

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its) RULE AND REGULATION NO. 202
own motion, seeking to establish Title)
291, Chapter 16, to adopt Reverse)
Auction and Wireless Registry rules and)
regulations in accordance with Nebraska)
Legislative Bill 994 [2018].)

JOINT COMMENTS OF
NE COLORADO CELLULAR, INC. d/b/a VIAERO WIRELESS
AND
U.S. CELLULAR CORPORATION

NE Colorado Cellular, Inc. d/b/a Viaero Wireless (“Viaero”), and United States Cellular Corporation (“U.S. Cellular”), respectfully submit these Joint Comments in response to the Nebraska Public Service Commission’s (the “Commission”) Order Opening Docket, Releasing Proposed Rules, Seeking Comment, and Setting Hearing entered on March 12, 2019 (the “Order”).

Pursuant to the Order, the Commission has proposed new rules and regulations (the “Proposed Rules”) designed to implement Nebraska Legislative Bill 994 (2018) (“LB994”), which was intended to expand the availability, quality and affordability of broadband telecommunications in rural areas of the state.¹ While several provisions of the Proposed Rules may elicit comments from other broadband providers, Viaero and US Cellular have particular concerns about the applicability of Section 001.04 “Reverse Auctions” to mobile wireless service providers (“WSP”)

1. Wireless Services are not restricted by Exchange Area.

Section 4 of LB994, codified as Neb. Rev. Stat. §86-330, authorizes the Commission to consider the implementation and operation of a “reverse auction program” to support high speed

¹ 2018 Neb. Laws 994 § 2.

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internet “infrastructure” projects in unserved and underserved “exchanges” within the State of Nebraska. Such a Reverse Auction program would be funded through NUSF Funding withdrawn by the Commission from previously awarded NUSF providers upon a determination by the Commission that any such provider had failed to serve those exchanges, to the “Commission’s satisfaction”. Any funding withdrawn by the Commission is required to be utilized to fund one or more other projects in the “exchange area for which the funding was originally granted”.^{2, 3} “Basic local exchange area” (as defined in Neb. Rev. Stat. § 86-115) defines a specific territorial unit established by a telecommunications company in which basic local service is provided by a telecommunication carrier. Mobile wireless services are not designed or required to operate in accordance with traditional wireline “exchange areas”, so these references strongly suggest that mobile wireless providers were not intended to be covered by this section.

2. Wireless Services are Exempt from Rate Regulation by the Commission.

In addition, § 001.04(D)(ii)(3) of the Proposed Rules requires the applicant for reverse auction funding to demonstrate that it will offer service “at rates that are equal or lower to the Commission’s reasonable comparability benchmarks for fixed wireline services offered in urban areas”. There is no requirement in Nebraska telecommunications law which requires mobile wireless providers to adhere to such rate requirements, and in fact such rate regulation of wireless service is prohibited by Nebraska law.⁴

3. Federal CAFII Program Model not Applicable to Mobile Wireless Service

Both LB994 and Neb. Rev. Stat. § 86-330 authorize the Commission to use as guide for the design of the new Reverse Auction Program the program designed by the FCC in its Connect

² Ibid, § 4.

³ Neb. Rev. Stat. §86-330.

⁴ Neb. Rev. Stat. § 86-124.

America Fund Phase II Auction process (“CAFII”). This emulation authority seems to have been utilized in drafting this section of Proposed Rules, however the CAF II Program was intended to promote funding to “fixed broadband and voice services”, including fixed wireless services, but **not** mobile wireless services.⁵ References in § 001.004(C)(vii) to the use of “spectrum” logically apply to the technology used by fixed wireless providers to carry their the signals from a fixed transmission site to another fixed location with a receiver. Based on the foregoing, the proposed Reverse Auction program does not appear to be designed for funding of wireless service providers.

4. Existing Dedicated Wireless Broad Program provides NUSF for Mobile Wireless Services.

Finally, the Commission has established and operated a Dedicated Wireless Broadband Program for many years designed specifically to fund mobile wireless broadband services and infrastructure in underserved and unserved areas of the state. The Wireless Broadband Program (NUSF-92) essentially operates like a reverse auction, with Applicants (bidders) being evaluated for providing the best service, to the greatest number of people at the lowest cost in unserved and underserved areas of the state. In recent years there have only been two or three Applicants per funding round, and identifying quality eligible projects has been effective and productive in promoting rural mobile voice and broadband services. There seems to be no compelling reason to reinvent an existing program dedicated to funding mobile wireless broadband services around the state with a new reverse auction methodology not designed for mobile wireless services.

⁵ Federal Communications Commission, “Connect America Fund Phase II Auction (Auction 903)”. (www.fcc.gov/auction/903).

Recommendations.

Based on the foregoing, Viaero and U.S. Cellular recommends amending the Proposed Rules as follows:

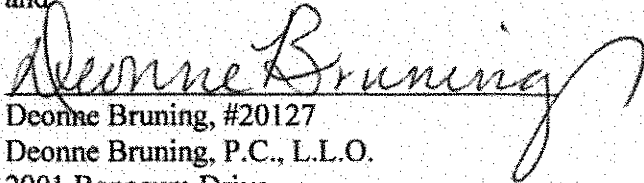
Section 001.04(A). This Section shall not apply to any wireless carrier (as defined in Neb. Rev. Stat. § 86-456) providing wireless service (as defined in Neb. Rev. Stat. §86-456.01) which is a recipient of support under the Dedicated Wireless Broadband Fund (or its successors) pursuant to NUSF-92.

Respectfully submitted this 18th day of April, 2019.



Loel P. Brooks #15352
Brooks, Pansing-Brooks P.C., L.L.O
1248 O Street, Suite 948
Lincoln, NE 68508
(402) 476-3300
lbooks@brookspanlaw.com
*Attorney for NE Colorado Cellular, Inc., d/b/a
Viaero Wireless*

and



Deonne Bruning, #20127
Deonne Bruning, P.C., L.L.O.
2901 Bonacum Drive
Lincoln, NE 68502
(402) 440-1487
deonnebruning@neb.rr.com
Attorney for United States Cellular Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of April, 2019, an original and five copies of the Joint Comments of NE Colorado Cellular, Inc., d/b/a/ Viaero Wireless and United States Cellular Corporation in Rule and Regulation No. 202 were hand-delivered to the Nebraska Public Service Commission, 1200 N Street, Suite 300, Lincoln NE and a copy of the same has been e-mailed to the following:

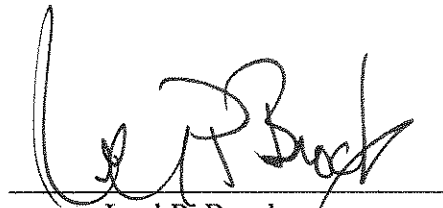
Nebraska Public Service Commission

John Monroe

john.monroe@nebraska.gov

Cullen Robbins

cullen.robbins@nebraska.gov



Loel P. Brooks