state is how to fund essential tower deployment while deploying the unfunded but federally mandated E-911 system without sacrificing one for the other. The ability of WSPs to fund Phase II deployment, while progressing with the deployment of towers and other wireless infrastructure, bears critically on the public policy behind the intended use of the E-911 Fund.

The Commission is fully aware of the challenges facing wireless carriers concerning their funding options for Phase II costs. Once again, Commissioner Vap's testimony before the Transportation and Telecommunications Committee regarding LB1222 in January 2006 recognizes this issue:

> Since last year's legislative interim study, seven carriers have expressed their willingness to implement Phase II wireless E-911 without seeking reimbursement from the fund. Federal law allows wireless carriers to recoup costs on their own through various methods. Some carriers are able to spread costs over the entire national customer base and charge nothing to their customers. Others will charge a fee to local customers for a period of time. Some will charge no fee and intend to recoup costs by marketing some of the services contained within their technology. The method a carrier chooses will depend on many factors. Different technologies will also impact the cost of implementing wireless

[14] Id. at p.21.

> enhanced 911. Although a wireless carrier's willingness to recoup costs from other sources reduces the overall cost to the fund, a need may still exist for cost recovery for smaller carriers serving less-populated areas. The commission proposed legislation to the committee that provides the flexibility necessary to address differences between costs and resources across the state and the impact they have on wireless carriers and at the same time ensure fairness to ratepayers. . . . We are committed to developing an equitable system for allocating funds that is fair to Nebraska ratepayers and that addresses the differences between carriers.[15]

Therefore, in considering the impact that reimbursing wireless carriers for Phase II costs would have on the 911 fund, it is critical to note that over the past several years, the fund has continued to grow despite a high level of investment in Phase II infrastructure for PSAPs. Today, much of the state is already Phase II capable, and the fund remains extremely healthy. Providing Phase II reimbursement to wireless carriers would not threaten the viability of the fund, and would significantly enhance public safety and trigger dramatic economic benefits. It would also allow wireless carriers to redirect capital investment toward building a more robust network, thereby enhancing the public safety benefits of E-911. This redirection would have the added benefit of stimulating economic activity in rural Nebraska. It is also important to remember that federal grants for emergency services are likely to be conditioned upon the past use of funds for their intended purpose, and putting more of the available funds to work accomplishes this goal as well.

In light of the evolving character of the 911 Fund support distributed to WSPs and PSAPs, the Commission must recognize that the "eligible costs" needed to (i) complete a reliable state-wide E-911 system; (ii) maintain that system and (iii) provide for the migration to an IP-enabled network, are necessarily different than the character of the costs needed to build and develop the State's E-911 network to this point. Therefore, the

[15] Id. at p.7.

character of those evolving costs must be incorporated into the structure of the 911-SAM, both in regard to the initial allocation pool and in regard to the WSP Grant Program.

Because the 911-SAM is merely a mathematical mechanism to allocate and forecast money, it does not identify or in any way make any independent analyses concerning the actual utilization of the money allocated. That analytical judgment process is strictly the responsibility of the Commission, as reflected in its policies and orders regarding the manner in which E-911 support can be used. Therefore, the 911-SAM is essentially not concerned with the issue of "eligible costs," but rather that certain amounts of money are allocated for qualified purposes as determined by the Commission. The essential limitation of the 911-SAM, however, is that the mechanism it utilizes for the allocation process is derived simply from the amount of support funding the Commission has historically distributed to WSPs and PSAPs during the development of the current wireless E-911 state-wide system. Therefore, the historic funding amounts used by the 911-SAM to allocate support to the WSPs have no particular relationship to any specific historic costs or needs, nor are those historic costs, in any specific way, related to any future costs or needs. Rather, the 911-SAM is simply a tool to allocate and distribute money based on historic experience. The 911-SAM only calculates changes in allocation of available support to particular WSPs based on who owns cell towers in a particular service territory, rather than on how much those WSPs are actually incurring in implementing E-911 Phase II services. However, the static and historic calculations used by the 911-SAM to develop the initial allocation formula, while essentially inflexible, derive some flexibility through the WSP Grant Program, which offers WSPs the opportunity to recover "other" eligible costs not funded in the initial allocation process.

Viaero is aware that some interested parties have suggested that funds directed to the WSP Grant Program be capped at some arbitrary level, and that support amounts in excess of the slated cap be either reallocated to the PSAPs or utilized in other ways. Viaero believes that adoption of an arbitrary cap would be unwise and inconsistent with the objectives of the 911 Fund. In the event funds allocated to the WSP fund were not fully requested by WSPs, then the Commission could evaluate an alternate use of the excess funds as the needs of the ever-changing wireless E-911 system might then dictate. Until that time, the 911-SAM mechanism should be utilized to transfer unclaimed support funds to the WSP Grant Program for other important eligible purposes.

IV. ELIGIBLE COSTS FOR FUNDING FROM GRANT PROGRAM

Having largely completed the development and implementation of Phase II capability in most of the State's PSAPs, the remaining priority of the 911 Fund is therefore, (i) to establish a reliable and seamless state-wide wireless E-911 system; (ii) to maintain the State's E-911 Phase II wireless system and (iii) to migrate to an IP-enabled emergency network. As previously discussed, the Commission has historically recognized the essential need for the growth of wireless signal coverage throughout the State, for without ubiquitous and reliable signal coverage, no reliable E-911 Phase II system can be achived. The Commission has also repeatedly recognized the dual economic challenges facing wireless carriers of expanding tower and infrastructure deployment in order to expand wireless signal coverage, while at the same time funding continuing Phase II services which produce no revenue to the wireless carrier. Therefore, "eligible costs" for funding of wireless carriers from the WSP Grant Program must include reimbursement to WSPs for Phase II costs incurred within their network. Clearly, the State has prioritized all other sectors of the State's E-911 system while

prohibiting WSPs from accessing Phase II cost reimbursement. Now that substantially all of the sectors of the Phase II emergency wireless system have been deployed, it is now time to permit the remaining essential sector of the system to obtain cost recovery so that the system will actually operate in all regions of the State, not just in the urban areas and along major highways. This can only be accomplished through expanded signal coverage made possible by the construction of more Phase II capable towers by WSPs willing and able to invest in the necessary infrastructure.

The WSP Grant Fund should also ensure that costs incurred by WSPs associated with the migration to an IP-enabled emergency network also constitute "eligible costs" for support from the 911 Fund. The FCC recently noted that successful 911 service implementation requires that cooperation of multiple distinct entities (wireless carriers, LECs, VoIP providers and PSAPs) and that upgrading the 911 system to an IP-based emergency network will require significant engineering and system modification by all of those distinct entities.

V. OTHER ISSUES REGARDING THE 911-SAM

1) The proposed 911-SAM both allocates the annual available support funds from the 911-Fund to WSPs and PSAPs, and forecasts the future status of the 911 Fund. The allocation mechanism used by the 911-SAM has been previously discussed and the limitations noted with regard to its reliance on historic payments authorized by the Commission.

The forecasting function of the 911-SAM is based on pre-determined reserve levels, the expected balanced of the 911 Fund, pre-existing payment commitments and surcharge remittance levels. Also included in the forecasting function are certain "common" inputs which are designed to anticipate future expenditures. However, if

certain "assumptions" or inputs are found to be inaccurate, the 911-SAM's ability to reliably forecast the 911 Fund could be substantially undermined.

a) The useful life of equipment (presumably all equipment purchased by PSAPs and WSPs with support from the 911 Fund) has been identified in the 911-SAM as 4.7 years. However, discussions at the July 13, 2009 E-911 Advisory Board meeting indicated that there was no consensus on the actual useful life of PSAP equipment. Several PSAPs indicated that they had been utilizing equipment since 2004 and that the existing vendor service contract being paid from the 911 Fund often provided for equipment replacement when necessary. Most PSAP representatives indicated that the existing software being utilized was fine and did not need to be replaced. Clearly, forecasting the status of the 911 Fund without a real understanding of the useful life of equipment previously purchased through the 911 Fund would dramatically impact the projected level of support available for other purposes.

b) Significant concern has been recently voiced at recent E-911 Advisory Board meetings, and in other quarters, about the fact that as a distinct category of costs, the costs paid to LECs to transport calls to the PSAPs represents the largest single category of costs paid out of the 911 Fund. It has been alleged that the LEC's tariffed rates billed to PSAPs significantly exceed the LEC's actual cost of providing transportation services and also includes a profit factor to the LECs, unlike the payments to WSPs and PSAPs which are strictly cost-based and do not include a profit. The 911-SAM assumes that the LEC costs will be paid in the future on the same basis, but a change in that practice could dramatically change the level of support available for other eligible costs.

In light of these two examples, the 911-SAM may suffer from several significant flaws which could serve to overestimate the on-going costs to the 911 Fund in years ahead.

2) While not the subject of a specific request for comment, the Commission's Order Seeking Comment and the Commission's Workshop presentations on the 911-SAM held August 12, 2009, revealed that the Commission plans to make allocated support payments directly to PSAPs and WSPs rather than paying vendors directly for approved costs of service, as has historically been the practice. While this new process will serve the objective of reducing the Commission's time and expense devoted to paying vendors, it also seems to suggest that the Commission with permit, even require, PSAPs to take over the responsibility of selecting, managing and contracting with vendors on their own without the regular guidance and involvement of the Commission. Concern has been expressed, which Viaero shares, that this new administrative process carries with it the real danger that the future development of the State's wireless E-911 system could become disjointed thereby undermining the efforts the Commission has historically employed to ensure a level of uniformity in the construction and operation of the wireless E-911 system. Continued guidance from some centralized governmental authority with expertise in the area of E-911 system operation and technology will be necessary to maintain a coordinated and uniform approach to the continued development of the State's wireless E-911 emergency system.

VI. CONCLUSION

Viaero appreciates the opportunity to comment on the proposed 911-SAM and the need to reimburse wireless carriers for Phase II costs in its funding mechanism. Both legislative history and practical need support the allocation of funding from the 911 Fund

for costs incurred by wireless carriers for deployment of Phase II costs. Viaero is anxious to further participate with the Commission in its development of a permanent funding mechanism which is fair to Nebraska's wireless rate payers and to wireless carriers saddled with the responsibility for delivering Phase II services.

NE COLORADO CELLULAR, INC.,
d/b/a VIAERO WIRELESS

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of September, 2009, an original, eight copies and an electronic copy of the Comments of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, in Application No. 911-019/PI-118 were delivered to:

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE NEBRASKA PUBLIC SERVICE COMMISSION, ON ITS OWN MOTION, TO IMPLEMENT PROVISIONS OF LB 1222 [2006] AND TO ESTABLISH A PERMANENT FUNDING MECHANISM FOR WIRELESS ENHANCED 911 SERVICE	)))))))	**Application No. 911-019/PI-118** **ERRATUM TO COMMENTS**

On September 8, 2009, N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless ("Viaero") filed its Comments in this Docket with the Commission in accordance with the Order Seeking Comment and Establishing Procedural Schedule entered by the Commission on July 7, 2009. Viaero has discovered that Exhibit A of the Comments was inadvertently excluded from the Comments. Said Exhibit is attached hereto and fully incorporated herein.

N.E. COLORADO CELLULAR, INC.,
d/b/a VIAERO WIRELESS

By_____

Loel P. Brooks, #15352
BROOKS, PANSING BROOKS, PC, LLO
1248 "O" Street, Suite 984
Lincoln, NE 68508-1424

RECEIVED
SEP - 9 2009
NEBRASKA PUBLIC SERVICE COMMISSION

CERTIFICATE OF SERVICE

I certify that on the 9th day of September, 2009, one original, eight copies and an electronic copy of the foregoing Exhibit A to the Comments of N.E. Colorado Cellular, d/b/a Viaero Wireless, regarding Application No. 911-019/PI-118, were delivered to:

Mike Hybl
Executive Director
Nebraska Public Service Commission
1200 "N" Street, Suite 300
Lincoln, NE 68509-4927

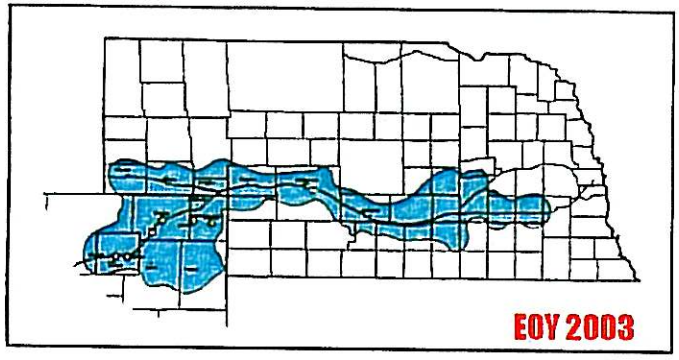
Angela DuVall Melton
Legal Counsel
Nebraska Public Service Commission
1200 "N" Street, Suite 300
Lincoln, NE 68509-4927

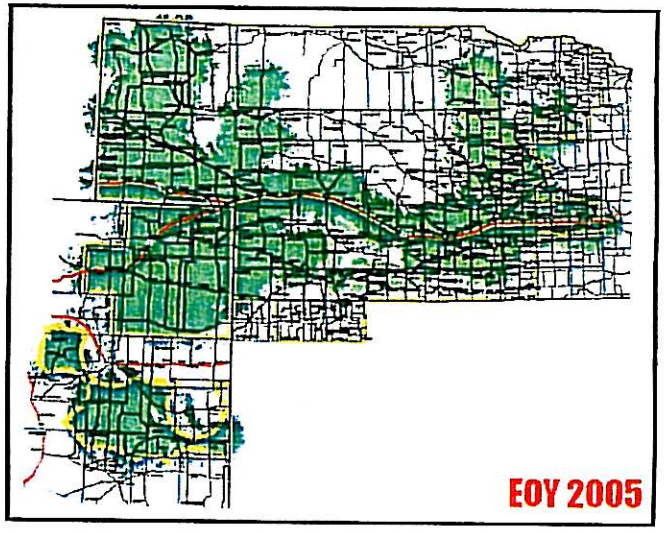
Loel P. Brooks

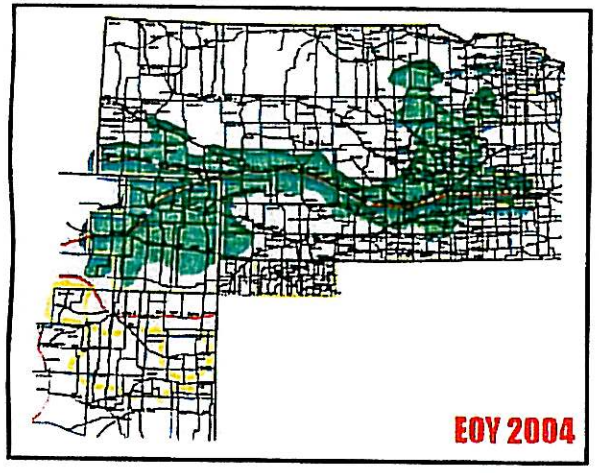
Exhibit A

Viaero's Coverage Maps

Evolution of Viaero Wireless Coverage



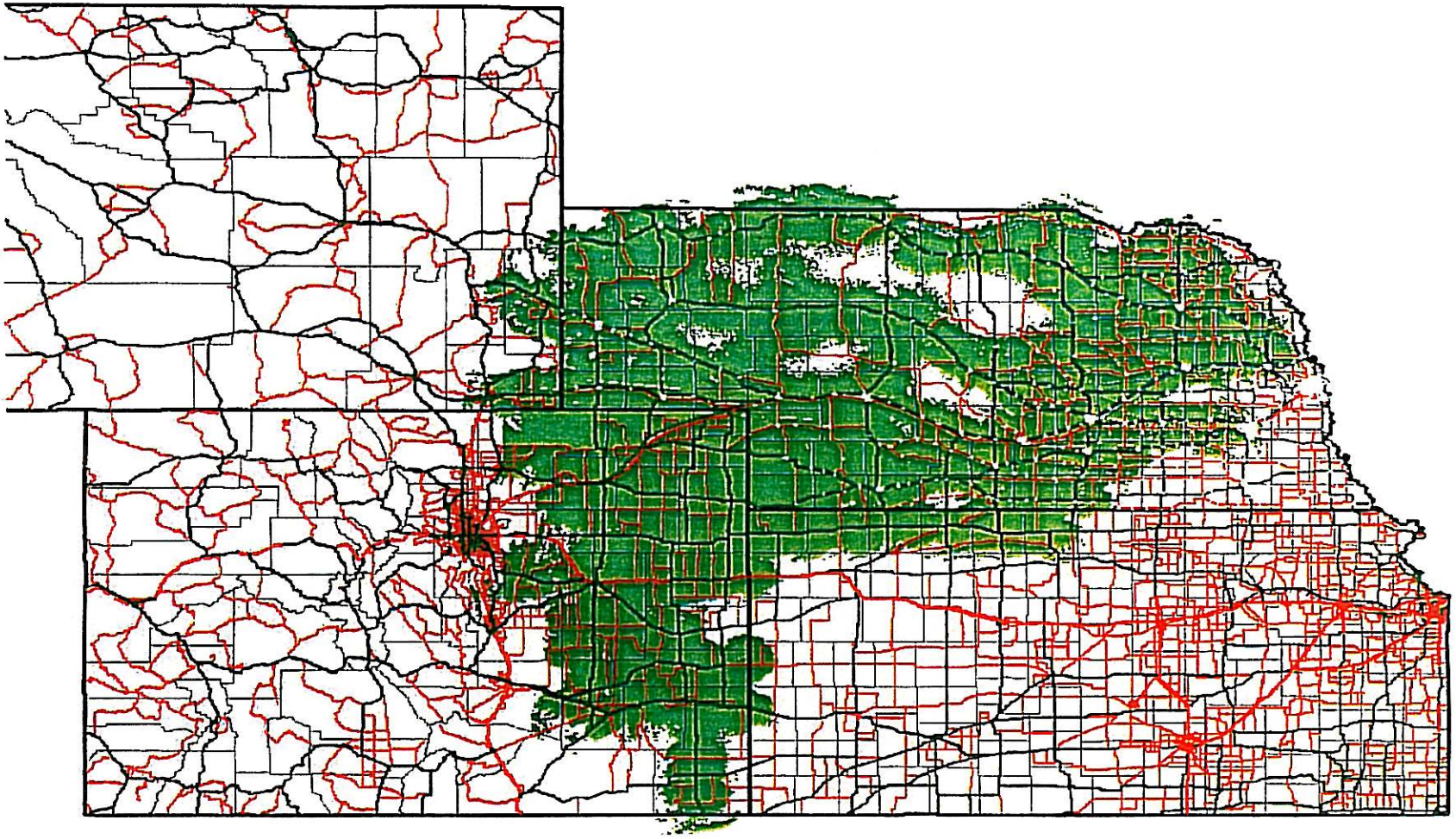
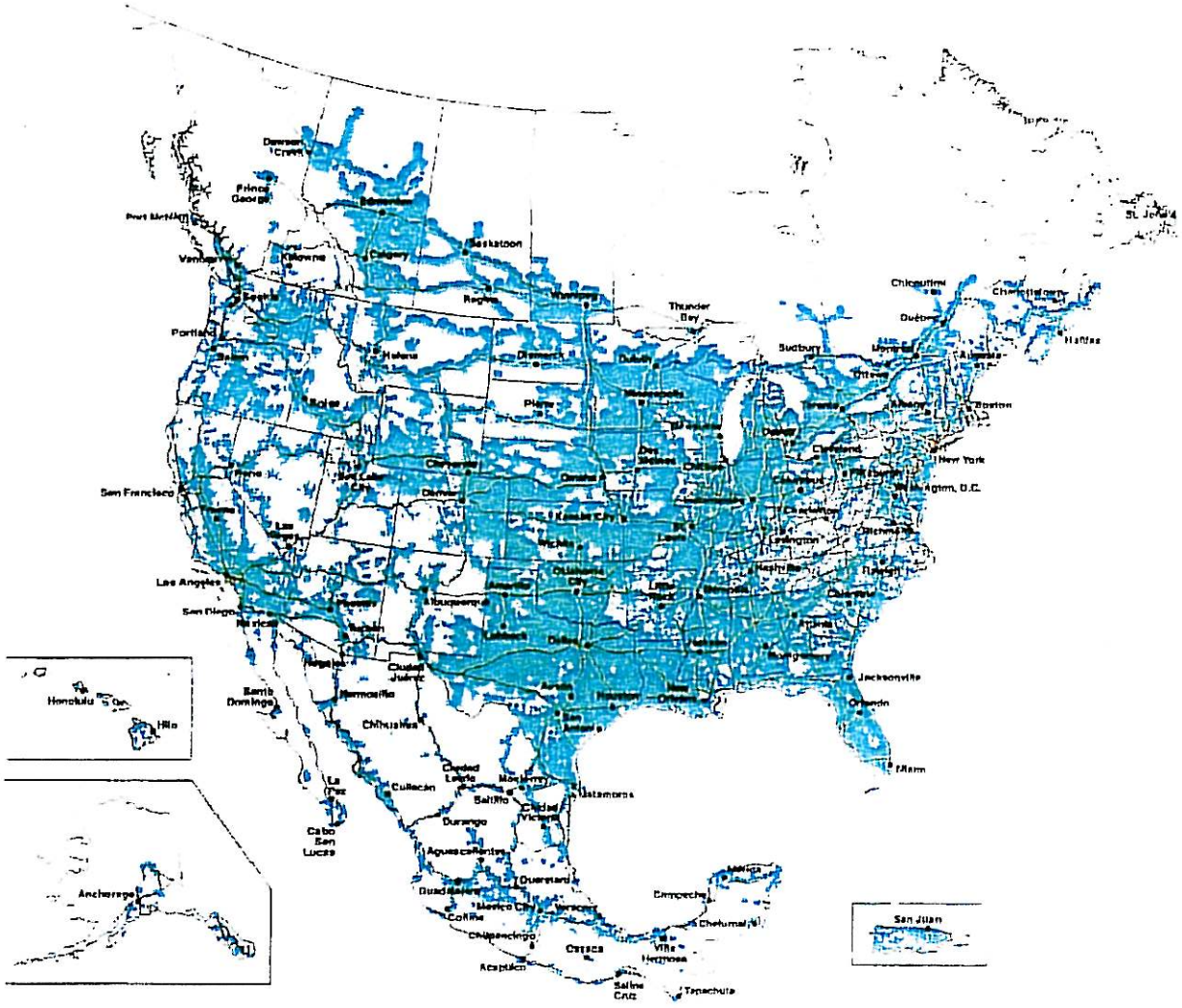




VIAERO® wireless

we are where you are.

Viaero Wireless Coverage 2008



Viaero National Roaming Covera