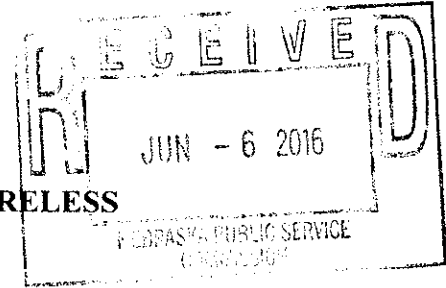


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service) Application No. NUSF-100/PI-193
Commission, on its own Motion to consider)
revisions to the Universal Service Fund)
Contribution Methodology.)



**COMMENTS OF
NE COLORADO CELLULAR, INC., D/B/A VIAERO WIRELESS**

I. INTRODUCTION

NE Colorado Cellular, Inc., d/b/a Viaero Wireless (“**Viaero**”) is pleased to submit these comments to the Nebraska Public Service Commission (“**Commission**”) in response to the Commission’s April 5, 2016 Order Seeking Further Comments (the “**Comment Order**”) in this Docket.

Viaero appreciates the Commission’s initiative to evaluate the Nebraska Universal Service Fund (“**NUSF**”) contribution mechanism which it originally established in 1999. In furtherance of the Commission’s evaluation, Viaero is pleased to offer the following Comments to the Commission.

II. COMMENTS

Viaero generally supports the Commission’s goal of developing a strategic plan to “modernize and reform the contribution mechanism to promote an equitable and sustainable framework in an evolving communication environment.”¹ As the Commission noted in its Opening Order,² the current contribution mechanism is not sustainable in light of innovation that has fostered new technologies and a wide array of communication services to consumers which has triggered the migration to services on which the NUSF surcharge is not remitted and

¹ See, *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100/PI-193, Order Opening Docket and Seeking Comment, (Nov. 13, 2014), p. 1 (“**Opening Order**”).

² *Id.* at 1.

therefore do not contribute to the NUSF.³ Further, as the assessment base has continued to decline, wireless consumers have continued to fund an increasingly greater share of the NUSF, while funding for mobile wireless telecommunication carriers has continued to constitute a small fraction of the NUSF funding expenditures.⁴ These trends, coupled with other competitive distortions cited by the Commission⁵ which have been permitted by the federal USF mechanism, have resulted in an inequitable contribution system that is broadly recognized as broken.⁶

The Commission has noted that it is not, at this time, considering the expansion of the base of service providers obligated to make NUSF contributions.⁷ Rather, the Commission is proposing to adopt a new contribution methodology, to replace the current broken system, which is equitable and sustainable⁸ and which must also be nondiscriminatory and technologically and competitively neutral.⁹ Viaero agrees with the Comments of the Rural Telecommunications Coalition of Nebraska (“**RTCN**”) that the Commission, under State law, has the authority to reform the NUSF contribution methodology consistent with the options and limitations set forth in the Commission’s Order.¹⁰

The Commission noted in the Comment Order that the FCC has referred the issue of contribution mechanisms under the federal universal service fund to the Federal State-Joint

³ Id. at 1.

⁴ See, *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100/PI-193, Order Seeking Further Comments, (April 5, 2016), p. 1 (“**Comment Order**”).

⁵ See, *Opening Order*, p. 1.

⁶ See *Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Further Notice of Proposed Rulemaking*, FCC 12-46, pp. 80-82 (April 30, 2012), summary published in 77 Fed. Reg. 33896 (June 7, 2012)(“*Contribution Methodology Reform and Modernization Further Notice*” or simply, “*Further Notice*”) at 2 (the “**Contribution Order**”).

⁷ See, *Opening Order*, at 1.

⁸ Id. at 1.

⁹ See, *Contribution Order*, at 2

¹⁰ See *Comments of the Rural Telecommunications Coalition of Nebraska*, Application No. NUSF-100/PI-193, (Feb. 13, 2015), p. 3.

Board on August 7, 2014.¹¹ Clearly, the Joint Board’s recommendations to the FCC could have a significant impact on the Commission’s findings in this Docket. While the Commission has determined that federal reforms “may be several years away”, any effort by the Commission to implement a new contribution mechanism which precedes, and therefore does not incorporate the recommendations of the Joint Board, and ultimately FCC action, could result in extensive regulatory confusion, the need to undertake further compliance reform proceedings, and an enormous waste of private resources and investments dedicated to NUSF reform that would have to be restructured during or immediately following the implementation of the Commission’s directives. Therefore, it would be prudent to allow all the stakeholders in this process a reasonable opportunity evaluate the Joint Board’s recommendations before implementing any reform contribution methodology developed pursuant to this proceeding.

III. CONTRIBUTION METHODOLOGY

The Commission’s stated goals for the evolution of NUSF essentially drives the discussion regarding reform of the current NUSF contribution methodology. The Commission’s overarching goal, as articulated in the Comment Order, is to support the “deployment of ubiquitous broadband availability throughout Nebraska”, including ubiquitous “fixed and mobile broadband services”. Given the dramatic emergence of broadband networks, spurred by several recent FCC Orders, which are designed to support data and video applications, as well as voice, many observers have concluded that the traditional “telephone numbers” contribution system, based on historic narrowband networks, is essentially “voice-centric” and is no longer a suitable foundation of funding an increasingly broadband-centric USF system.¹² Rather a “connections based” contribution system appears to have significant support among the Commenters in this

¹¹ See, *Comment Order*, at 2.

¹² See *Contribution Order* at 25.

docket, as well as the FCC's recent Contribution Order (the "**Contribution Order**").¹³ The connections based methodology is a flat, per-unit methodology, which is both equitable and nondiscriminatory. Further, the connections based methodology's use of connections as the unit to assess contributions seems to better coincide with the Commission's overarching goal of universal service, which is to expand the number of broadband connections throughout the State of Nebraska.

The connections based methodology also appears to satisfy the objective of creating a sustainable system in light of the FCC's estimate that there is significant potential for connection growth in the future.¹⁴

Based on the foregoing, Viaero supports the Commission's decision to further evaluate a connections based contribution methodology in this Docket.

IV. DEFINITIONS

The Commission has requested comments regarding the definitions of certain critical terms related to a connections based contribution methodology, including the definition of "connection", "assessable service", "assessable connection", and "assessable". Each of these terms raises a host of related issues, including service speeds and tiers of speed, user types, residential or multi-line business services, and jurisdictional issues over interstate v. intrastate classification of services. In addition, the Commission's proposed definition of "connection" includes the term "wireless channel", which also has no definitive meaning. Similarly, the recommended definition of "assessable connection" suggested by RIC in its filed comments references a "working telephone number" assigned for routing to the PSTN, which raises questions as to the future need/desirability/relevance of utilizing "telephone numbers" in a

¹³ See *Contribution Order*.

¹⁴ *Id.* at ¶ 1 p. 2.

“broadband-centric” USF system. A definition of “accessible connection” which relies on numbers would also, by definition, exclude from assessment all services that do not rely on numbers. In an increasingly broadband-centric world, tying a new contribution methodology to a number based infrastructure seems fundamentally inconsistent with the evolving direction of communications systems and services which are increasingly broadband-centric and should be supporting NUSF.

The FCC acknowledged in the FCC Connections Order that for over a decade, the FCC and the industry have been grappling with the appropriate definition of “connection” for a connections based methodology and the FCC has sought comment on the definition of “connection” several times.¹⁵ It has acknowledged that a “connection” can be viewed as a “physical facility”, whether wired or wireless, that connects two separate points, or a service provided over some physical facility. Viaero views the effort to capture, in appropriate detail, the functional definition of “connection” as the most logical, efficient, fair and sustainable way to structure a new contribution mechanism. Only after reaching consensus on the mechanism to be used in establishing the assessment, including issues of speed and capacity of the connection, etc., should the separate and distinct issues of what providers and services will contribute to universal service be addressed. To embed the contribution mechanism with which services or providers should be incorporated into the contribution base would lead to endless controversy that would forestall indefinitely the establishment of the mechanism to be used to establish the assessment.

Viaero is also mindful that the jurisdictional issues alone arising from the implementation of a connections based contribution methodology might threaten the authority of states to assess

¹⁵ Id. ¶¶ 227-228 at 83.

connections to support state universal service funds. The FCC noted in the Contribution Order¹⁶ that the FCC's permissive authority to assess broadband internet access connections might carry a presumption that all connections are "interstate" for purposes of universal service contributions, which could arguably preempt states from assessing connections to support state universal service funds. This result would be catastrophic to important state universal service fund initiatives like those in Nebraska.

Further, the FCC, in its Contribution Order¹⁷ has also requested comments on the same issues and substantially the same definitions regarding contribution methodologies in its effort to establish a federal connection based methodology, which it has recently referred to the Joint Board. The lack of current consensus among the FCC and industry participants on these fundamental issues makes addressing these issues in a definitive manner very difficult at this time.

Viaero is also concerned that the implementation of a new contribution methodology will require a significant period of transition for the industry as well as the regulatory bodies involved. A connections based methodology will require new data collection and reporting requirements and systems by the industry, and new analytical mechanisms and audit processes for new government compliance responsibilities. The time and expense to all stakeholders to implement a new contribution mechanism will be significant, with some estimates suggesting 18 to 24 months¹⁸, therefore it is very important to ensure that our State's efforts will be consistent with emerging national policies so that local efforts and investments will not be wasted through unnecessary duplication of regulatory compliance requirements.

¹⁶ Id. ¶ 268 at 96.

¹⁷ Id.

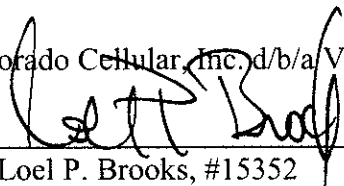
¹⁸ Id at 3.

Viaero applauds the Commission's dedication to preserve competitive and technological neutrality, especially between fixed and mobile providers of broadband. Certainly, a connections based methodology will need to incorporate a mechanism for identifying connections used for mobile services. However, there is no current consensus on the definition of "wireless channel" and there is continuing debate regarding measurements devoted to average number of telephones, capacity of connections, speeds and other factors. Viaero is continuing to evaluate these factors as the national discussion advances.

Based on the foregoing, Viaero continues to evaluate the definitions targeted by the Commission as well as the related jurisdictional issues, and therefore reserves the opportunity to further comment on the specific issues raised by the Commission as a more thorough evaluation of the implications of a connections based system emerge from this Docket and the Joint Board's recommendations.

Viaero is grateful for the opportunity to participate in this Docket.

Respectfully submitted this 6th day of June, 2016.

NE Colorado Cellular, Inc. d/b/a Viaero Wireless
By: 
Loel P. Brooks, #15352
BROOKS, PANSING BROOKS, PC, LLO
1248 "O" Street, Suite 984
Lincoln, NE 68508-1424
(402) 476-3300
lbrooks@brookspanlaw.com

and

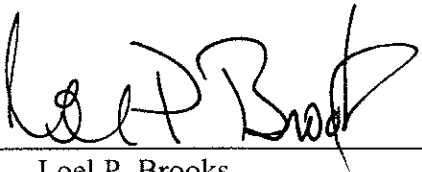
Eric Preston, #21380
General Counsel, Viaero Wireless
1224 West Platte Ave
Fort Morgan, CO 80701
(970) 768-3000
eric.preston@viaero.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of June, 2016, one original, five copies and an electronic copy of Viaero's Comments were delivered to the following:

Shana Knutson
General Counsel/Deputy Director of Policy
and Law
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
Shana.knutson@nebraska.gov

Brandy Zierott
Surcharge Remittances/Administrative
Assistant
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
Brandy.zierott@nebraska.gov



Loel P. Brooks

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of June, 2016, an electronic copy of Viaero's Comments was delivered to the following:

psc.nusf-filings@nebraska.gov

Association of Teleservices International, Inc.

Nicholas K. Niemann
Matthew Ottemann
nniemann@mcgrathnorth.com
mottemann@mcgrathnorth.com

CenturyLink

Jill Vinjamuri Gettmann
Gettman & Mills, LLP
jgettman@gettmanmills.com

Charter Fiberlink-Nebraska, LLC

Charles Hudak
Kennard B. Woods
kwoods@fh2.com

and

and

Norman G. Curtright
Norm.curtright@centurylink.com

Michael R. Moore
Michael.moore@charter.com

Cox Nebraska Telcom, LLC

Deonne Bruning
deonnebruning@neb.rr.com

CTIA

Bret A. Dublinske
bdublinske@fredlaw.com

Rural Telecommunications Coalition of Nebraska


Andrew S. Pollock
Troy S. Kirk
apollock@remboltlawfirm.com
tkirk@remboltlawfirm.com

Rural Independent Companies

Paul M. Schudel
James A. Overcash
Thomas J. Moorman
pschudel@woodsaitken.com
jovercash@woodsaitken.com
tmoorman@woodsaitken.com

Windstream

Matthew Feil
Matthew.feil@windstream.com



Loel P. Brooks