BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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

Application No. NUSF-69.14

TESTIMONY OF ANDREW R. NEWELL ON BEHALF OF N.E. COLORADO CELLULAR, INC., D/B/A VIAERO WIRELESS

Q: PLEASE STATE YOUR NAME.

A: Andrew R. Newell.

Q: WHERE ARE YOU EMPLOYED AND IN WHAT CAPACITY?

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

Q: PLEASE DESCRIBE YOUR EDUCATIONAL QUALIFICATIONS.

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

Q: PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.

A: I have held the General Counsel position at Viaero since February 2009. Prior to joining Viaero, I maintained a private law practice beginning in 2002. From 1999 to 2001 I held positions on increasing responsibility within the legal department of Jato
Communications Corp., a competitive provider of DSL services, and its successor in interest, a subsidiary of Lucent Technologies. Prior to joining Jato I worked as a law clerk, and later in regulatory affairs for Intrado, a provider of enhanced 9-1-1 technologies and services.

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

A: Yes, I am.

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

A: Yes, I did.

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

A: Yes.

As General Counsel, I manage the legal affairs of Viaero, including the preparation of this Application, which brings us here today. I will address most issues regarding the Application, and how it meets the requirements of (i) the Commission's Order dated February 26, 2008 in Application No. NUSF-69 Progression Order No. 3 ("Authorization Order"), authorizing wireless carriers to petition the Commission for support from the NUSF Dedicated Wireless Program established by Order of the Commission in Application NUSF-48/PI-104 dated October 18, 2005, (ii) the
Commission’s Progression Order No. 4 ("Progression Order No. 4") entered February 24, 2009, establishing a time line for filing requests for support from the NUSF Dedicated Wireless Program and identifying certain information required to be submitted in all petitions for support from the NUSF Dedicated Wireless Program, (iii) the Commission’s Progression Order No. 7 entered May 24, 2011 (the "Broadband Order") directing that wireless applicants for funding from the Dedicated Wireless Program provide details in their applications regarding the extent of their deployment of wireless broadband services in their respective service territory and (iv) the Commission’s Progression Order No. 9 entered May 14, 2013 ("Progression Order No. 9") directing that applications be submitted by July 1, 2013.

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

Headquartered in Fort Morgan, Colorado, Viaero employs over four hundred people, well over one hundred of those within the State of Nebraska. Viaero maintains thirty three (33) retail stores (including kiosks) in Nebraska, most of which were new construction, and has seven (7) additional dealer locations. In all, Viaero has made over $108 million
in capital investments to provide wireless voice and data coverage to rural Nebraskans since 2006.

Q: PLEASE EXPLAIN VIAERO’S PROPOSAL FOR USE OF SUPPORT FROM THE NUSF DEDICATED WIRELESS PROGRAM.

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

Q: DOES VIAERO’S PROPOSAL COMPLY WITH THE COMMISSION’S ORDERS CONCERNING THE NUSF WIRELESS PROGRAM?

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

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

Service to Unserved/Underserved Areas. All of the Proposed Sites target unserved or underserved areas.
1 **Household Densities.** Viaero has verified that all Proposed Sites serve out-of-town support areas with household densities below 4.5 households per square mile, with most proposed sites in areas substantially below this density threshold.

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

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

19 **Willingness to Enter into Sharing/Collocation Arrangements.** Viaero is willing and able to construct any NUSF supported tower to accommodate the collocation of additional equipment. Viaero considers collocation requests from other entities on a case-by-case basis. Where technically feasible and subject to commercially reasonable
and mutually-agreeable terms and conditions, Viaero is able and willing to reserve space on NUSF-supported towers or facilities for additional equipment of other carriers, public safety communications equipment, internet providers and other providers with wireless technologies that qualify. Viaero has reached numerous collocation arrangements in the past with entities providing a wide range of services such as public safety applications, WiMax and religious broadcasting.

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

**Service Plans and Features – Voice and Data Plans Offered/Broadband Offering.** Viaero offers a number of voice and data plans in its service territory, and will provide those same offerings in the Targeted Areas. Viaero is well into the of deployment of 4G services to its customers throughout its service territory in Nebraska. Viaero’s 4G services will exceed the service offering criteria for “broadband” established by the Commission in Procedural Order No. 7, entered May 24, 2011 in this Docket (the “Broadband Order”). Viaero will utilize WCDMA technology that, as deployed, will be capable of providing theoretical download speeds of up to 21 Megabits per second (Mbps) and upload speeds exceeding 6 Mbps (“Viaero Broadband”). The towers to be constructed at each of the Proposed Sites will be equipped to provide Viaero Broadband, far exceeding the minimum standards for “Broadband” established by the Commission in the Broadband Order. I also want to note that Viaero’s broadband will exceed the minimum standards established for “broadband” under the Nebraska Broadband Pilot Program (“NEBP”) in NUSF-77, which is the 4/1 Mbps standard. I acknowledge that the Commission recently determined in its Order in NUSF-77, Progression Order 8/NUSF-69
dated September 4, 2013, that the Dedicated Wireless Fund will be absorbed by the NEBP Program in 2014, and that the definition of “broadband” will likely reflect the 4/1 Mpbs standard established under the NUSF-77 NEBP Program. Viaero customers in each Targeted Area will have the opportunity to purchase Viaero Broadband in accordance with specific service plans offered by Viaero, as described in Exhibit B of the Application. Viaero Broadband will be as fast, or faster, than any mobile broadband product offered by any other CRMS carrier in the United States, including major carriers such as Verizon or AT&T.

Submission of Broadband Availability Data.

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

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

A: No.

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

A: All of the Proposed Sites will have Phase II functionality upon request from the local PSAP for such services. Viaero will continue to comply with the requirements imposed by the FCC regarding E-911 implementation, as it has across its entire network to date.
Q: HOW WILL APPROVAL BY THE COMMISSION OF THE APPLICATION ADVANCE THE PUBLIC SAFETY AND WELFARE IN THE STATE OF NEBRASKA?

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

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

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

Q. IN ADDITION TO SATISFYING THE TECHNICAL CRITERIA FOR FUNDING ESTABLISHED BY THE COMMISSION IN ITS PRIOR ORDERS IN THIS DOCKET, ARE THERE ANY OTHER REASONS THAT THE COMMISSION
SHOULD GRANT VIAERO’S PETITION AND GIVE ITS PROPOSED SITES
PRIORITY FUNDING STATUS?

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

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

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

Viaero believes that the Commission should give consideration to significantly increasing
the allocation of NUSF funds dedicated to broadband deployment, regardless of
technology. The Commission’s commitment to prioritize wireline and wireless broadband
accessibility must be accompanied by a parallel commitment to allocate sufficient
funding from the NUSF to realistically make broadband deployment throughout the state
a top priority. In the current NEBP NUSF-77 program cycle, there are sixteen applicants
seeking a combined total of approximately $35 million from a fund containing only $4
million. Similarly, in this NUSF-69 program cycle, three applicants are seeking a
combined total of over $12 million from a fund containing only $5 million. Clearly there
is a compelling need to consider a substantial increase in the eligible NUSF funding
allocated to support deployment of broadband service across the state. Viaero would
support the allocation of at least an additional $10 million from the NUSF Fund for that
purpose next year for the combined NUSF-69 and NUSF-77 programs.

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

The Commission’s recognition that closing the existing broadband availability gap in the
near future is a state and federal responsibility, which will require both state and federal
financial support, and coincides with and complements its “primary objective” to ensure
that Nebraska consumers realize the benefits of increased service in the form of
reasonably comparable access and rates for both voice and broadband service. The rapid
pace of technology is transforming broadband services into a comprehensive platform for
voice and data which will provide the most cost-effective services to the greatest number
of Nebraska consumers, everywhere they live, work and play. Such a rapid
transformation deserves a more aggressive allocation of NUSF funding to serve the
interests of the greatest number of Nebraska citizens.

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

A: Viaero appreciates the work of the Commission Staff in evaluating and providing
recommendations for the NUSF-69 applications. However, Viaero joins in the comments
made by many of the other carriers in both the NUSF-69 and NUSF-77 dockets that
Commission should provide more transparency in their evaluation of the applications and
their criteria for awarding grants. Further, the weighting and ranking standards for each
of the Commission’s funding criteria should be discussed well in advance of submitting
applications. Viaero agrees that if each criterion weighting or ranking is explicitly known
prior to the application process, then applicants could design their proposed projects to
better conform to the Commission’s desired outcomes as represented by its weighting and
ranking formulas. The recent carrier “negotiation” process authorized by the Commission
in NUSF-77, Progression Order No. 7 has revealed the difficulty of attempting to
evaluate the merits of other carriers’ applications without any knowledge of how any
affected project might be scored/ranked or weighted. The lack of available criteria for
evaluation has made it nearly impossible to determine which project has higher priority
or whether the Commission would even approve any specific project emerging from a
negotiated settlement. The lack of relevant data has, therefore, made negotiations largely
arbitrary, based not on criteria important to the Commission, like cost of service per
household, but on internal business criteria which are not linked to any ranking criteria established by the Commission designed to effectuate its public policy objectives in this Docket.

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

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

A: As part of the negotiation process, Viaero and United States Cellular Corporation ("USCC") reached an agreement with regards to the respective NUSF-69 applications. As part of the agreement, Viaero agreed to include in its testimony certain information
regarding the FCC’s Connect America Fund (“CAF”) which is focused on broadband and from which Viaero has received funding. Viaero was awarded grants through the CAF program, but none of the proposed projects in Viaero’s NUSF-69 Application include census blocks that are covered by a winning CAF bid. Additionally, while Viaero did return some CAF sites on which it had a winning bid, no census tracts Viaero returned during the CAF process are included in Viaero’s proposed projects in its Application. Finally, none of Viaero’s CAF obligations are being met with the use of NUSF funding.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes. I am pleased to respond to any questions.
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd 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/ Viaero Wireless in Docket No. NUSF-69.14 were delivered to:

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[Signature]
Loel P. Brooks
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The undersigned hereby certifies that on this 22nd 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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