

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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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

MAR 23 2017

Nebraska Public Service Commission

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 February 22, 2017 Order and Order Seeking Further Comments and Setting Hearing (the “ Further 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 continuing goal to “modernize and reform the contribution mechanism to promote an equitable and sustainable framework in an evolving communication environment.”<sup>1</sup> As the Commission has reiterated in its Further Comment Order,<sup>2</sup> the current contribution mechanism is not sustainable and the assessable base for NUSF

<sup>1</sup> 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”).

<sup>2</sup> 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 and Order Seeking Further Comments and Setting Hearing (Feb. 22, 2017) (“Further Comment Order”).

contributions has continued to erode.<sup>3</sup> Throughout this period, 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.<sup>4</sup> These trends, coupled with other competitive distortions cited by the Commission<sup>5</sup> which have been permitted by the federal USF mechanism, have resulted in an inequitable contribution system that is broadly recognized as broken.<sup>6</sup>

We note with approval that the Commission has reiterated that it is not proposing to assess broadband service in its assessment base, while it acknowledges that states have not been preempted for assessing universal service fund surcharges on VoIP service and nomadic interconnected VoIP service.<sup>7</sup> Rather, the Commission is proposing to adopt a new contribution methodology which is specific, predictable, sufficient and competitively neutral, as required under the NUSF Act.<sup>8</sup> While not all commenters agree, the Commission's opinion that it has the authority pursuant to federal and state law to reform the NUSF contribution methodology to preserve and advance universal service has considerable support.<sup>9,10</sup>

Similarly, the Commission's determination that the cost of not proceeding with state level contribution report at the current time would be severe and would undermine the stability of the

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<sup>3</sup> Id. at 1.

<sup>4</sup> 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**”).

<sup>5</sup> See, *Opening Order*, p. 1.

<sup>6</sup> 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**”).

<sup>7</sup> See, *Further Comment Order*, at 15-16.

<sup>8</sup> Id. at 17.

<sup>9</sup> Id. at 16, 17.

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

NUSF Fund and thereby put at significant risk the access of Nebraska consumers to affordable and reliable telecommunications services is broadly supported.<sup>11</sup>

### **A. Strategic Plan/Definitions**

In its prior Comments this this Docket, Viaero supported the Commission’s objective of developing a Strategic Plan to examine in detail the basis for sizing the NUSF Fund and to better define the components of the Commission’s proposed connections-based contribution methodology.<sup>12</sup> Viaero pointed out that several terms needed to be defined, specifically “connection”, “assessable service”, “assessable connection” and “assessable” in order to more fully understand how a connections-based contribution methodology would work.

The Commission has now provided a definition for “connection”, “wireless channel”, “assessable service”, and a functional description of what constitutes an “assessable connection” based on the definition of “assessable service”. Viaero will further evaluate the implications of these definitions in considering how the evolving structure of the connections-based methodology will function.

Viaero remains concerned about the use of a “working telephone number” for routing to the PSTN in a broadband-centric USF system. Clearly, if an “assessable connection” relies only on numbers, assessable connections will, by definition, exclude from assessment all services that do not rely on numbers. As Viaero remarked in its prior Comments, in an increasingly broadband-centric world, tying a new contribution methodology to a number-based infrastructure seems fundamentally inconsistent with the rapidly evolving direction of communication systems and services which are increasingly broadband-centric and should be supporting NUSF.<sup>13</sup>

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<sup>11</sup> See, *Further Comment Order*, at 15.

<sup>12</sup> See, *Comments of NE Colorado Cellular Inc. d/b/a Viaero Wireless*, Application No. NUSF-100/PI-193 (June 6, 2016) at 1.

<sup>13</sup> *Id.* at 6.

Further, the definitions offered by the Commission do not discuss any issues concerning speed and capacity of connections, so the implications of those important factors need to be open for evaluation.

Viaero remains 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 months<sup>14</sup>, 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.

### **B. Sizing of the Fund**

Viaero is continuing to evaluate the appropriate method to size the high-cost mechanism using the SBCM. Clearly, the Commission's initial calculations indicate a funding threshold for the high-cost mechanism that would be well beyond what is reasonably affordable to the state's consumers. Given that conclusion, the Commission's decision to build an initial model based on current funding needs and the present value of historic implicit subsidies which were made part of the explicit high-cost support mechanism seems reasonable. NUSF programs currently in place also provide ascertainable values for program costs deemed to be in the public interest going forward.

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<sup>14</sup> 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**").

However, these values are based on historic programs which have been created to support legacy networks and facilities that will not be supported long into the future and do not reflect current or future investment needs or network infrastructure requirements and design utilizing evolving technologies. In short, these values serve only as a baseline for establishing a fund for future needs that will be beyond the estimated costs of future deployment and utilization.

Viaero reserves its opportunity to provide further comments as more detailed analysis and documentation through the SBCM is provided for evaluation.

### **C. Mobile Wireless Tower Fund**

One component of the proposed high-cost mechanism recommended by the Commission is a new grant-based Mobile Wireless Tower Fund designed to incentivize the improvement of wireless coverage in otherwise non-economic areas of the state. Funding requests under the NUSF Broadband Program in NUSF-92, and its predecessor wireless infrastructure programs, have far exceeded the amount of support available. The Commission has noted the increasing reliance on wireless technology for broadband deployment across the state in rural and high-cost areas especially. Without regard to the ultimate size of the high-cost mechanism, the Commission's proposal to budget \$10,000,000 to the deployment of more wireless technology shows a strong recognition of the unmet demand from consumers for this vital service in high-cost areas. Viaero heartily supports this important budget recommendation.

## **IV. CONCLUSION**

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 continuing uncertainty regarding

measurements devoted to average number of telephones, capacity of connections, speeds and other factors. Viaero encourages the Commission to evaluate these factors as part of its strategic plan.

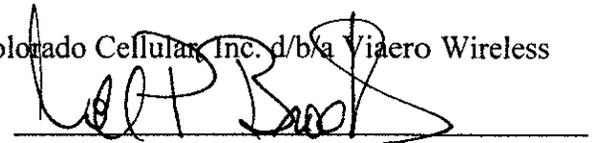
Based on the foregoing, Viaero continues to evaluate the definitions proposed by the Commission as well as the related budget, and therefore reserves the opportunity to further comment on various specific issues raised by the Commission as a more thorough evaluation of the implications of a connections-based 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 23<sup>rd</sup> day of March, 2017.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23<sup>rd</sup> day of March, 2017, one original, five copies and an electronic copy of Viaero's Comments were delivered to the following:

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