

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of the Nebraska) **Application No. NUSF-77**
Telecommunications Association for) **Progression Order No. 8**
Investigation and Review of Processes and)
Procedures Regarding the Nebraska Universal)
Service Fund.)

In the Matter of the Nebraska Public Service) **Application No. NUSF-69**
Commission on its own motion seeking to)
implement policies and procedures related to)
providing dedicated universal service support for)
wireless telecommunications services.)

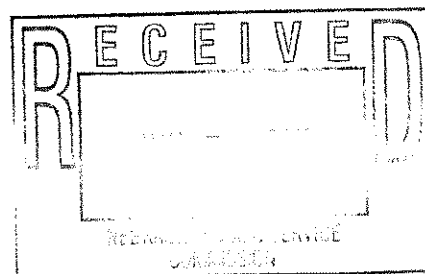
**N.E. COLORADO CELLULAR, INC. d/b/a VIAERO WIRELESS
REPLY COMMENTS**

N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (“Viaero”) respectfully submits these Reply Comments in response to comments of other carriers in the Commission’s Progression Order No. 8 (the “Order”) entered on April 23, 2013. Viaero appreciates the opportunity to further articulate its position regarding the pace and public policy considerations regarding the consolidation of the Nebraska Broadband Pilot Program (“NEBP Program”) and the Dedicated Wireless Fund Program established by the Commission under NUSF-69 (“Wireless Fund”).

DISCUSSION

There appears to be significant consensus among the carriers providing comments pursuant to this Order concerning several threshold issues raised by the Commission:

- 1) Viaero agrees with the comments filed by Rural Telecommunications Coalition of Nebraska (“RTCN”) on May 24, 2013 which support the Commission’s goal of combining the



NEBP Program and the Dedicated Wireless Program to target needed support to prioritize broadband accessibility throughout the state.¹

2) Viaero also agrees with the comments submitted by the Rural Independent Companies (“RIC”), RTCN, and Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (“Frontier”) that the merger of the NEBP Program and the Wireless Fund would be a productive step toward that goal.²

3) Viaero further supports the Comments of RIC, RTCN, Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (“CenturyLink”) and Frontier that accelerating the pace of the merger of the NEBP Program and the Dedicated Wireless Fund would maximize the benefits of both programs to consumers.³

4) Viaero also concurs with the comments of RIC, RTCN and CenturyLink that a merger of the two funding programs would be more administratively efficient for both the Commission and the applicants, primarily in processing, scoring, ranking and awarding funds, based on uniform and ascertainable criteria established by the Commission.

5) Finally, most commenters, including Viaero, agreed that establishing a uniform minimum speed threshold of 4/1 Mbps would be desirable, provided that the Commission should consider on a regular basis whether such threshold speed should increase.⁴

¹ *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund, NUSF-77, PO. 8* and *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*, Comments of Rural Independent Companies, pp. 2,3, 4 (May 24, 2013) (“RIC Comments”), Rural Telecommunications Coalition of Nebraska, p. 3 (May 24, 2013) (“RTCN Comments”), Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink, p. 5 (May 24, 2013) (“CenturyLink Comments”) and Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska, p. 2 (May 23, 2013) (“Frontier Comments”).

² RIC Comments, p. 2, 3, RTCN Comments, p. 3, CenturyLink Comments, p. 2 and Frontier Comments, p. 2.

³ Id.

⁴ Id., RIC Comments, p. 6, RTCN Comments, p. 4 and CenturyLink Comments, p. 3.

However, despite these areas of common agreement, Viaero urges the Commission to pursue a more aggressive public policy path toward making broadband deployment throughout the state its top priority. To that end, Viaero urges the Commission to reconsider various elements of its NUSF-77 public policy objectives so that the scarce NUSF funding available to it are most effectively utilized for the greatest number of Nebraska consumers.

1) **More Funding is Necessary for Broadband Deployment**

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. There are currently sixteen applicants seeking funding from the current NEBP NUSF-77 program cycle, for a total of approximately \$35,000,000 from a fund containing only \$4,000,000. 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, whether the NUSF-69 and NUSF-77 programs are merged or not.

Moreover, Viaero believes that all high cost NUSF funds should be transitioned to promote primarily broadband deployment. 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.⁵ 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.

2) **Criteria for Awarding Grant Funds Should Be Transparent**

Viaero joins in the comments made by RIC that the 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 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

⁵ *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the NUSF*, Order Issuing Findings, Seeking Further Comments and Setting Hearing, Application No. NUSF-77, Progression Order No. 4, p.1 (Sept. 27, 2011).

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.

3) **The Commission Should Not Utilize the Broadband Mapping Data Through the State Broadband Initiative to Determine Which Areas are Unserved or Underserved.**

The Commission determined in Progression Order 5 that the broadband mapping data provided through the State Broadband Initiative (“SBI”) represents a valuable database of broadband availability and speed data in Nebraska and that it should be used by the Commission as a “starting point” when reviewing applications for broadband support under the NEBP Program.⁶ The Commission has acknowledged, however, that the SBI database is “not a perfect depiction of broadband availability” (i) because the SBI relies on voluntary responses from providers, thereby not capturing a complete picture of broadband providers, (ii) NTIA business rules for broadband data collection vary by provider type and geographic attributes, (iii) there are differences in how ‘broadband’ is defined for the SBI grant program (768 Kbps download/200

⁶ *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Order, NUSF-77, Progression Order No. 5, p. 7 (Nov. 21, 2011).

Kbps upload) versus the NEBP Program (4 Mbps download/1 Mbps upload), while both of which are displayed in the Commission's SBI map, and (iv) that some broadband providers, depending on modality, are permitted to provide broadband information to the Commission in "differing formats" for the SBI data collection project which may, in some cases, overestimate or underestimate broadband deployment in a given area.⁷

Further, there is no standard means by which carriers define or depict their respective service/coverage areas, because there is no standard signal propagation methodology required by the Commission in determining coverage areas. In many cases, "coverage" is reported by simply drawing an arbitrary mileage circle around a cell tower site without regard to actual signal strength, directional limitations or distance limitations resulting from technological issues or geographic/geologic conditions in the area. In effect, much of the data reported to SBI is nothing more than "marketing" material designed to attract consumer interest in a particular carrier.

While assuring applicants that the Commission will not take a "close-minded" approach when reviewing the data collected through the SBI, and that such data will not be the "sole determinative factor" when concluding whether an area is "unserved" or "underserved",⁸ the NEBP Program places the burden on the applicants to prove that its proposed projects are located in "unserved" or "underserved" areas in order to establish eligibility or priority in the Commission's funding review process. Consequently, while acknowledging the many significant deficiencies in the SBI Broadband Map, the applicants have the burden to effectively "disprove" the accuracy of the SBI map in most situations in order to establish either eligibility for funding or priority in the review process. In effect, in spite of the acknowledged inaccuracies

⁷ Id, pp. 7 and 8.

⁸ *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Order, NUSF-77, Progression Order No. 5, p. 8 (Nov. 21, 2011).

and unreliability of the SBI map, the SBI database nevertheless creates a “rebuttable presumption” of the existence of “broadband” service in any specific area, as well as the scope of coverage offered by other carriers in that area. This “rebuttable presumption” can, and is, being used by competing carriers to attack the “eligibility” of other carriers’ applications without any underlying rationale or scientific verification of the presence or scope of broadband service in any area. As a result, the Commission’s use of the SBI map data as a “starting point” when reviewing applications for broadband support simply invites unsubstantiated protests, interventions and attendant litigation forcing applicants to overcome a fundamentally flawed legal threshold based on largely inaccurate and therefore, irrelevant data. This result is not conducive to the orderly administration or adjudication of this critically important funding program and clearly undermines the public’s expectation that the Commission is evaluating and awarding scarce public funds for legitimate and important broadband services in a reasonable manner.

Viaero believes that the SBI map should not be used as a tool by competing carriers to preemptively preclude applications from consideration by the Commission. All applicants must demonstrate that their proposed projects are “eligible” for funding and that they are located in areas which are prioritized by the Commission. However, carriers which claim the presence of pre-existing broadband services in any proposed project service area must be required to demonstrate the existence of such services by reliable, scientific evidence rather than simply pointing to the admittedly flawed SBI map as “evidence” of pre-existing services. To that end, Viaero believes that the SBI map should not be used by the Commission when reviewing applications for broadband support.

Viaero looks forward to providing further comment and analysis as this Docket progresses.

DATED this 7th day of June, 2013.

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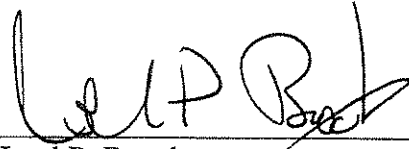
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of June, 2013, an original and an electronic copy of Viaero Wireless' Reply Comments in Docket Nos. NUSF-77, Progression Order No. 8 were delivered to:

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