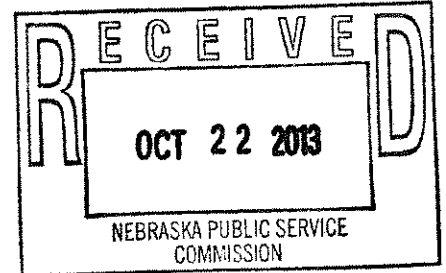


1 **BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

2  
3  
4 In the Matter of the Nebraska Public Service )  
5 Commission, on its own motion, seeking to )  
6 implement policies and procedures related to )  
7 providing dedicated universal service support )  
8 for wireless telecommunications services: N.E. )  
9 Colorado Cellular Inc., d/b/a Viaero Wireless. )

Application No. NUSF-69.14



10  
11  
12 **TESTIMONY OF**  
13 **ANDREW R. NEWELL**  
14 **ON BEHALF OF**  
15 **N.E. COLORADO CELLULAR, INC., D/B/A VIAERO WIRELESS**  
16

17  
18  
19 **Q: PLEASE STATE YOUR NAME.**

20 A: Andrew R. Newell.

21 **Q: WHERE ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

22 A: I am General Counsel for N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless ("Viaero").

23 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL QUALIFICATIONS.**

24 A: I hold a Bachelor of Science degree in political science from the University of California  
25 at Los Angeles and was awarded a Juris Doctor degree from the University of Colorado  
26 School of Law.

27 **Q: PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.**

28 A: I have held the General Counsel position at Viaero since February 2009. Prior to joining  
29 Viaero, I maintained a private law practice beginning in 2002. From 1999 to 2001 I held  
30 positions on increasing responsibility within the legal department of Jato

1 Communications Corp., a competitive provider of DSL services, and its successor in  
2 interest, a subsidiary of Lucent Technologies. Prior to joining Jato I worked as a law  
3 clerk, and later in regulatory affairs for Intrado, a provider of enhanced 9-1-1  
4 technologies and services.

5 **Q: ARE YOU AUTHORIZED TO TESTIFY ON BEHALF OF VIAERO?**

6 A: Yes, I am.

7 **Q: DID YOU OVERSEE THE PREPARATION OF VIAERO'S "SIXTH PETITION**  
8 **FOR SUPPORT FROM NEBRASKA UNIVERSAL SERVICE FUND**  
9 **DEDICATED WIRELESS PROGRAM" FILED WITH THE NEBRASKA**  
10 **PUBLIC SERVICE COMMISSION ("COMMISSION") ON JULY 1, 2013 (THE**  
11 **"APPLICATION")?**

12 A: Yes, I did.

13 **Q: DO YOU HAVE TESTIMONY TO OFFER THE COMMISSION REGARDING**  
14 **VIAERO'S APPLICATION FOR SUPPORT?**

15 A: Yes.

16 As General Counsel, I manage the legal affairs of Viaero, including the preparation of  
17 this Application, which brings us here today. I will address most issues regarding the  
18 Application, and how it meets the requirements of (i) the Commission's Order dated  
19 February 26, 2008 in Application No. NUSF-69 Progression Order No. 3  
20 ("Authorization Order"), authorizing wireless carriers to petition the Commission for  
21 support from the NUSF Dedicated Wireless Program established by Order of the  
22 Commission in Application NUSF-48/PI-104 dated October 18, 2005, (ii) the

1 Commission's Progression Order No. 4 ("**Progression Order No. 4**") entered February  
2 24, 2009, establishing a time line for filing requests for support from the NUSF  
3 Dedicated Wireless Program and identifying certain information required to be submitted  
4 in all petitions for support from the NUSF Dedicated Wireless Program, (iii) the  
5 Commission's Progression Order No. 7 entered May 24, 2011 (the "**Broadband Order**")  
6 directing that wireless applicants for funding from the Dedicated Wireless Program  
7 provide details in their applications regarding the extent of their deployment of wireless  
8 broadband services in their respective service territory and (iv) the Commission's  
9 Progression Order No. 9 entered May 14, 2013 ("**Progression Order No. 9**") directing  
10 that applications be submitted by July 1, 2013.

11 Before I discuss the Application itself, I would like to provide some background on  
12 Viaero, its operations as a wireless carrier and ETC in Nebraska, and its service offerings.  
13 Viaero was designated as an ETC by this Commission on October 18, 2005. Since that  
14 designation, Viaero has aggressively expanded its coverage in Nebraska, and currently  
15 owns more than three hundred (300) telecommunications towers covering roughly nine  
16 hundred fifty-five thousand (955,000) rural Nebraskans, all of which reside outside of  
17 Omaha and Lincoln. Viaero's wireless coverage extends over 90% of the state's  
18 landmass.

19 Headquartered in Fort Morgan, Colorado, Viaero employs over four hundred people, well  
20 over one hundred of those within the State of Nebraska. Viaero maintains thirty three  
21 (33) retail stores (including kiosks) in Nebraska, most of which were new construction,  
22 and has seven (7) additional dealer locations. In all, Viaero has made over \$108 million

1 in capital investments to provide wireless voice and data coverage to rural Nebraskans  
2 since 2006.

3 **Q: PLEASE EXPLAIN VIAERO'S PROPOSAL FOR USE OF SUPPORT**  
4 **FROM THE NUSF DEDICATED WIRELESS PROGRAM.**

5 Through this Application, Viaero proposes to build seventeen (17) telecommunications  
6 towers and related infrastructure ("Proposed Sites") located in twelve (12) remote high-  
7 cost rural areas of Nebraska ("Targeted Areas"). A list of the Targeted Areas where the  
8 Proposed Sites will be located is attached to the Application as **Exhibit A**. We estimate  
9 the total cost of construction, excluding any enhanced 9-1-1 related costs, to be roughly  
10 \$7.3 million. While Viaero has become quite accurate in estimating its network  
11 construction costs, these costs can vary based on a number of factors. I am aware that in  
12 the Commission's Progression Order No. 9, entered on May 14, 2013, the Commission  
13 allocated \$5 million for disbursement in this Docket for fiscal year 2013.

14 **Q: DOES VIAERO'S PROPOSAL COMPLY WITH THE COMMISSION'S**  
15 **ORDERS CONCERNING THE NUSF WIRELESS PROGRAM?**

16 Yes, Viaero represents that each Proposed Site complies with the following criteria  
17 established by the Commission:

18 **Construction Status.** As set forth in Section IV of Viaero's Application, none of the  
19 Proposed Sites have been, or are, under construction.

20 **Service to Unserved/Underserved Areas.** All of the Proposed Sites target unserved or  
21 underserved areas.

1        **Household Densities.** Viaero has verified that all Proposed Sites serve out-of-town  
2        support areas with household densities below 4.5 households per square mile, with most  
3        proposed sites in areas substantially below this density threshold.

4        **Status of Existing Wireless Services.** As explained more fully in the service area  
5        analyses attached to the Application, the targeted areas lack sufficient wireless coverage,  
6        especially GSM coverage, to provide quality service, or in many instances, any service.  
7        Some, but not all, of the targeted areas have some CDMA coverage, but this is irrelevant  
8        to many people because these two wireless technologies are not interoperable. If no GSM  
9        coverage were to exist, roughly 40% of the wireless subscribers in the United States, and  
10       95% worldwide, would lack the ability to place and receive calls, including emergency  
11       calls, in these areas.

12       **Willingness to Enter into Roaming Agreements.** Viaero is currently a party to roaming  
13       agreements with 78 domestic partners serving millions of subscribers nationwide, and  
14       303 international partner carriers in Canada, Mexico, Central and South America,  
15       Europe, Africa and Asia. Those agreements would permit roaming on any new towers  
16       added to Viaero's network without need for additional agreements or amendments.  
17       Viaero is willing to add additional roaming partners at commercially reasonable rates as  
18       needed to accommodate access for additional wireless users.

19       **Willingness to Enter into Sharing/Collocation Arrangements.** Viaero is willing and  
20       able to construct any NUSF supported tower to accommodate the collocation of  
21       additional equipment. Viaero considers collocation requests from other entities on a  
22       case-by-case basis. Where technically feasible and subject to commercially reasonable

1 and mutually-agreeable terms and conditions, Viaero is able and willing to reserve space  
2 on NUSF-supported towers or facilities for additional equipment of other carriers, public  
3 safety communications equipment, internet providers and other providers with wireless  
4 technologies that qualify. Viaero has reached numerous collocation arrangements in the  
5 past with entities providing a wide range of services such as public safety applications,  
6 WiMax and religious broadcasting.

7 **Compliance with Reporting Requirements.** Viaero complies with, and will continue to  
8 comply with, all reporting requirements, including those required by the Commission.

9 **Service Plans and Features – Voice and Data Plans Offered/Broadband Offering.**

10 Viaero offers a number of voice and data plans in its service territory, and will provide  
11 those same offerings in the Targeted Areas. Viaero is well into the of deployment of 4G  
12 services to its customers throughout its service territory in Nebraska. Viaero's 4G  
13 services will exceed the service offering criteria for "broadband" established by the  
14 Commission in Procedural Order No. 7, entered May 24, 2011 in this Docket (the  
15 "**Broadband Order**"). Viaero will utilize WCDMA technology that, as deployed, will  
16 be capable of providing theoretical download speeds of up to 21 Megabits per second  
17 (Mbps) and upload speeds exceeding 6 Mbps ("**Viaero Broadband**"). The towers to be  
18 constructed at each of the Proposed Sites will be equipped to provide Viaero Broadband,  
19 far exceeding the minimum standards for "Broadband" established by the Commission in  
20 the Broadband Order. I also want to note that Viaero's broadband will exceed the  
21 minimum standards established for "broadband" under the Nebraska Broadband Pilot  
22 Program ("**NEBP**") in NUSF-77, which is the 4/1 Mbps standard. I acknowledge that the  
23 Commission recently determined in its Order in NUSF-77, Progression Order 8/NUSF-69

1 dated September 4, 2013, that the Dedicated Wireless Fund will be absorbed by the  
2 NEBP Program in 2014, and that the definition of “broadband” will likely reflect the 4/1  
3 Mbps standard established under the NUSF-77 NEBP Program. Viaero customers in each  
4 Targeted Area will have the opportunity to purchase Viaero Broadband in accordance  
5 with specific service plans offered by Viaero, as described in **Exhibit B** of the  
6 Application. Viaero Broadband will be as fast, or faster, than any mobile broadband  
7 product offered by any other CRMS carrier in the United States, including major carriers  
8 such as Verizon or AT&T.

9 **Submission of Broadband Availability Data.**

10 Viaero will submit broadband availability data to the Commission and its vendors for the  
11 duration of the State Broadband Data and Development (SBDD) Program, as required by  
12 the Commission in the Broadband Order.

13 **Q: DO ANY OF THE PROPOSED CONSTRUCTION COSTS FOR THE PROPOSED**  
14 **SITES FUND EQUIPMENT WHICH IS DEDICATED TO THE PROVISION OF**  
15 **911 SERVICE?**

16 **A:** No.

17 **Q: WHAT IS THE CURRENT STATUS OF E-911 WITHIN VIAERO’S**  
18 **FOOTPRINT?**

19 **A:** All of the Proposed Sites will have Phase II functionality upon request from the local  
20 PSAP for such services. Viaero will continue to comply with the requirements imposed  
21 by the FCC regarding E-911 implementation, as it has across its entire network to date.

1 **Q: HOW WILL APPROVAL BY THE COMMISSION OF THE APPLICATION**  
2 **ADVANCE THE PUBLIC SAFETY AND WELFARE IN THE STATE OF**  
3 **NEBRASKA?**

4 A: The expansion of wireless coverage into unserved and underserved remote rural areas  
5 allows consumer access to the public safety network to those people who live, work, and  
6 play in those areas. Often, access to 911 is even more urgent in isolated areas, due to the  
7 additional time needed for public service agencies to respond and, if necessary, transport  
8 someone to safety or to medical facilities.

9 At this time, the Targeted Areas that would be covered by the Proposed Sites described in  
10 the Application are without sufficient wireless coverage to allow consumers to efficiently  
11 get help in an emergency. If a caller cannot obtain a wireless signal, clearly he or she  
12 cannot dial 911. In that case, a consumer in distress would be required to travel to the  
13 nearest business, residence, or pay phone in order to dial 911.

14 Approval of the Application advances the aims of public safety by providing wireless  
15 coverage in areas where consumers are known to live, work and play, but where  
16 traditional economic models have not supported construction of wireless infrastructure.  
17 These sites will immediately provide access to 911 and, upon a proper request from the  
18 PSAP covering the site, enhanced 911 which will assist in locating a wireless 911 caller,  
19 further hastening emergency response.

20 **Q. IN ADDITION TO SATISFYING THE TECHNICAL CRITERIA FOR FUNDING**  
21 **ESTABLISHED BY THE COMMISSION IN ITS PRIOR ORDERS IN THIS**  
22 **DOCKET, ARE THERE ANY OTHER REASONS THAT THE COMMISSION**



1           **SHOULD GRANT VIAERO’S PETITION AND GIVE ITS PROPOSED SITES**  
2           **PRIORITY FUNDING STATUS?**

3    A:    Yes. Each Proposed Site was carefully chosen by Viaero due to its unique demographic  
4           and geographic characteristics and the specific needs of their local communities and those  
5           who visit those areas for recreation, business or other purposes. Each Proposed Site was  
6           also chosen to provide coverage to the greatest number of out-of-town households  
7           possible in the given Targeted Area, as well as the greatest number of out-of-town  
8           visitors who utilize the Targeted Areas on a seasonal basis. In addition, each Proposed  
9           Site is designed to integrate with and enhance Viaero’s growing and robust network in  
10          Nebraska. Enhanced voice quality and coverage will also improve the accuracy and  
11          reliability of public safety 911 services, which is even more urgent in isolated areas.

12   **Q:    DO YOU BELIEVE THAT THE AMOUNT OF FUNDING AVAILABLE FOR**  
13          **NUSF GRANTS TO SUPPORT BROADBAND DEPLOYMENT SHOULD BE**  
14          **INCREASED?**

15   A:    This will be the last independent application to NUSF-69 as the Commission has decided  
16          to combine the Dedicated Wireless Fund in this docket with the NUSF-77 NEBP  
17          Program in 2014. Viaero has actively participated in the NUSF-77 NEBP Program and  
18          has submitted comprehensive comments concerning the policies and proposed structure  
19          and operations of the combined Program. However, it is important to restate certain  
20          critical issues which Viaero has espoused in the NUSF-77 docket.

21          Viaero believes that the Commission should give consideration to significantly increasing  
22          the allocation of NUSF funds dedicated to broadband deployment, regardless of  
23          technology. The Commission’s commitment to prioritize wireline and wireless broadband

1 accessibility must be accompanied by a parallel commitment to allocate sufficient  
2 funding from the NUSF to realistically make broadband deployment throughout the state  
3 a top priority. In the current NEBP NUSF-77 program cycle, there are sixteen applicants  
4 seeking a combined total of approximately \$35 million from a fund containing only \$4  
5 million. Similarly, in this NUSF-69 program cycle, three applicants are seeking a  
6 combined total of over \$12 million from a fund containing only \$5 million. Clearly there  
7 is a compelling need to consider a substantial increase in the eligible NUSF funding  
8 allocated to support deployment of broadband service across the state. Viaero would  
9 support the allocation of at least an additional \$10 million from the NUSF Fund for that  
10 purpose next year for the combined NUSF-69 and NUSF-77 programs.

11 Broadband is quickly evolving into a comprehensive voice, video and data platform that  
12 will likely supplant many traditional roles played by POTS in the near future. There is  
13 now competition even in markets where high cost support is available because the focus  
14 on technology is rapidly shifting from voice to data and consumers are becoming  
15 increasingly reliant on mobile services, which consumers expect to be reliable and  
16 ubiquitous. It is clear that nationwide, as in Nebraska, there are more mobile broadband  
17 users than fixed broadband users.

18 The Commission's recognition that closing the existing broadband availability gap in the  
19 near future is a state and federal responsibility, which will require both state and federal  
20 financial support, and coincides with and complements its "primary objective" to ensure  
21 that Nebraska consumers realize the benefits of increased service in the form of  
22 reasonably comparable access and rates for both voice and broadband service. The rapid  
23 pace of technology is transforming broadband services into a comprehensive platform for

1 voice and data which will provide the most cost-effective services to the greatest number  
2 of Nebraska consumers, everywhere they live, work and play. Such a rapid  
3 transformation deserves a more aggressive allocation of NUSF funding to serve the  
4 interests of the greatest number of Nebraska citizens.

5 **Q: DO YOU BELIEVE THAT GREATER TRANSPARENCY IS NEEDED IN THE**  
6 **COMMISSION'S EVALUATION OF NUSF GRANT APPLICATIONS?**

7 A: Viaero appreciates the work of the Commission Staff in evaluating and providing  
8 recommendations for the NUSF-69 applications. However, Viaero joins in the comments  
9 made by many of the other carriers in both the NUSF-69 and NUSF-77 dockets that  
10 Commission should provide more transparency in their evaluation of the applications and  
11 their criteria for awarding grants. Further, the weighting and ranking standards for each  
12 of the Commission's funding criteria should be discussed well in advance of submitting  
13 applications. Viaero agrees that if each criterion weighting or ranking is explicitly known  
14 prior to the application process, then applicants could design their proposed projects to  
15 better conform to the Commission's desired outcomes as represented by its weighting and  
16 ranking formulas. The recent carrier "negotiation" process authorized by the Commission  
17 in NUSF-77, Progression Order No. 7 has revealed the difficulty of attempting to  
18 evaluate the merits of other carriers' applications without any knowledge of how any  
19 affected project might be scored/ranked or weighted. The lack of available criteria for  
20 evaluation has made it nearly impossible to determine which project has higher priority  
21 or whether the Commission would even approve any specific project emerging from a  
22 negotiated settlement. The lack of relevant data has, therefore, made negotiations largely  
23 arbitrary, based not on criteria important to the Commission, like cost of service per

1 household, but on internal business criteria which are not linked to any ranking criteria  
2 established by the Commission designed to effectuate its public policy objectives in this  
3 Docket.

4 Without greater transparency concerning the criteria established by the Commission for  
5 evaluating the applications, and the ranking process for applying the criteria to the  
6 applications for NEBP funding, applicants are left without any effective means of  
7 evaluating their own applications, or determining whether the Commission is meeting its  
8 obligations to Nebraska consumers to allocate scarce NEBP funding in a rational,  
9 efficient manner. Furthermore, as the goal of NUSF is to provide all consumers with  
10 access to advanced telecommunications and information services at a just, reasonable,  
11 and affordable rate, the Commission has a responsibility to employ the implementation of  
12 supported services by providers in the most efficient and cost effective manner possible.  
13 This ensures that the limited funding available for such projects can be utilized for the  
14 greatest number of consumers. It is the responsibility of the Commission to ensure that  
15 the projects it funds provide the necessary quality of services the Commission and  
16 consumers demand, in the most efficient and cost effective manner. Without more details  
17 on the process by which the Commission Staff evaluates applications, there is no clarity  
18 for the carriers applying for funds, nor are there assurances to Nebraska consumers that  
19 state controlled funds are being used in a best manner possible.

20 **Q: DO YOU HAVE ANYTHING ELSE TO ADD TO YOUR TESTIMONY?**

21 A: As part of the negotiation process, Viaero and United States Cellular Corporation  
22 (“USCC”) reached an agreement with regards to the respective NUSF-69 applications. As  
23 part of the agreement, Viaero agreed to include in its testimony certain information

1 regarding the FCC's Connect America Fund ("CAF") which is focused on broadband and  
2 from which Viaero has received funding. Viaero was awarded grants through the CAF  
3 program, but none of the proposed projects in Viaero's NUSF-69 Application include  
4 census blocks that are covered by a winning CAF bid. Additionally, while Viaero did  
5 return some CAF sites on which it had a winning bid, no census tracts Viaero returned  
6 during the CAF process are included in Viaero's proposed projects in its Application.  
7 Finally, none of Viaero's CAF obligations are being met with the use of NUSF funding.

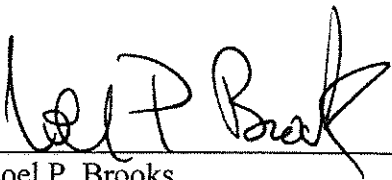
8 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

9 **A:** Yes. I am pleased to respond to any questions.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 22<sup>nd</sup> day of October, 2013, an original, five copies and an electronic copy of the Pre-Filed Testimony of Andrew R. Newell in Support of the Application of N.E. Colorado Cellular, Inc., d/b/a/ Viera Wireless in Docket No. NUSF-69.14 were delivered to:

Shana Knutson  
Nebraska Public Service Commission  
1200 N Street, Suite 300  
Lincoln, NE 68508  
shana.knutson@nebraska.gov

  
\_\_\_\_\_  
Loel P. Brooks

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 22<sup>nd</sup> day of October, 2013, an electronic copy of the Pre-Filed Testimony of Andrew R. Newell in Support of the Application of N.E. Colorado Cellular, Inc., d/b/a/ Viaero Wireless in Docket No. NUSF-69.14 was delivered to:

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Loel P. Brooks