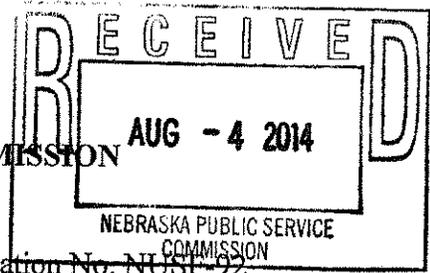


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION



In the Matter of the Nebraska Public Service)
Commission, on its Own Motion, to Administer)
the Nebraska Universal Service Fund Broadband)
Program)

Application No. NUSF-92
Progression Order No. 1

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

I. INTRODUCTION

N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (“Viaero”) respectfully submits these Comments in response to the Commission’s Progression Order No. 1 (the “Order”) entered on July 22, 2014. Viaero is grateful for the continuing opportunity to articulate its position regarding the development of the Commission’s Nebraska Universal Service Fund Broadband Program (“NEBP”) to make NUSF support available for broadband development in the State of Nebraska.

II. ISSUES FOR COMMENT

A. Defining Mobile versus Fixed Broadband

Viaero supports the adoption of the FCC’s definition of fixed terrestrial broadband and the inclusion of fixed wireless broadband service in that definition. As noted in the Commission’s Order, the FCC has defined “terrestrial fixed broadband service” as one that

serves end users primarily at fixed endpoints using stationary equipment such as the modem that connects an end user’s home router, computer or other Internet access device to the network.

The FCC further provided that this term includes fixed wireless broadband services (including those offered over unlicensed spectrum). Viaero proposes that mobile wireless service providers who do not fall under the FCC’s definition of a terrestrial fixed provider, but who offer an

optional fixed product, should be categorized as only a mobile provider as this is the approach used by the FCC.¹

Viaero does not think that individual projects should be categorized as fixed or mobile project, rather that the carriers be classified by the Commission as either a fixed or mobile provider and, any projects proposed by those carriers, be evaluated in the appropriate category. Carriers should be required to identify the type of service they offer based upon previous filings with the Commission, publically available data, including promotional material and advertising material, and how they are categorized on the National Broadband Map. While Viaero recognizes that issues arose during the first round of funding under NUSF-92 regarding the classification of carriers as either a mobile or fixed provider, if the Commission were to adopt the FCC's definition of fixed broadband service, how carriers self-identify would be an easy starting point for categorizing carriers as either fixed or mobile. Even if carriers use only broad terms to describe their services, at a basic level, each carrier identifies itself as offering a fixed product, including a fixed wireless product, or a mobile product. Rather than make the classification process more difficult by requiring a nuanced discussion of the technology involved, the Commission should simply require each applicant to identify itself as a mobile broadband provider or a fixed broadband provider, which includes fixed wireless broadband provider.

Viaero does not support using other technological factors as a basis for defining fixed or mobile service. These factors become too nuanced and difficult to uniformly evaluate between the carriers. Furthermore, Commission staff lacks the technological and industrial expertise to effectively evaluate these factors.

¹ *Connect America Fund*, WC Docket No. 10-90, Order, DA 14-32, para. 198 (2014).

Viaero does support the basic concept that, in the context of 911 service, caller location information could be used to evaluate whether a provider offers a mobile or fixed product. As evidenced by testimony in the NUSF-92 hearings, the caller location information transmitted by fixed providers differs from that provided by mobile providers. A customer who makes a 911 call from a device associated with a mobile carrier will have the location data of the actual handset used to make the 911 call transmitted to the PSAP. In contrast, a customer who makes a 911 call from a device associated with a fixed carrier may not have the actual location of the device making the call transmitted to the PSAP, but rather will have the location data of the address of the residence only or business associated with the fixed wireless base unit transmitted to the PSAP. To require mobile carriers to comply with the 911 service requirements of 47 C.F.R. § 20.18 in order to be considered a mobile carrier for purposes of NUSF funding would require Commission staff to undergo another level of application review, especially in light of the exceptions and waivers to the regulation granted to mobile carriers by the FCC. Nor does Viaero believe that Phase 2 wireless E911 location accuracy be a requirement for classification as a mobile provider for similar reasons.

B. Multi-Year Projects

Viaero does not support a change by the Commission to permit multi-year broadband projects to be funded using NEBP funding. While Viaero recognizes that some broadband build-out plans may not be viable or cohesive with one-time project support, historically, the Commission receives more applications for one-year projects than can be funded in a single year. Given the already limited amount of funds available and the increasing number of applications, it does not appear necessary to tie up future funding with projects that would have been granted in a prior application year. There appears to be sufficient projects that are eligible for funding

which can be completed in the timeframe permitted by the Commission to make effective use of each year's funding resources.

Additionally, multi-year projects are difficult because rather than permitting a carrier to do annual evaluations of expansion, carriers would have to commit to build-out plans that might turn out to be more or less economically viable than thought when the original application was filed. In short, multi-year projects do not necessarily permit accurate forecasting for project development and carriers are unable to evaluate, on a year-by-year basis, where it makes economic sense to expand their network.

C. Project Caps

Viaero opposes the Commission's recent policy of awarding each applicant funding for a single project, i.e., giving the "best" project from each applicant a Group 2 assignment as further discussed below. However, if the Commission intends to continue that policy, then Viaero supports the adoption of a project cap. Each year, the Commission receives more applications than can be funded and, if every carrier has one project eligible for funding, without any project caps in place, the Commission could end up awarding all its available funding to this group if carriers simply file large, singular projects.

However, should the Commission decide to not identify a project from each applicant for funding and not use its current methodology for Group 2 assignments, Viaero would not support project caps. Larger, more expensive projects, that can provide a large number of consumers with broadband access at a low cost per subscriber, should not be penalized for simply being more expensive. Viaero has always supported a "cost per subscriber" analysis and does not believe that the Commission's current policy of giving more expensive projects a lower ranking in Groups 3-5 simply because they are more expensive supports the legislative rationale behind

the NEBP. Viaero has repeatedly urged the Commission to select projects for Program funding in a manner which prioritizes costs of service per subscriber and efficiency in a meaningful way. The overriding consideration of the Commission in its project selection methodology should be the most cost effective and efficient means of delivering broadband services to the most Nebraskans, 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 Program fund.

D. Broadband Adoption

While Viaero recognizes that affordability of broadband service at speeds sufficient to ensure that consumers can use internet effectively in their daily lives is an issue that should receive attention and perhaps funding from the Commission, this docket is not the appropriate vehicle for that issue to be addressed. The Commission has made it clear that the ability of Commission staff to uniformly evaluate applications is critical to the process of awarding funding. While Viaero may not agree with certain aspects of the methodology, it seems apparent that the methodology used by the Commission to evaluate capital improvement projects for funding would be difficult to adapt to evaluate broadband adoption projects. Viaero recommends that a separate program be created for evaluation of broadband adoption projects, as there appears to be no way to create an evaluation matrix that would equitably compare capital improvement projects with new broadband adoption projects that, given concerns raised by the Commission in its Order and in the NUSF-91 docket, would be focused on low income Nebraskans. Viaero acknowledges that without sufficient internet speeds, this subset of Nebraskans lack meaningful access to internet resources which results in restricting economic development and educational

opportunities but that to add another layer of complexity to project evaluation would be difficult for carriers and for the Commission.

Similarly, while Viaero recognizes that there may need to be directed support to increase broadband adoption statistics in Tribal areas, Viaero does not believe that this docket is an appropriate venue.

E. Additional Comments

a. Unserved versus Underserved Analysis

Viaero believes additional clarification is needed on the Commission's process for evaluating each project in terms of whether its proposed location is an unserved, underserved, or served area. According to the 2014 Staff Recommendations, any project that was comprised of completely unserved areas was to receive a Group Assignment of One (1). Viaero submitted four Projects which its resources show would serve completely unserved areas: the Lyman South Project, the Wallace North Project, the Sparks Northeast Project, and the Dix Southwest Project. It is Viaero's understanding of the Staff's methodology that because these Projects would provide broadband service to areas which were "unserved", as defined by the Commission, all four of these Projects should have been identified as Group Assignment One (1) and prioritized for funding. Yet none of these Projects were recommended for funding by the Commission Staff. There is no evidence or supporting calculations attached to the Staff Recommendations showing the Staff's "unserved" and "underserved" analysis, or at a minimum, the Group Assignments.

Tyler Frost has repeatedly stated that he does not use the State Broadband Map data reported by mobile broadband providers. However, it appears that while Mr. Frost is not using data reported by mobile broadband providers, he is using the data reported by fixed broadband providers when evaluating a mobile broadband provider's proposed service area. Stated another

way, while in NUSF-77, Progression Order No. 7, the Commission found that “comparable access could mean universal service access to one fixed and one mobile broadband provider,”² when evaluating whether an area is served or unserved, Commission staff is only looking at fixed broadband service and not evaluating mobile broadband service. This could result in a mobile broadband provider’s application to serve an area that is unserved or underserved by mobile broadband providers being denied funding even though there is no mobile broadband service meeting the Commission’s 4/1 mbps requirement because the area is served by a fixed broadband provider. While Viaero recognizes that it could provide evidence at the hearings of a lack of mobile broadband service in the area, under the Commission’s current procedure for evaluating applications, that evidence would be presented in a hearing that would happen after Mr. Frost has evaluated the application, assigned a ranking, and proposed funding. It seems clear that if the Commission’s policy is that there can be one mobile and one fixed provider in each service area, that when evaluating whether an area is served, underserved, or unserved, applications for fixed broadband projects should be evaluated against existing fixed services and applications for mobile broadband projects should be evaluated using existing mobile services. To evaluate all projects, including mobile broadband projects, using only fixed broadband data is in conflict with the Commission’s policy of one fixed and one mobile provider.

b. Group 2 Assignment

In the prior round of funding, the Staff changed the manner in which Group Assignment 2 is established by including in Group Assignment 2 “the highest priority projects submitted by each Applicant”. This decision effectively allocated funding to at least one project submitted by each Applicant, without regard to that project’s relative ranking with any other project. Given the

² *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. 7, Order at 11 (January 15, 2013) (“Progression Order No. 7”).

number of projects submitted for funding, this strategy could have the effect of using up all available NEBP funding for those projects with a Group Assignment 2 without any comparative analysis of the merits of the remaining projects. This is inconsistent with the Commission's stated objective of carefully ranking each applicant's project against all other projects using the Commission's stated criteria.

c. Prioritization Based Upon Total Cost of Project

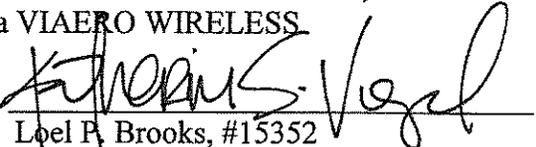
As stated above, Viaero does not believe that the Commission's policy of prioritizing or ranking projects based upon total cost of the project effectuates the purposes of the NEBP. Penalizing larger projects simply because they are more expensive, without any analysis as to whether those projects have the best cost per subscriber value, is not an appropriate method for evaluating how to expend state controlled funds. The Commission needs to evaluate the "value" of each project at a deeper level than simply overall project cost. Without further analysis, the Commission has no reference point for determining whether the funds are being used to get broadband service to the greatest number of Nebraskans at the lowest cost.

III. Conclusion

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

Respectfully submitted this 4th day of August, 2014.

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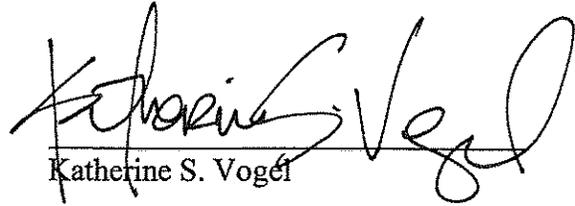
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The undersigned hereby certifies that on this 4th day of August 2014, an original, one copy and an electronic copy of Viera Wireless' Comments in Docket No. NUSF-92, Progression Order No. 1, were delivered to:

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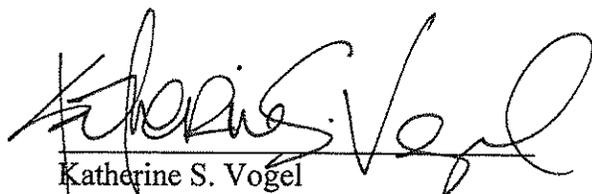
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