

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of the Nebraska ) NUSF-77  
Telecommunications Association for )  
Investigation and Review of Processes and ) Progression Order No. 9  
Procedures Regarding the Nebraska Universal )  
Service Fund. )  
)

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

**I. INTRODUCTION**

N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (“Viaero”) respectfully submits these Comments in response to the Commission’s Progression Order No. 9 (the “Order”) entered on October 1, 2013. Viaero is grateful for the continuing opportunity to articulate its position regarding the development of the Commission’s Nebraska Broadband Pilot (“NEBP”) Program to make NUSF support available for broadband development in the State of Nebraska.

**II. ISSUES FOR COMMENT**

1. **Should the Commission institute a company cap which would limit the amount of support awarded to a single company? Such a cap would be utilized after the Commission staff prioritized the projects and would be used to ensure that funding was available to more than one or two applicants in a given funding year.**
  - a. **If you recommend a company cap should be utilized what is the appropriate company cap percentage?**
  - b. **If the Commission imposed a 20% cap for example, a single company would be limited to \$1.8 million in NEBP support for 2014. Would 20% be an appropriate company cap? Please explain.**
  - c. **If you do not believe a company cap should be used, please explain.**

Viaero does not believe that instituting a company cap to limit the support awarded to a single company for NUSF support is necessary or appropriate to further the public policy of the NEBP Program. The NUSF Program was created

to provide consumers access to advanced telecommunication and information services at a just, reasonable, and affordable rate. See, Neb. Rev. Stat. § 86-323. Creating an artificial and arbitrary company cap will not increase access to affordable advanced telecommunication and information services for consumers. In short, the NUSF Program must be consumer driven, not carrier driven. Establishing an artificial and arbitrary company cap will distort the results of the Commission's project prioritization methodology. Rather than funding the best and highest rated projects to the fullest extent possible, an artificial company cap will simply serve to prevent the best projects from being funded. Consumers who would otherwise have benefited from an effective and efficient project with a high cost relative to other project would be arbitrarily denied access to the project by virtue of an arbitrary funding allocation mechanism. By definition, carriers would be forced to accept the next best solution just to satisfy a non-quality based funding criteria. It is difficult to justify how such an arbitrary funding mechanism would advance the interests of these consumers denied access to the best rated project.

Further, an artificial company caps designed to promote multiple providers receiving NUSF funding does not necessarily result in NUSF funds being used in the highest and best manner; it simply means that more companies get funding. The NEBP Program should be implemented so that those carriers receiving support are those that can, in the most cost-effective manner, reach the most consumers with the funding. For example, if the Commission gives priority to all five of Company A's projects, those are the projects that should receive the funding even if it means that Company A receives all of the NEBP support for that calendar year. If Company B's ten projects all received lower prioritization than Company A's projects, providing any support to Company B's projects rather than Company A's would be putting the economic interests of Company B above the public interests the NUSF was created to promote. NUSF was created to support consumers, not carriers, and implementing a company cap inherently

shifts the focus of the funding mechanism in a way that loses its consumer driven purpose.

**2. In addition to, or in the alternative, should the Commission institute a per project cap? This cap would be applied on the front end of the Commission staff's analysis and would limit the size of projects to a certain funding level. The Commission believes a per project cap may encourage applicants to be more selective when designing discrete broadband projects.**

**a. If so, what would the appropriate per project cap be? Would a \$300,000 per project support cap be reasonable? If not, why wouldn't this amount be appropriate?**

As detailed in its answer to question 2e below, Viaero does not support a per project cap. However, should the Commission seek to implement a project cap, Viaero believes that additional analysis is essential and required before a project cap can be established.

**b. If a per project support cap is established, should projects where more than \$300,000 in NEBP support is sought be placed in a lower priority group assignment compared to the projects that are at or under the \$300,000 proposed project support cap?**

Viaero would not support placing those projects seeking more than \$300,000 in a lower priority group. There is no evidence whatsoever to support the conclusion that projects costing over \$300,000 are less efficient than projects under \$300,000.

**c. If a per project support cap is established should the Commission find the project would be supported up to, but not in excess of, the cap amount? If not, why not?**

**d. If a per project support cap is established and projects where more than the cap is sought are placed in a lower priority group assignment, should the applicant be allowed to seek support up to, but not in excess of, the cap amount in order to receive a higher priority group assignment?**

**e. If you do not believe a per project support cap should be used, please explain.**

Viaero does not believe that a per project cap should be implemented. As an initial matter, the Commission has not provided any information or basis for its \$300,000 proposed project support cap. Project caps simply create an artificial barrier to designing efficient projects. Project design must take into consideration geographic issues and clients, population density considerations, network support and infrastructure matters and a host of other issues. Establishing an arbitrary project cap ignores the complexities of project design and service delivery in face of a “cookie cutter” approach which is not responsive to the design needs of a given project. The most economically efficient project for a given area may require information and network support which cannot be included in a project capped funding package, but which could enhance the efficiency and cost for several subsequent and interrelated projects. Further, there are few projects constructed in isolation from other projects or support systems and network facilities. All meaningful and efficient projects must be part of an effective network in order to provide adequate service, so “insular” projects, with an arbitrary project support cap, are likely less efficient and more costly per subscriber than thoughtfully or carefully engineered projects which are part of an integrated network system.

The NUSF Fund is designed to subsidize costs in rural and high-cost areas; areas where carriers have no viable economic model to build infrastructure and supply advanced telecommunication and information services without support from the NEBP Program. It is expensive to provide services in these areas and placing a per project cap on carriers would create additional financial disincentives to seek NUSF support or propose projects in certain areas, thereby hindering the stated goal of the NUSF Fund to provide consumers with advance telecommunications and information services in these areas.

- 3. In addition to, or in the alternative, should the Commission institute a cost per household support cap? The purpose of this proposed cap would be to ensure that NEBP support is based upon reasonable and efficient use of grant funds.**

- a. If the Commission adopts a household support cap what would the appropriate per household cap be?**

Viaero supports implementing a cost per household support cap. Placing a cap on the cost per household ensures the NUSF support is being used in the most efficient manner possible. As shown by the number of applications for 2013 calendar year support, requests for NUSF support currently exceed available funding. Thus, NUSF support should not be used for projects with a high cost per household, as that does not promote the Commission's policy of using the funds in a manner that provides quality services to as many consumers as possible for the lowest cost. Using NUSF funds to support high-end, expensive projects that will provide services to very few consumers is not good public policy nor is it a responsible use of the scarce NEBP Program funds.

- b. Would \$5,000 per household be reasonable? The Commission estimates a cap of \$5,000 per household exceeds the average per household amount of all projects submitted in 2013. If the Commission adopts a cost per household cap should it be used to determine the priority assigned to the project by the Commission in a manner that does not preclude a project that exceeds the proposed cap? If a per household cap is established should the Commission find the project would be supported up to, but not in excess of, the cap amount? If the Commission adopts a cost per household cap that is used to determine the priority assigned to the project but does not preclude a project that exceeds the proposed cap, should the applicant be allowed to seek support up to, but not in excess of, the cap amount in order to receive a higher priority group assignment? If not, why not?**

A cap on per household support is important to prevent wasteful projects, and would operate as a failsafe for inefficient and excessively costly projects. Given the very limited amount of available NEBP funding, "cadillac" projects are simply not good public policy nor are they affordable. 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 responsibility of the Commission includes employing the implementation of supported services by providers in the most efficient and cost effective manner possible, so 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. A corollary to that responsibility is overly expensive, and higher cost projects, as compared to efficient projects, must receive a lower priority for funding. The Commission must recognize that any “cap” on funding or costs it establishes may be inappropriate in any given set of circumstances. Also, in a competitive evaluation, depending upon current economic and technological circumstances, there is little guarantee that a “cap” is always reasonable under the circumstances. However, a “cost cap” per household would serve to restrain wasteful projects and provide a guideline for carriers and the Commission to utilize in designing, completing and funding competitive projects with NEBP funding.

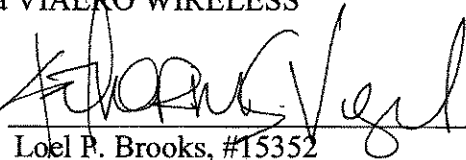
Viaero would support a cap of \$1,000 per household. A lower cap would be more reasonable as it would require carriers to be competitive in order to promote efficient use of the NEBP grant funds. Carriers who can’t provide cost efficient services on a per household basis should not be awarded scarce NEBP funds. Applicants for NEBP funds should be subject to evaluation by the Commission in a manner that promotes an efficient use of the funds.

- c. If you do not believe a cost per household support cap should be used, please explain.**

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

DATED this 11<sup>th</sup> day of October, 2013.

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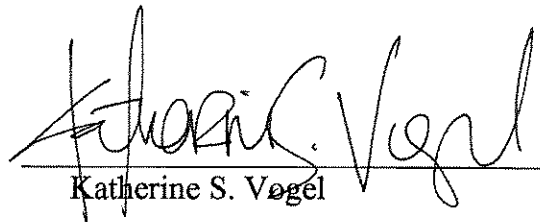
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 11<sup>th</sup> day of October, 2013, an original and an electronic copy of Viaero Wireless' Comments in Docket No. NUSF-77, Progression Order No. 9, were delivered to:

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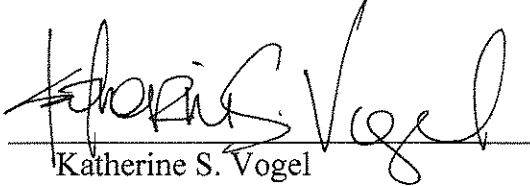
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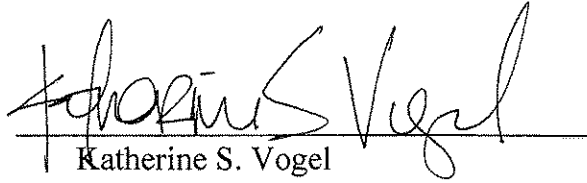
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