

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service ) Application No. NUSF-92.09  
Commission, on its own motion, seeking to )  
administer the Nebraska Universal Service )  
Fund’s Broadband Program: application to )  
the Nebraska Broadband Program Received )  
from Inventive Wireless of Nebraska, LLC )  
d/b/a Vistabeam. )

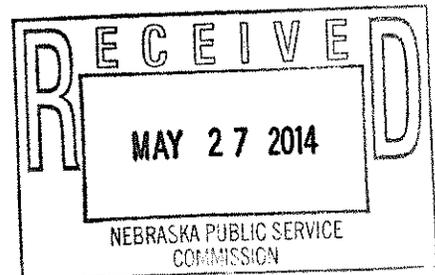
**COMMENTS OF CHARTER COMMUNICATIONS, INC.**

Charter Communications, Inc. (“Charter”) is pleased to provide the following comments (“Comments”) to the Nebraska Public Service Commission (“Commission”) regarding the Application (“Application”) of Inventive Wireless of Nebraska, LLC d/b/a Vistabeam (“Vistabeam”) to the Nebraska Universal Service Fund’s Broadband Program (the “Program”).

**CERTAIN VISTABEAM PROJECTS  
OVERLAP WITH EXISTING CHARTER SERVICE AREAS**

Vistabeam’s Application proposes to use NUSF-92 support for several projects intended to upgrade Vistabeam’s existing fixed wireless equipment in order to provide higher broadband speeds to its existing customers. Three of Vistabeam’s Proposed Projects will offer enhanced services in areas where Charter currently provides broadband service at speeds that meet the Commission’s definition of broadband for the Program,<sup>1</sup> specifically the Kimball County Project, Morrill County Project and Scotts Bluff County Project (the “Project Areas”). Vistabeam states in its Application that it currently offers service to customers in these Project Areas with a system that provides internet at speeds of 3 Mbps download and 1 Mbps upload, and that it intends to use NUSF-92 funding to upgrade its existing equipment. However, Vistbeam’s Application is unclear as to whether the proposed upgrades will permit it to expand

<sup>1</sup> 4 Mbps download and 1 Mbps upload



these current Project Areas beyond their existing borders or whether they will only continue to serve the current population base in the Project Areas.

In spite of Charter's existing qualified broadband service in these Project Areas, the Commission Staff has recommended funding for all three Vistabeam Projects which overlap Charter's existing service areas. Charter's detailed evaluation of Vistbeam's census block data indicates that Vistbeam's proposed Kimball County Project will serve 363 households, 8 of which (2%) are within Charter's existing service area. Vistabeam's proposed Morrill County Project has 1875 households in the proposed Project area, 1323 of which (71%) are within Charter's existing service area. Finally, Vistbeam's Scottsbluff County Project has 3064 households in the proposed Project area, 1540 of which (50%) are within Charter's existing service area.<sup>2</sup> Given the limited funding available for NUSF-92 projects, and the number of applications filed by carriers requesting NUSF-92 funding, Charter believes that the Commission should carefully evaluate whether it is consistent with the Commission's stated goals of NUSF-92 to award funds to Projects which upgrade broadband services for customers who are already served by other existing providers at speeds that already satisfy the requirements of the Program. This is especially the case in areas where two other fixed providers, Charter and CenturyLink, already provide broadband services at sufficient speeds. While Charter shares the Commission's philosophy that access to internet alone is insufficient and that Nebraskans need to have access to quality, high speed broadband, Charter is deeply concerned about allowing Vistabeam to access NUSF funds to simply upgrade internet services for its existing customers in areas already served

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<sup>2</sup> It should be noted that United Telephone Company of the West, Inc. d/b/a CenturyLink and Qwest Corporation, Inc. d/b/a CenturyLink QC (collectively "CenturyLink"), has also provided the Commission with testimony regarding overlap between CenturyLink's existing broadband service areas and Vistabeam's proposed projects in Morrill and Scotts Bluff counties. Specifically, CenturyLink offers broadband service at sufficient speeds in 24% of the census blocks in the Morrill County project area and 17% of the census blocks in the Scotts Bluff County project area.

by two other fixed service providers. The Commission's goals of prioritizing its NUSF funding to areas that are unserved or underserved area simply are not satisfied or advanced by awarding funding in areas where existing services are provided by two other fixed providers.

### **IMPLICATIONS OF THE 2014 STAFF RECOMMENDATIONS**

The Recommendations of the Commission Staff issued on April 22, 2014, including the Staff's explanation of the methodology it used in making its Funding Recommendations, raise several concerns. First, the Staff Recommendations reveal the Staff's decision to alter its methodology, without prior notice, to award a Group Assignment 2 to "the highest priority projects submitted by each Applicant."<sup>3</sup> This alteration effectively allocates funding to at least one project submitted by each Applicant, without regard to that project's relative or comparative ranking with any other project. Given that applications for funding exceeded the amount of funding available,<sup>4</sup> this single change in the Staff's methodology could have the effect of using up all available Program funding for those projects with a Group Assignment 2, without any comparative analysis of the merits of any of the remaining projects. This is especially disconcerting to carriers, such as Charter, which have not applied for NUSF funding to expand their broadband networks, but rather invested their own resources to develop and expand broadband services in Nebraska. By permitting funding of at least one project by any carrier who submits an application, the goals of the NUSF-92 Program can, and appear to have been, entirely circumvented by not adhering to the stated objectives of the NUSF-92 Program, which are to prioritize projects which provide qualified broadband in unserved and underserved areas. The Staff's unilateral change in the methodology effectively authorizes and rewards projects

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<sup>3</sup> See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, Recommendation of the Commission Staff, p. 13 (April 22, 2014).

<sup>4</sup> According to the 2014 Staff Recommendations, this year there were 16 applicants for a total of 96 projects. See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, Recommendation of the Commission Staff, p. 7 (April 22, 2014).

which undermine existing qualified competitive services rather than expanding access in areas not served by qualified competitive services. The Commission's decision to suddenly adopt a methodology which threatens existing service providers by using limited public resources to subsidize service upgrades in areas where unsubsidized services are already being provided is both surprising and of great concern.

Second, the Staff Recommendations state that the "total cost" of a project determines assignment priority in Groups 3 through 5, indicating a presumption that small, cheaper projects better promote the purposes of the Program. However, Charter is aware of no evidence which supports that rationale. The Commission's stated goal of the NUSF-92 Program is "to expand broadband service availability to the greatest number of Nebraskans"<sup>5</sup> which reasonably translates to providing broadband services to the most Nebraskans for the lowest costs. However, that goal does not mean that cheaper projects best meet that objective. Rather, the Commission must determine, at a minimum, what the cost-per-subscriber is for each project. Charter also suggests that the nature and quality of the service being proposed by the applicant must also be evaluated, since currently there is no mechanism in place for the Commission to evaluate the quality, viability or reliability of broadband services any carrier will deploy using NUSF funds. While Charter fully supports the stated goals of the NUSF-92 Program, it does not believe that the Commission Staff's methodology for evaluating applications for funding achieves those goals.

Finally, as a wireline carrier, Charter is also concerned with that the fact that a very high percentage of the funding awarded from the Program has been awarded to fixed service

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<sup>5</sup> See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, Recommendation of the Commission Staff, p. 14 (April 22, 2014).

providers. In last year's NUSF-77 docket, fixed service providers received 81.4%<sup>6</sup> of the available funding, and in this year's NUSF-92 docket, fixed carriers received 63.5%<sup>7</sup> of the available funding. These results reveal an apparent preference for fixed technology over mobile technology, and, based on the recent methodology adopted by the Commission Staff which awards some funding to any carrier who applies without regard to comparative neutral ranking with any other Project, suggests that fixed providers who invest their own dollars in developing broadband services in Nebraska face a greater economic threat from the Nebraska's NUSF Program than wireless carriers.

### **PROCEDURAL MATTERS**

Charter elected to withdraw its previously filed Formal Intervention in spite of its concerns about the Staff Recommendations, because it did not feel that it was economically justified in opposing Vistabeam's application given all of the facts and circumstances. To participate in negotiations with other carriers and sponsor testimony and expert witnesses is both time-consuming and expensive and must be carefully considered on a case-by-case basis. However, by filing an Informal Intervention, Charter seeks to provide the Commission with its concerns over the Commission Staff's Recommendations and the methodology the Staff has decided to apply in this Docket. Charter believes that the Commission's stated goals for the NUSF-92 Program are laudable and important; however the new methodology being used to prioritize the fund projects is clearly inconsistent with those goals and potentially undermines

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<sup>6</sup> See *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*, Recommendation of the Commission Staff, Table 3 (August 28, 2013).

<sup>7</sup> See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, Recommendation of the Commission Staff, Table 2 (April 22, 2014).

the important economic interests of service providers who provide existing, qualified broadband services across the State.

Dated this 27<sup>th</sup> day of May, 2014.

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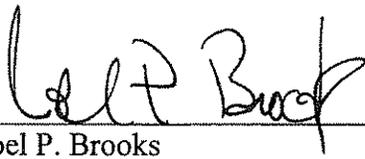
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 27<sup>th</sup> day of May, 2014, an original, five copies and an electronic copy of Charter's Comments in Application No. NUSF-92.09 were delivered to:

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 27<sup>th</sup> day of May, 2014, an electronic copy of Charter's Comments in Application No. NUSF-92.09 was delivered to:

**Vistabeam**

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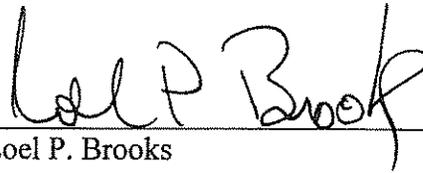
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