



least be weighed against an applicant on their financial ability to timely and appropriately complete a grant project. Companies that have used public funding to build networks and later wrote off billions of dollars of debt by declaring bankruptcy should not be allowed to continue to abuse taxpayer funds.

Viaero has been successfully serving customers since 1991, proving our technical capability to fulfill grant requirements. However, longevity does not always indicate the ability to adapt to new technologies or to serve customer demand into the future. Score deductions are reasonable for bad actors to incentivize applicants to invest in their businesses for their customers. Viaero takes no issue with the Commission's proposed showing for legal capability.

### **Tiebreaker**

The Commission has been granted the authority and has the capability to decide the best use of limited funds at their discretion without a rigid rule such as lowest requested amount. The purpose of the Broadband Bridge Act is "to facilitate and fund the development of broadband networks in unserved and underserved areas," and adhering to the lowest amount requested does not serve that goal as well as using other factors on a case-by-case basis.<sup>1</sup>

### **Challenge Process**

While Viaero does not dispute a challenge process, it feels that it could be more efficiently done to allow for competition in a project area. For example, the State of Colorado allows for a right of first refusal process to an incumbent provider that is already in the project area, but providing service at potentially slower speeds than the grant requirements, to file a right

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<sup>1</sup> N.R.S. 86-1303 (2021)

of first refusal to serve the project with existing and new infrastructure, at the same or lower cost of the applicant, and within a shorter duration of time (in Colorado, a grant awardee is given two years to build out, but an incumbent provider that exercises a right of first refusal must complete the project within one year of being awarded funding). Additionally, if a project is submitted in an application that includes homes or addresses that are already receiving service, that grant is determined to not meet the minimum requirements and is not approved to move on through the review process. This places the onus on the applicant to diligently review the project area and gather sufficient data to dispute any reported service that is not actually being delivered to the customer, helping to expedite the review process, and is utilized to prevent funding being allocated to overbuild existing infrastructure. However, considering the statutory requirement for a challenge process, and without a change in structure of the grant program to allow such right of first refusal, such changes would require Legislative action.<sup>2</sup>

### **Speed Testing**

Accountability in the use of taxpayer dollars is important. Given the global pandemic, entering customers' homes has been problematic, with the risk of potentially exposing both customers and employees. At this time, Viaero is requesting speed test results from the customer be returned to a designated Viaero email address. Viaero proposes that evidence of network equipment could supplant on site speed testing or supplement a complaint driven process to speed test. In the event that an applicant is unable to obtain speed tests from the potential customers in a project area, and while Viaero recognizes changes being implemented into the FCC mapping and reporting requirements, until this data is readily available, it should be

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<sup>2</sup> N.R.S. 86-1307 (2021)

sufficient to rely on the multiple data sources currently available to an applicant including that from the Commission, the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) mapping, and private or commercial speed test data that an applicant can obtain in support of their project are the best source of data at this time.

### **Revisions to Applications**

While Viaero supported allowing revisions to applications in comments submitted for Docket C-5272, the efficiencies have not played out as expected and the process is cumbersome with outcomes supporting well-represented incumbents known for providing poor broadband service. Broadband providers can submit corrections to such publicly available data if discrepancies exist, and this should be done prior to application by the broadband provider, not during a time sensitive grant process. While cooperation among applicants in the interest of Nebraskans is desirable, broadband grants remain highly competitive.

### **Data Plans and Usage Caps**

Viaero supports the Commission's bar on throttling and usage restrictions. When business lines have early termination fees, it is possible to remove these restrictions in areas where grant funding is used, if required by the Commission.

### **Digital Inclusion Plans**

Access and affordability of broadband services is critical to ensure the greatest benefit for the greatest number of Nebraskans. Viaero strongly supports including scoring for digital inclusion plans and participation in Lifeline, the Emergency Broadband Benefit, and Affordable Connectivity Program. Such programs ensure fair access and equity, a critical component of a state funded grant program.

## **Match Source**

Due to current supply chain shortage, where fiber optic cable and conduit is currently being pushed out for delivery as much as an 80-week delay from purchase, in-kind contributions should be allowed with documentation of the actual cost of the contribution for equipment on hand prior to submission of the grant, which will enable an applicant to timely build out and complete the project within the required timeline.

## **Public-Private Partnerships**

In other states this criterion makes more sense and is scorable where public entities are Internet service providers, but in Nebraska every private network that uses public dollars is a public-private partnership and does not need additional scoring criteria.

## **Conclusion**

Finally, while not requested for comment, Viaero supports a lower match rate for high-cost areas, as proposed by Legislative Bill 1144 (2022).<sup>3</sup> Viaero's service footprint is focused on rural areas, where a business case does not prove to be efficient without grant funding. In areas where it would take more than five years to recuperate the investment costs for projects to the truly underserved in hard-to-reach areas of Nebraska, a lower match contribution should not be penalized or scored less, as these are precisely the areas sought to be developed under the Broadband Bridge Program.

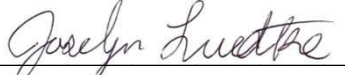
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<sup>3</sup> <https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1144.pdf>

In conclusion, Viaero appreciates the Commission's work to thoughtfully administer the Nebraska Broadband Bridge Program and looks forward to continued collaboration in serving the public's need for broadband access and affordability.

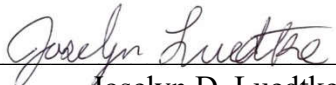
DATED: February 22, 2022

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### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of February, 2022, one electronic copy of the Comments of NE Colorado Cellular, Inc., dba Viaero Wireless in Docket No. C-5368 were e-mailed to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).

  
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