

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)
Public Service Commission, on)
its own motion, to implement)
the Nebraska Broadband Bridge Act)

Docket No. C-5272

COMMENTS OF NE COLORADO CELLULAR, INC., DBA VIAERO WIRELESS

NE Colorado Cellular, Inc., dba Viaero Wireless (“Viaero”) respectfully submits the following comments in response to the Nebraska Public Service Commission’s (“Commission”) Order Opening Docket and Seeking Comment to implement the Nebraska Broadband Bridge Act (“Order”) entered June 8, 2021, in the above-captioned docket.

In the Order, the Commission seeks feedback on the implementation of the Nebraska Broadband Bridge Program (“NBBP”) created under LB388 (2021). Several questions have been posed in the docket, and responses are provided below on the matter of grant priorities, how to identify project areas in an application, speed test data, noncontiguous geographical areas, unserved and underserved areas, overlapping areas, digital inclusion plans, matching funds and in-kind contributions, eligibility and priority determination, scoring and weighted criteria, and grant distribution.

Viaero appreciates the opportunity to assist the Commission in the formation of the policies for a very important and potentially impactful broadband grant program. According to LB388 (2021), “The purpose of the program is to facilitate and fund the development of broadband networks in unserved and underserved areas...”. Unserved areas are defined in the new law as areas lacking access to 25/3 Mbps broadband speeds and underserved areas are defined as lacking access to 100/20 Mbps broadband speeds.¹ Viaero’s commitment to serve

¹ LB388 (2021) <https://nebraskalegislature.gov/FloorDocs/107/PDF/Slip/LB388.pdf>

rural customers in Nebraska, Colorado, Kansas, and Wyoming is evident in our long history of providing the most up to date technology possible in some of the most high-cost areas, to serve our families and neighbors.

Grant Priorities

Viaero agrees with the Nebraska Legislature and the Commission that serving unserved areas should be the greatest priority. This approach ensures the best use of financial resources allocated to this grant program.

Project Area identification

Viaero agrees with the Commission's proposal to require identification of serviceable locations in a shapefile or alternative format that enables the Commission to determine the number of locations *capable* of being served, with the practical understanding that not all locations will be served due to customer preference or existing services in anchor institutions or businesses. Shapefiles are currently used in the work Viaero does and such a request would not pose a burden on applicants.

Speed Data

Viaero supports the Commission's suggestion to require applicants to file documentation that the speeds proposed in their application are being provided as advertised. Accountability is key to ensuring affordable access. Additionally, this metric would demonstrate the weighted criteria of an applicant's technical capability to provide such service in proposed project areas within the NBBP timeframe.

Noncontiguous Geographical Areas

Viaero supports allowing applications for grants in noncontiguous geographical areas if there is some connection to the overall application, with the caveat that project areas should be

clearly defined in each application. It is a reasonable assumption that areas exist that need broadband service but are proximally close to served areas, which may cause them to appear served on a map, while in reality remaining unserved. Allowing noncontiguous geographical areas in the same application would allow more remote homes to be served with last mile fiber connections, even where there may be businesses or anchor institutions nearby being served. The unique geography of rural Nebraska coupled with modern technological applications make the defined boundaries of contiguous geographical areas less necessary. However, if an application contains several noncontiguous projects, Viaero's position is that each of the project areas should be submitted through a separate application. This will allow the Commission to better evaluate each project area and allocate financial resources to serve priority areas classified as unserved.

Unserved and Underserved Areas

Viaero proposes that all applications that include an unserved area should be prioritized. However, applications that include unserved and underserved areas should not be moved to a lower priority, as an economic business case may not exist to improve or build out to higher speeds absent NBBP grants. Allowing such treatment of applications including underserved areas follows the letter of LB388 and the NBBP proposed by the Legislature, and also incentivizes faster buildout to provide upgrades to these areas that may have greater than 25/3 Mbps but less than the 100/20 Mbps speeds. NBBP grants can improve both the accessibility of broadband in unserved areas and the affordability in underserved areas. Such an approach would allow grants to be awarded for projects proposing an economical approach to serving Nebraskans and could limit the number of applications a carrier must make in the NBBP.

Overlapping Areas

An opportunity to address overlapping areas once all applications are received would benefit Nebraskans and allow for a more efficient use of grant funds. Viaero supports the Commission granting applicants the ability to revise applications to remove overlapping areas submitted by another application. This process will allow for broadband to be able to be delivered to customers, so long as it is supportive of the purpose of the NBBP, to facilitate and fund the development of broadband networks in unserved and underserved areas. Additionally, applicants should be allowed to amend their applications, time permitting, to address any overlap with NBBP applications and areas receiving Nebraska Universal Service Fund (NUSF) support through the reverse auction or rural-based plans. While time is a factor, allowing applicants 10 days to correct an application could save time and resources in the future.

Digital Inclusion Plan

Affordability is a key component of broadband access. Using participation in the Nebraska Telephone Assistance Program/Lifeline, the Emergency Broadband Benefit Program, or the Emergency Connectivity Fund Program, is a good indicator of an applicant's commitment to serve all Nebraskans. Compliance in and participation with federal and state programs to offer discounted service is an important indicator of a community partner willing to inclusively address resident's needs.

Matching Funds

Viaero suggests that federal and state funding should not be allowed as a match. The provision of additional dollars for broadband projects through the NBBP acknowledges the need for a variety of funding sources in the buildout of broadband networks across Nebraska, while NUSF dollars should continue to be used for existing purposes, not to be a part of the NBBP

buildout. The 50% matching requirement ensures an acceptance of risk and diligence in ongoing service provision that justifies the long-term financial reward of customer revenue.

Cash or in-kind contributions should be the only funds allowed for the match. The possibility for abuse increases with the variety of allowable match sources. In-kind contributions should consist of existing inventory, internal engineering, project management, materials, and permitting fees. Applicants seeking to use existing inventory (such as fiber optic cable, conduit, or construction materials) as an in-kind match, should disclose the original price paid.

Eligibility and Priority Determination

Speed test data collected by the applicant should be allowed to affirm speeds despite Form 477 data, which is historically a poor indicator of actual service in rural areas. Further, speed data should be allowed to evidence that the reported coverage is not what is actually being provided to the consumers in a potential project area. An applicant may collect and submit such speed data with sufficient information to evidence the speed test used, the date and time stamped copy of when the speed test was taken, together with the address where it was taken from, as well as the broadband plan and provider being utilized and from which the subscriber currently has service. In the event that an applicant submits this data to reflect coverage and eligibility for an application, Viaero respectfully suggests the Commission adopt a standard of 30% of speed tests in a census block to determine served/unserved/underserved for purposes of the NBBP. The suggested 50% is high due to the technical steps necessary for acquiring that number of speed tests (i.e., 50% of all households in a project area isn't feasible where access to premises is required), or where the applicant typically needs to direct a residential consumer to send the data to the applicant *prior* to the application. Additionally, because of the different technologies potentially being used, an applicant may not be able to accurately obtain speed tests simply by

drive testing an area, whereas the 30% baseline will allow the Applicant and the Commission to adequately assess an application.

Scoring and Criteria

Viaero agrees with the Commission that an approach basing the scoring/weighting on objective criteria that is transparent to the public is necessary. Viaero comments on the criteria from Attachment B of the Order, in the areas of Financial Capability, Technical Capability, ETC Status, Rates, Minimum Broadband Speeds, Match Source, Match Percentage, and Households Covered.

Financial Capability

As mentioned previously, applicants that can provide a higher cash match for the project are likely to be more financially capable at providing ongoing maintenance of the project after completion. Weighting the score of applicants with a stronger financial position will ensure the NBBP dollars granted today provide long lasting positive impact to Nebraskans and dissuade unreliable and untried/new-to-market applicants.

Technical Capability

It is prudent for the Commission to consider the number of years an applicant has been providing service in Nebraska, however, a carrier that has been providing poor quality service for many years should not be weighted heavier than a company providing stellar service for a shorter time. Quality of service should be given a greater weight than quantity of years.

The proposed requirement for an attestation that equipment used is compliant with the FCC's equipment and authorization rules to promote national security, relying on such rules in place at the time of the application deadline, is appropriate. Basing the disqualification of certain equipment on the FCC's determination of risk is more appropriate than the Commission coming

up with its own determination of safe equipment and provides stability for companies purchasing such equipment in bulk.

Eligible Telecommunications Carrier Status

Viaero supports the Commission giving greater weight to providers that have ETC status prior to submitting an application. ETC status demonstrates a commitment to continue serving Nebraskans into the future, and it provides the Commission with oversight powers to ensure the responsible use of public funds. ETC status also demonstrates the financial, technical, and legal capability of an applicant. Viaero supports an even weightier consideration for current or long time ETC status holders, and less weight (or no weight) for no ETC status designation at the time of application.

To avoid the issue of a NBBP grant recipient failing to secure ETC status by the end of project completion, Viaero recommends the Commission require ETC status prior to payment. Requiring ETC status as a condition of receiving the grant ensures the Commission is able to enforce repayment provisions in the event of failed speed tests, and it also demonstrates the applicant's legal capability to deploy and operate broadband Internet service.

Rates

Viaero proposes that the Commission should allow service plans with a contract because the terms and conditions of such contracts allow for access or easements being granted to install the service components in a timely and efficient manner, and to speed test the service. Another benefit of a having contract for service is on properties with a tenant, contracts may contain provisions that protect the service provider by ensuring that the tenant has authority to enter service agreements that may require installation, and access to the property for the infrastructure

to be placed. Further, such contracts allow for stability in a carrier's business model and ensure future service is supported.

Minimum Broadband Speeds

As of the time of this comment, fiber optic cable is the only technology capable of meeting the 100/100 Mbps standard. Instead of giving weight to different technologies, Viaero proposes that until a new technology is shown to be capable of speeds comparable to fiber, that fiber projects should be automatically and solely eligible. Greater weights for speed tiers in excess of 100/100 Mbps benefit companies investing in more expensive network equipment, but those investment costs also carry into customer rates, another weighted score for NBBP grants. This means applicants will need to carefully balance the speeds and rates offered, in a way that may favor unaffordable service that is, in fact, more bandwidth than the individual consumer needs at this time. The beauty of the NBBP is that it will fund the last mile of fiber to the home and allows the consumer to determine the level of speed necessary for their Internet use purposes and budget. However, the Commission's proposed weighting criteria appear to disincentivize the offering of higher speeds inside a project area over speeds offered outside the project area, where rates outside the project area must be comparable to receive the 10 points in the rate category. For example, applicants able to offer 1 Gig synchronous upload and download speeds in the project area, but at a higher rate than a 100/100 Mbps offering outside the project area, will receive 10 points for a speed additive but zero points for rates. If rates are compared with similar speeds offered outside the project area, the weight of rates and speeds proposed in the Order can be fair.

Match Source

As mentioned above, Viaero proposes that use of federal or state funds should not be allowed as a matching source, and therefore this weight category should be eliminated from Appendix B. LB388 does not require a weight be given to projects funded by federal broadband funds, and it is inappropriate to do so, especially where the priority designation system already contemplates such match sources.

Match Percentage

The match percentage weighted scoring heavily favors applicants requesting the least percentage of funding for the project. Presumably the unserved areas will be the highest cost to build and to maintain, but this weighted scoring benefits projects that have a lower buildout cost and higher expected rate of return. While it is reasonable to favor applicants willing to provide more of the investment and risk, 20 points seems excessive to meet the letter of LB388. Increments of 1-10 points would better reflect the intent to provide broadband where it is currently too expensive to make an economic case to buildout.

This section of the Order also asks if the Commission should give an applicant any chance to cure a defect and if so, how much time should be given. To err is human, therefore Viaero proposes that applicants be given 10 days to correct any material defects in their application.

Households Covered

For the scoring criteria of Households Covered, the greater weight proposed for more households served could lead to the most remote areas being left out of this grant opportunity. Choosing the most customers served does not necessarily align with the goal of providing rural broadband. Population density should not be weighted when trying to serve rural areas. Indeed,

the weighting of the number of households covered by an application is not expressed in LB388 (see section 6) and should be removed from the scoring and weighting sheet proposed in Appendix B to the Order.

While the goal of providing grants to increase service to more households is worthy, these funds were designed to reach areas that have not yet made an economic case for fiber infrastructure investments because of the low density of households per area. Viaero is dedicated to connecting and serving rural areas. Viaero's position is that if these locations were easy or inexpensive to serve, they would be served, and Viaero is committed to bridging that gap.

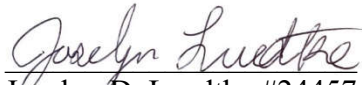
Distribution of Support

Considering the cash flow needs of businesses undertaking such a monumental endeavor as connecting the last mile of Nebraskans to broadband, Viaero supports the Commission's proposal to distribute support with thirty percent of the net grant award initially and a monthly distribution amortized over the 18-month buildout, with the possibility of being paid in full at the time of project completion prior to the 18-month limitation.

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

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NE COLORADO CELLULAR INC., DBA
VIAERO WIRELESS

BY: 
Joselyn D. Luedtke #24457
ZULKOSKI WEBER
725 S. 14th St.
Lincoln, NE 68508
(402) 429-4895
joselyn@zulkoskiweber.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of June, 2021, one electronic copy of the Comments of NE Colorado Cellular, Inc., dba Viaero Wireless in Docket No. C-5272 were e-mailed to psc.broadband@nebraska.gov.


Joselyn D. Luedtke