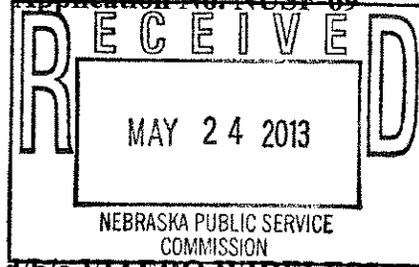


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of the Nebraska) **Application No. NUSF-77**
Telecommunications Association for) **Progression Order No. 8**
Investigation and Review of Processes and)
Procedures Regarding the Nebraska Universal)
Service Fund.)

In the Matter of the Nebraska Public Service) ~~Application No. NUSF-69~~
Commission on its own motion seeking to)
implement policies and procedures related to)
providing dedicated universal service support for)
wireless telecommunications services.)



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

N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (“Viaero”) respectfully submits these Comments in response to the Commission’s Progression Order No. 8 (the “Order”) entered on April 23, 2013. Viaero is grateful for the continuing opportunity to articulate its position regarding the development of the Commission’s Nebraska Broadband Pilot (“NEBP”) Program to make NUSF support available for broadband development in the State of Nebraska.

- 1) Should the Commission accelerate the combination of the Dedicated Wireless Fund Program into the NEBP Program?**
- 2) Should the Commission continue to maintain a separate Dedicated Wireless Fund? To what extent do the Dedicated Wireless Fund and NEBP currently overlap? Should funding support include both costs for tower construction and the development of broadband equipment on existing cell towers?**

Viaero has supported the Commission’s decision to combine the Dedicated Wireless Fund established in NUSF-69 with the NEBP Program established in NUSF-77 in light of the Commission’s recent decision to require wireless carriers to deploy broadband services as a precondition of receiving dedicated funds under the NUSF-69 Program. Viaero would also support accelerating the combination of the two Programs to the extent that the Commission

decides to increase the allocation of NUSF funds to the joint program, and, articulates a project selection methodology which prioritizes costs of service and efficiency in a meaningful way.. It is essential that the Commission continue to promote the delivery of advanced services, including broadband, to undeserved and underserved areas of the state given the growing trend towards the use of advanced technology and the economic benefits which accrue to the state and its citizens in expanding the overall telecommunications network in the state. However, Commission's commitment to this public policy initiative must be accompanied by a commitment to allocate sufficient funding from the NUSF to make broadband deployment throughout the state a top priority. In light of the significant number of applicants seeking funding in the current NEBP NUSF-77 program cycle, for funding amounts well above that allocated to the NEBP Fund, there is a compelling need to consider a substantial increase in the eligible NUSF funding allocated to support deployment of broadband service across the state. Viaero would support the allocation of at least an additional \$10 million from the NUSF Fund for that purpose next year, whether the NUSF-69 and NUSF-77 programs are merged or not.

Moreover, Viaero believes that all NUSF funds should be transitioned to promote primarily broadband deployment on a technology neutral basis. There is now competition even in markets where high cost support is available because the focus on advanced technology is rapidly shifting from voice to broadband and consumers are becoming increasingly reliant on mobile services, which consumers expect to be reliable and ubiquitous. It is clear that nationwide, as in Nebraska, there are more mobile internet users than fixed internet users. Consequently, the rapid changes in technology and consumer demand require that the model for allocation of NUSF funds cannot be primarily a wireline model because broadband is not solely a wireline service.

It is clear that the Dedicated Wireless Fund and the NEBP program contain certain common (overlap) objectives, even though they differ in the fundamental criteria for accessing program funding. While wireless carriers like Viaero have historically promoted a funding source dedicated to wireless services, the Commission's recent decision in NUSF-69 to require wireless carriers to deploy broadband services as a prerequisite to receiving funding from the Dedicated Wireless Fund has demonstrated the Commission's recognition that the traditional demarcation between "voice" services and "advanced services" is rapidly disappearing as technological advances evolve which are rapidly changing the fundamental characteristics of "telecommunications" services as we know them. This recognition that "broadband" is the emerging vehicle for all communications services is driving not only dramatic changes in the telecommunications industry but in the historic structure of federal and state regulatory processes as well as support and funding mechanisms for universal service.

The Commission has recognized in both NUSF-69 and NUSF-77 that support for both costs of tower construction and the placement of broadband equipment on existing cell towers is critical to the Commission's priority of promoting broadband availability in areas that are unserved or underserved. Simply funding the "conversion" of historic cell sites to 4G only addresses one aspect of increasing broadband availability to consumers in the state. Without funding for cell tower construction costs, expansion of broadband availability throughout the state will not be economically possible because the expansion of wireline systems will be too expensive to ever reach most areas which are currently unserved. Moreover, funding only wireline systems will result in the dramatic benefits of mobility which wireless broadband provides. Consequently, the continued funding of the costs of tower construction, which is

obviously essential in the further deployment of wireless broadband into unserved areas of the state, is fundamental to achieving the Commission's public policy objectives.

From that conclusion, it becomes evident that the Commission must establish criteria and a methodology for evaluating proposed projects which promote the delivery and availability of broadband services in the most efficient and cost effective manner. By merging the two funding mechanisms, the overriding consideration of the Commission should be the most cost effective and efficient means of delivering broadband services, regardless of technology. Any artificial or non-economic allocation methodology which does not heavily weight costs of deployment on a per-subscriber basis will not satisfy the Commission's funding responsibility to prudently marshal the scarce public resources managed by the Commission in the two funds. The historic interest of the Legislature which drove the evolution of the Dedicated Wireless Fund, to ensure the allocation of NUSF funds to the wireless industry, was the recognition that wireless services were, in any case, the most cost effective vehicle available to serve the public interest of providing Nebraska consumers with the latest and least expensive voice and advanced service offerings. The emerging reality that the technological distinction between wireless and wireline delivery of broadband services has largely disappeared compels the recognition by the Commission that its objectives under both of these programs will be most effectively achieved by allocating public funds to the most efficient providers of services.

Based on the foregoing, Viaero supports the combination of the Dedicated Wireless Fund and the NEBP, provided that the Commission supports its public policy objective of broadband deployment throughout the state, with a similar commitment to establishing a priority from its NUSF programs, and that such funding be allocated to the most economically efficient projects through a well-established and articulated selection criteria and methodology.

3) What are the advantages and disadvantages for combining the support for these programs and what conditions from the Dedicated Wireless Fund Program should be preserved?

The Commission has also developed a statistical methodology to determine the use of NEBP Program support, which was first articulated by Commission staff at the Hearing on the initial applications under this Docket on May 30, 2012 (the “Methodology”). The Methodology establishes a prioritized hierarchy for evaluating proposed projects, granting the highest priority to projects in areas determined as “unserved” and then to areas determined as “underserved.” The scoring criteria established under this Methodology was intended to encourage applicants to submit “balanced” projects that expand broadband service availability to the greatest number of Nebraskans, while prioritizing projects located in unserved areas. Three of the six criteria measured and weighted the “total number of households” in the proposed project service area to satisfy the objective of reaching the greatest number of Nebraskans. This approach, however, gives the lowest priority to areas with the lowest household density, which seems economically logical when the prioritization objective is to serve the greatest number of Nebraskans.

However, the Methodology gives value and priority only to areas where Nebraskans live, rather than there they work, travel or play. For example, in areas of the state where large numbers of people congregate for recreation, such as a lake or recreation area, there may be few if any residential households, yet Nebraskans and visitors who frequent these popular areas may often have no access to voice or broadband service at all. Yet it is in these very areas where robust communication services may be most critically important. The Methodology will always give these areas the very lowest priority because the household density is the lowest. Therefore, crucially important public safety objectives may be entirely unserved in these areas.

Broadband devices, especially mobile broadband devices, will enhance public safety, especially in rural areas. The ability to transmit streaming video, for instance, has a broad range of applications and will provide public safety organizations, including police, fire and ambulance services as well as ordinary citizens, the ability not only to talk to each other, but to transmit video images as well, all the more important when response times are extended in rural areas. A broadband-enabled ambulance could communicate directly with medical staff while en route with a patient, transmitting vital signs and images, making treatment while in transport more efficient and effective.

Both wireless and wireline networks play an important role in the existing 9-1-1 system. The Commission should consider the role of NUSF may have in either encouraging or discouraging investments in network infrastructure that enhance public safety. All carriers are required to provide access to Enhanced 9-1-1 (“E9-1-1”), but where those services are actually available depends on the reach of that carrier’s network. Nebraskans at home or on the road will lack access to the next generation of public safety technology if they lack access to broadband. The Commission should therefore, consider how the NUSF will interact with public safety funding, and create synergies where possible.

4) Should the Commission continue to provide explicit support for infrastructure in the dedicated wireless program which does not provide the minimum 4/1 Mbps speeds that are required in the NEBP, or should the Commission encourage faster broadband services?

The Commission should not provide support for infrastructure which does not provide the minimum 4/1 Mbps speed that is required in the NEBP Program. Both wireless and wireline providers are now capable of, and should be required to, deploy broadband services with speeds of at least 4/1 Mbps, and the public has come to expect such services. However, the Commission should be cautioned when scoring applications which promote speeds that go beyond 100 Mbps,

because such speeds are expensive and significantly exceed the needs of most individual users. Delivery of speeds between 4 and 20 Mbps to the greatest number of individual consumers would be much more efficient and economically viable.

5) Would absorption of the dedicated wireless fund into the NEBP accelerate the delivery of wireless and wireline broadband services because of the 25 percent matching requirement? Or would the matching obligation deter the construction of wireless facilities in given areas? Would this change make a significant difference in the Commission's ability to reach more consumers at a faster pace?

Viaero has consistently argued that the Commission should not impose a 25 percent matching requirement in the NEBP program.¹ Carriers serving truly rural markets enjoy the benefits and bear the burdens of a wide array of subsidies and service requirements. Understanding this reality renders it impossible to fairly evaluate applications that contain financial matching commitments. For instance, a rural ILEC that is essentially guaranteed to recover its embedded costs, plus a reasonable rate of return, is far more likely to match grant funding with its own money even though this commitment is backed only with the promise of subsidies from another source. Carriers that benefit from less generous federal and state subsidies, or no subsidies at all, will perceive more risk in committing to a match because this match will require putting purely private capital at risk. There is simply no way to untangle the web of federal support and cross-subsidies endemic in the provision of rural telecommunications to evaluate and compare matching commitments from carriers subject to differing regulatory and subsidy regimes.

Rather, the Commission should evaluate applications based upon realistic cost estimates. This requirement will prevent applicants from submitting unrealistically low-cost applications

¹ *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Application No. NUSF-77, Progression Order No. 3, Comments of N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (July 15, 2011) and Reply Comments of N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (July 29, 2011).

that simply leverage other subsidy monies, or are submitted for anti-competitive purposes. While under-cost applications may seem attractive in the short run, they will likely have unintended consequences and higher long-term costs. For instance, a carrier motivated solely by a desire to block a competitor will inevitably create enforcement problems for the Commission once its application is granted. A carrier which utilizes cross-subsidizing cost estimates in its application will not truly build a more affordable broadband network; it will simply be shifting the cost to consumers through other means, such as artificially high access rates or additional funding demands on the federal Universal Service Fund.

In addition to the impossibility of fairly evaluating applications which contain financial matching commitments, a 25% matching requirements will significantly deter investment in unserved areas and thereby slow down the Commission's ability to reach more consumers at a faster pace. As carriers seek to expand their networks farther into remote, high costs areas in an effort to respond to the Commission's prioritization of funding projects in unserved areas, the business model for such expansion becomes less and less certain and increasingly risky, thereby making the deployment of scarce capital much less attractive.

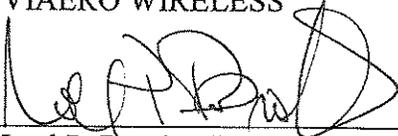
While expansion into areas of the state which experience high seasonal traffic and attract large numbers of people for recreation, such as state parks, lakes and recreation/tourist areas, will serve an important public policy objective, these same areas typically have an extremely low household density, which dramatically diminishes the opportunity for receiving NEBP funds under the Commission's currently selection methodology, while substantially increasing the investment risk by carriers to expand their network into such areas. The Commission's 25% matching requirement simply serves to increase the financial risk to such projects, thus slowing, if not eliminating, the likelihood that important projects will be constructed in such areas. Thus,

the 25% matching requirement serves to threaten the deployment of any form of telecommunications or advanced services into unserved areas of the state.

Viaero looks forward to providing further comment and analysis as this Docket progresses.

DATED this 24th day of May, 2013.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of May, 2013, an original and an electronic copy of Viaero Wireless' Comments in Docket Nos. NUSF-77, Progression Order No. 8 were delivered to:

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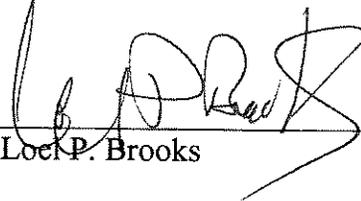
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The undersigned hereby certifies that on this 24th day of May, 2013, an electronic copy of Viaero Wireless' Comments in Docket Nos. NUSF-77, Progression Order No. 8 were delivered to:

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