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**

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NEBRASKA PUBLIC SERVICE COMMISSION

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 Releasing Proposed Application Process for Comment, dated September 22, 2009 ("**Process Order**"), in the above-referenced Docket, is pleased to submit the following Comments. Viaero also submitted Comments on September 8, 2009 in response to the Commission's Order Seeking Comment and Establishing Procedural Schedule, dated July 7, 2009 ("**Order Seeking Comment**") and hereby incorporates those Comments herein by reference.

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. GENERAL FUNDING ASSUMPTIONS

In the Process Order, the Commission has assumed that as proposed, a permanent funding mechanism to implement provisions of LB 1222 [2006] ("**PFM**") will be implemented July 1, 2010, with a funding year coinciding with the Commission's fiscal year, from July 1st through June 30th. Viaero supports this basic assumption as consistent with other funding mechanisms the Commission oversees and with the Commission's own fiscal year.

The Commission's Process Order has also assumed that funds from the Enhanced Wireless 911 Fund ("**911 Fund**") will be distributed on a quarterly basis. Viaero, and other interested commentators, have previously stated that monthly distribution payments would be preferred because such frequency would permit WSPs like Viaero to best manage their cash flow obligations to vendors from whom WSPs must secure necessary equipment and software. The Process Order mandates that funding requests for equipment and software in the general funding phase of the PFM must be submitted prior to the purchase of such equipment and software. Therefore, once the Commission approves the funding request, payment to vendors must be made by the applicant in accordance with the vendor's contractual funding schedule, which often does not accommodate quarterly or extended payment terms. Because E-911 infrastructure, including equipment and software, does not generate revenue for WSPs, monthly reimbursement

payments would ease the economic burden on all WSPs who are actively deploying wireless E-911 infrastructure in the State.

As an alternate scenario, all WSPs would benefit from a reimbursement system which would provide distributions in advance on a quarterly basis, as has been proposed by the Enhanced Wireless 911 Advisory Board for distribution to PSAPs. Such a distribution system would allow WSPs to utilize 911 funds to remain current in their funding obligations to vendors and other parties involved in providing wireless 911 services.

III. REQUESTS FOR GENERAL FUNDING

Viaero supports the Commission's decision to require initial applications for general funding from the 911 Fund to be filed no later than April 15, 2010. The Commission's determination to issue a notice of available funding to each applicant on or before May 31, 2010 is timely and will provide applicants ample planning options for the coming fiscal year.

However, the Commission's suggestion that, for funding years beginning on or after July 1, 2011, applications must be submitted no later than October 15 for the following fund year seems extraordinarily early and would necessitate WSPs and PSAPs alike to secure bids and estimates for equipment and software and other eligible expenses nearly a year before the beginning of the next fiscal year and perhaps even longer before funding allocation and actual distributions would commence. The Process Order does not indicate at what point during the following fiscal year the Commission would announce the funding allocation to the applicants or begin distributions. Given the volatile nature of the telecommunications and related services market, costs can, and do, fluctuate often. Similarly, there are frequently technological innovations in the market that can impact each and every component of the E-911 network being deployed by a WSP, thus altering significantly the requirements and design of a network system, and potentially making prior design, equipment and software applications obsolete or

unnecessary. Further, it is not reasonably feasible to implement the deployment of towers or to accurately predict tower costs so far in advance. Consequently, with such a long time between the application deadline and the funding allocation and distribution decision, the financial and technological basis for an applicant's request for funding is likely to be of little or no real value when submitted. This would trigger a substantial restructuring of the underlying documentation, thus wasting the time and resources of both the applicant and the Commission staff. Viaero therefore, suggests that the Commission reevaluate the proposed application deadline for funding requests for fiscal years beginning on or after July 1, 2011 to a date significantly closer to the date the Commission will allocate the available 911 funding for the fiscal year and the date when the Commission will actually begin funding distributions to WSPs and PSAPs.

IV. WIRELESS CARRIER GRANT FUNDING

Application Process

As with the applications for General Funding, the Commission has recommended that applicants seeking funding from the WSP Grant Program ("**Grant Program**") be submitted on or before October 15 for the following funding year (for example, October 15, 2010 application date for funding for fiscal year July 1, 2011 to June 30, 2012). Viaero reiterates its Comments concerning the matter expressed above regarding applications for General Funding from the 911 Fund.

Further complicating the Grant Program application process is the awkward funding structure contemplated by the Commission for this particular program. The Order Seeking Comment provided that the Grant Program would be funded by setting aside those amounts initially allocated to a particular WSP under the proposed Wireless 911 Support Allocation Model ("**911-SAM**") which were not applied for by that WSP, and then transferred to the Grant Program "during that funding year" for distribution to

applicants under the Grant Program (see Order Seeking Comment, pages 3-4). Therefore, the Commission's statement in the Process Order that it will announce the level of grant funding available in the Grant Program by May 31, would only relate to "that funding year", which would end on June 30. Even if the Commission's May 31 announcement of available funding in the Grant Program were intended to apply to the following funding year, the Commission's October 15 deadline for funding requests for the Grant Program is intended to apply to the following fund year, which would be the year after the funding level announcement made on May 31. For example, a May 31, 2010 funding level announcement would apply either to (i) the remainder of the 2009-2010 fiscal (funding year ending June 30, 20100, or (ii) to the 2010-2011 funding year (beginning on July 1, 2010 and ending on June 30, 2011). However, the funding application deadline of October 15, 2010 for the Grant Program would apply to the "following funding year", which would be the fiscal year beginning on July 1, 2011 and ending June 30, 2012, a full funding year later. Therefore, the Commission's funding level announcement would never coincide with the application deadline for that funding year. This is an unacceptable result which would not serve the interests of either the applicant or the Commission.

Based on the foregoing, Viaero urges the Commission to re-evaluate the funding application process so that WSPs can apply for funding from the Grant Program with accurate knowledge of the available funding for the intended funding year and without such a long lead time so that accurate and meaningful cost estimates and bids can be obtained to support the application.

Eligible Wireless Carrier Costs

The Process Order states that funding from the Grant Program can be used for "capital expenses directly related to the provision of wireless enhanced 911 service." This determination appears to include capital expenses for Phase II enhanced wireless 911 service ("**Phase II**") and next generation costs, which have historically been precluded from cost reimbursement by WSPs.[1] The Commission recently confirmed this determination in testimony delivered by Tyler Frost before the Commission on October 7, 2009 at the Hearing on the Order Seeking Comment.[2] Viaero strongly supports the Commission's determination and will further comment on this matter in anticipated additional proceedings in this Docket.

Costs Eligible for Reimbursement

The Commission has stated in the Process Order that all funds from the Grant Program "will be paid after completion of the project based on invoices paid by the wireless carrier" (see Process Order, page 4). Viaero supports this funding methodology and concurs with the Commission's recognition that the Grant Program is available for reimbursement of costs already incurred by WSPs for implementation of E-911 services and infrastructure rather than for costs to be prospectively incurred for equipment and software as established for the General Funding application process.

Proposed Cap on 911 Funds Allocated to Grant Program

The Process Order proposes that no more than twenty-five percent (25%) of the total amount "assigned" to the "wireless carrier funds" may be spent on funding from the

[1] PSC Order Denying Application of N.E. Colorado Cellular, d/b/a Viaero Wireless, Inc., November 13, 2008 and PSC Progression Order, December 16, 2008.
[2] Tr. at 35-36.

Grant Program. Further, the Process Order contemplates that any amount in excess of the 25% cap will be returned to the total funds available for both PSAPs and wireless carriers and reallocated for the following funding year. Viaero opposes this proposal as being arbitrary, unnecessary, detrimental to the entire WSP industry and contrary to the stated goals of the Commission in implementing the PFM and 911-SAM.

First, there is no evidence of any kind in this Docket that supports or provides any factual or rational basis for the imposition of a specific funding cap to the Grant Program. While the Enhanced Wireless 911 Advisory Board recommended that a cap be placed on the wireless carrier grant funding available through the 911-SAM, the Advisory Board's stated rationale for that recommendation was that a "majority of wireless carriers have and are providing wireless 911 service in accordance with current regulations."[3] This rationale is both inaccurate and irrelevant to the issue of whether the WSP industry shall be prevented from accessing the full amount of funding from the Grant Program originally contemplated by the Commission under the 911-SAM. The Advisory Board's statement that "a majority" of wireless service carriers are providing wireless 911 services in accordance with current regulations implies that some number less than a majority are either not providing 911 service or are not providing 911 service "in accordance with current regulations." There is no evidence of any kind in the Docket (or elsewhere) that <u>any</u> wireless carrier in the State of Nebraska is not providing wireless 911 service in accordance with current regulations. In fact, all wireless carriers serving the State of Nebraska are required by federal law to provide such 911 service and to the best of Viaero's knowledge, are doing so in accordance with <u>all</u> current regulations, whether federal or state.

[3] Letter from 911 Advisory Board Letter to Nebraska Public Service Commission (September 4, 2009).

Second, the record in this Docket contains no evidence of any kind that a cap on funding the Grant Program is in any manner necessary or even desirable. To the contrary, the record in this Docket clearly demonstrates that access to the 911 Fund by WSPs is essential to achieving the goals of the FCC, the Commission and the State of Nebraska in deploying a robust statewide wireless 911 system. Viaero's prior Comments and testimony in this Docket (along with Comments and testimony in numerous related Commission dockets and legislative hearings), clearly articulate and summarize these objections and the needs and interests of the WSPs as an industry regarding the right to access E-911 funds allocated and managed by the Commission. Viaero will not repeat those positions in this proceeding but its record concerning these matters is incorporated into these Comments.

Third, no interested party has proposed that a specific percentage cap concerning the funding of the Grant Program should be considered or adopted. Therefore, Viaero believes that the Commission's proposed twenty-five percent (25%) cap is entirely arbitrary and unsupported by evidence of any kind.

Fourth, it must be noted that the entire WSP industry has been precluded by the long-standing policy of the Commission from seeking reimbursement for any Phase II costs. As discussed at length in Viaero's prior Comments in this Docket, the Commission's long-standing decision to focus E-911 funding primarily on the statewide deployment of Phase II infrastructure at the PSAP level first has been largely realized, as confirmed in the Commission's 2009 Annual Report on Telecommunications.[4] Therefore, the utilization of available wireless E-911 support funds can now be expanded to support other crucial wireless E-911 implementation costs and infrastructure

[4] Nebraska Public Service Commission 2009 Annual Report on Telecommunications, p. 58.

implementation such as WSP costs associated with Phase II service and IP-enabled emergency services, as originally contemplated by the Legislature under the Enhanced Wireless 911 Service Act ("**911 Act**").

Finally, Viaero knows of no public policy, whether state or federal, which would be advanced by placing an arbitrary limit on the amount of funding allocated to the Grant Program. In the absence of any evidence that such a cap is necessary or desirable, it appears that adopting such a cap would serve to undermine the established intent of the WSP industry and thwart the intention of the Commission itself in developing the 911-SAM. Clearly the Commission retains control over the application and distribution process under its proposed Grant Program. The 911-SAM has a self-limiting allocation feature regarding the Grant Program already built in, specifically that the Grant Program is only funded in the first instance with money allocated to, but not requested by or distributed to, eligible WSPs. Over the years, some WSPs have utilized other funding mechanisms to pay for E-911 costs, including direct surcharges on their customers. A particular WSP's decision not to access the State's E-911 Fund does not mean that other WSPs do not need, or should not be entitled to receive, available support from the 911 Fund as contemplated by the 911-SAM and as authorized under the 911 Act.

Further, other self-limiting mechanisms are available by the Commission to react to changes in the demand for and a utilization of funding from the 911 Fund. In the event the amount allocated to the Grant Program exceeds the available requests for funding and a surplus is carried over, the Commission has the opportunity to revise the 911-SAM accordingly on the basis of actual experience and real information rather than on the basis of unsubstantiated speculation. Certainly it is the responsibility of the Commission to regularly evaluate the needs of the State to maintain and enhance the wireless E-911

system, and to further consider on the basis of actual experience, the best way to allocate and utilize the valuable resource that the E-911 Fund represents. This reasoned, experience-based approach to allocating 911 funds will best serve the interests of the Sate as well as the interests of the WSP industry, and the PSAP community. Therefore Viaero urges the Commission to reject the proposed arbitrary cap on the funding of the Grant Program.

V. CONCLUSION

Viaero appreciates the opportunity to provide Comments on the Commission's proposed timeline and application process for the approval and distribution of funding from the 911 Fund and related verification requirements. Viaero urges the Commission to re-evaluate their timing and application component of the PFM and to adjust the proposed cap on funding allocated to the Grant Program. Viaero believes that the Commission's efforts to develop a PFM are commendable and that significant progress has been made to structure a mechanism that will be fair to Nebraska's wireless rate payer, PSAPs and WSPs alike. Viaero is anxious to further participate in all subsequent proceedings of the Commission in the development of a PFM.

Respectfully submitted this 30th day of October, 2009.

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

By_____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of October, 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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The undersigned hereby certifies that on this 30th day of October, 2009, one copy of the Comments of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, in Application No. 911-019/PI-118 was mailed via U.S. mail to:

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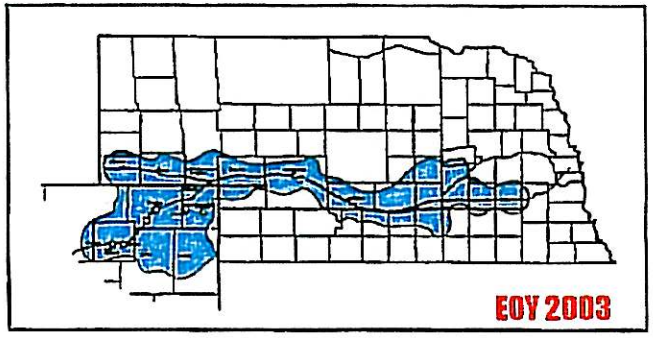
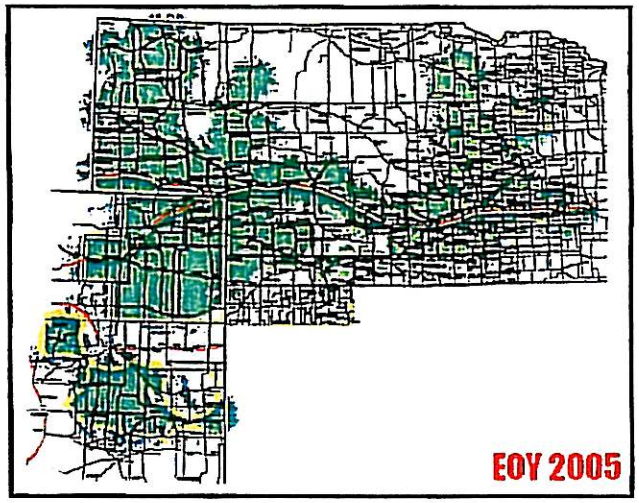
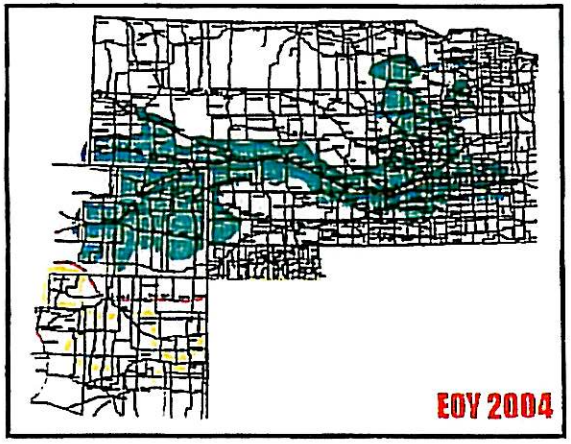
Exhibit A

Viaero's Coverage Maps

Evolution of Viaero Wireless Coverage







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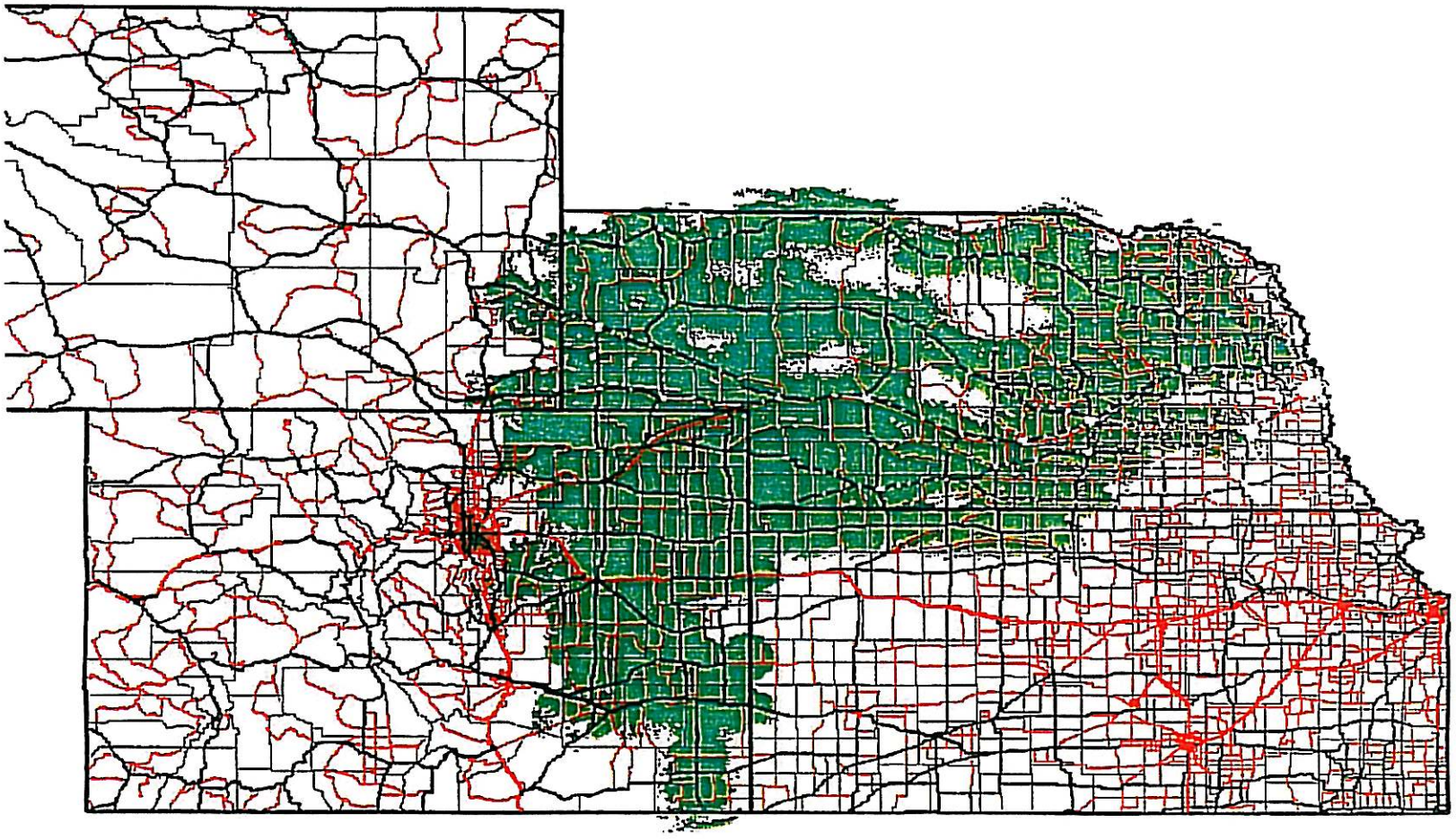
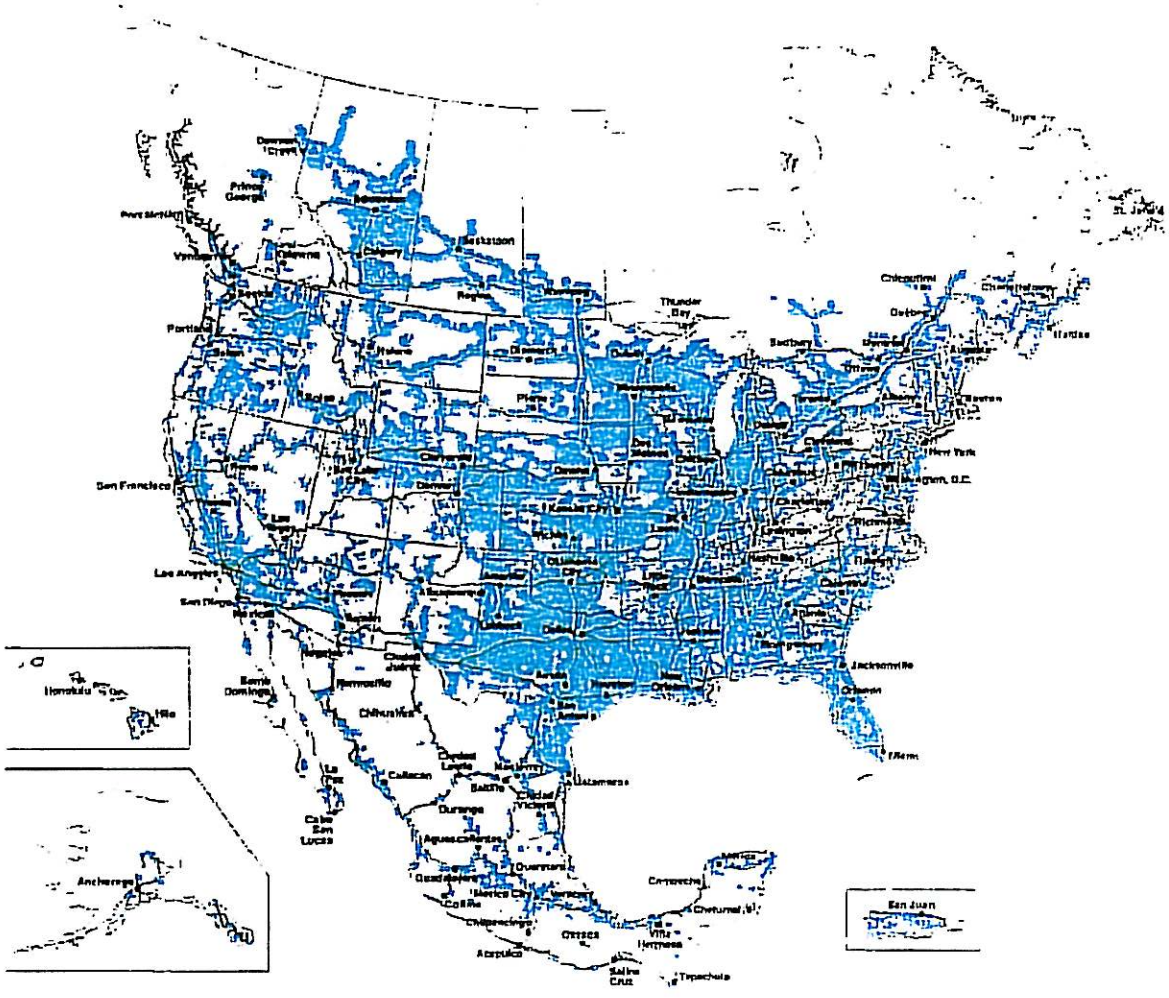
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