

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate and determine whether additional funds from the Enhanced Wireless 911 Fund should be made available to public safety answering points for costs to implement text to 911 solutions.) Application No. 911-060/PI-191)) Progression Order No. 2)))))



COMMENTS OF N.E. COLORADO CELLULAR, INC. D/B/A VIAERO WIRELESS

N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (“Viaero”), by and through its counsel, is pleased to provide the following comments in response to the Nebraska Public Service Commission’s (the “Commission’s”) Progression Order No. 2 in this Docket (“Progression Order No. 2”).

I. INTRODUCTION

Viaero is a wireless carrier under Neb. Rev. Stat. § 86-456. Viaero provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.5 and was designated an Eligible Telecommunications Carrier (“ETC”) by Commission Order entered on October 18, 2005 in Application C-3324. Viaero has been actively involved with the development of and implementation of 911 services throughout the Commission’s development of its Wireless 911 program contemplated in the Enhanced Wireless Services Act (the “Act”).

II. SUMMARY OF COMMISSION FINDINGS

In Progression Order No. 1 in this Docket, the Commission determined that Text-to-911 is a purely wireless service, and is neither a wireline nor a NG911 service. As such, the Commission also determined that Text-to-911 service is an “eligible use” of Enhanced Wireless 911 Funds and that additional funds from the Enhanced Wireless 911 Fund should be made available to public safety answering points (PSAPs) for costs to implement Text-to 911 solutions. The

Commission directed such additional funding will be granted to PSAPs only, outside of the 911-SAM cost model and funding mechanism created by the Commission for distributing funding from the Enhanced Wireless 911 Fund (the “911-SAM”), because Text-to-911 solutions were not specifically contemplated in the 911-SAM and to incorporate such solutions within the 911-SAM “will take time”. The Commission further determined that it is “essential” to establish an “interim funding solution” for Text-to-911 to make available “limited funding” to PSAPs on a case-by-case basis, while gathering data to guide statewide implementation in the future. The Commission declined to first develop a statewide plan to implement a uniform system with specific technological options because to do so would be a “disservice” to local PSAPs who might not be ready to implement Text-to-911 or hinder the progress of others.

III. COMMENTS ON STAFF PROPOSAL.

Based on the foregoing, Viaero is pleased to provide these additional comments on the Staff Proposal for Text-to-911 Interim Funding.

1. **Funding for Wireless Carriers.** The Commission’s finding that Text-to-911 service is an “eligible use” of Enhanced Wireless 911 funding should also qualify wireless carriers for additional funding from the Enhanced Wireless Fund. Viaero provided information in its recent Comments in this Docket regarding the estimated costs it would have to incur to provide Text-to-911 service. The Act specifically provides for distribution of funds to wireless carriers and historically the Commission has provided for partial reimbursement of eligible costs. However, in recent years, the portion of the Fund allocated to wireless carriers has decreased in proportion to the funding distributed to PSAPs and LECs. Additional distributions for PSAPs will necessarily further reduce funds available to wireless carriers in light of the policy of the Commission to fully fund all LECs for transport at the LEC’s

tariffed rates. It appears that the Commission's decision to reduce the 911 surcharge in 2012 to \$.45 per wireless access line might need to be revisited to adequately address the additional expenses of PSAPs and wireless carriers in the implementation of Text-to-911 and, eventually, NG911.

2. **Avoid Stranded Investment.** In light of the decision of the Commission to initiate interim funding assistance for Text-to-911 solutions before the Commission (i) gathers data on the cost and appropriate technologies for implementing such service and (ii) develops policies and procedures for further statewide implementation, Viaero supports the Comments of CTIA filed on August 27, 2014 that the Commission must ensure that all PSAP applications for funding demonstrate a choice that is most reasonable and cost-efficient for that PSAP's particular circumstances. Clearly, the implementation of Text-to-911 is a complex issue from a technical, operational, and funding perspective, and, in the absence of reliable data on actual costs of implementation, in order to minimize stranded investments, the Commission must carefully evaluate all requests for support from the Enhanced 911 Wireless Fund. The Commission must also take into consideration the impact of this Program on the ongoing Legislative study concerning the eventual implementation of a statewide NG911 system, and the costs which will be ultimately borne by Nebraska consumers.

3. **Review of Interim Funding Criteria.** While the Commission acknowledges the "rapid development in mobile communications technology", its plan to reevaluate this Program by April 15, 2016 is, in the world of technology development, a lifetime! By that time there could be numerous iterations of each existing technology and the emergence of new IP-based solutions and/or networks. It seems incumbent on the Commission to establish a thoughtful

and consistent program that guides this process rather than merely following the disparate and uncoordinated initiatives of each of the state's many PSAPS. An 18-month period of time to have this program run on auto-pilot seems destined to create a web of uncoordinated and potentially costly solutions that may or may not be capable of interconnection or integration into an effective system resulting in significant stranded investments from the enhanced Wireless 911 Fund. Viaero would strongly encourage the initial review of this program to occur not later the April 15, 2015.

4. Funding for Text- to -911 Should be Predictable and Stable. The Staff Proposal states that the Commission's interim funding is "discretionary" and may be "terminated at any time" by the Commission. This policy pronouncement is extremely troubling, as it warns that PSAPs might find the Commission's funding support of the Text-to-911 solutions it has authorized and encouraged through this Program arbitrarily terminated, at any time, by the Commission. The Staff Proposal does not articulate under what circumstances the Commission might chose to terminate support to a PSAP or what recourse a PSAP might have for stranded investments in its Text-to-911 solution if Commission funding suddenly terminates. The absence of predictable and stable funding makes successful program implementation problematic at best. Currently the PSAPs have no other source of funding for such solutions, so there would effectively be no viable economic recourse for the PSAPs if funding from the Commission is terminated. If the public is expected to rely on Text-to-911 services, and the Commission intends to initiate comprehensive public education programs to familiarize the public about these interim solutions, then the continuation of funding to support these interim solutions must be assured.

5. **Funding for the Web Browser Solution.** While several Commenters and the Commission itself have identified the “web browser” solution as a “middle ground” solution that is cost-effective and utilitarian, the Staff Proposal states that connectivity to the internet, network charges and equipment and software are not eligible for cost recovery from the Fund. Clearly, this policy should not limit the ability of the PSAP to implement one of the best and least costly solutions available to PSAPs for Text-to-911 service. Clarification of the Staff Proposal is warranted to determine which of these costs would be “otherwise eligible” for reimbursement through the PSAPs’ annual allocation set aside.

6. **Third Party Subject Matter Vendor.** The Staff Proposal suggests the hiring of a “third party contractor” to provide the Commission with “technical subject matter expertise” to review and advise the Commission on each Application. However, the Staff Proposal does not indicate who this vendor will be or the qualifications the vendor will need to have. Nor does the Staff Proposal reveal why the vendor cannot be used by the Commission to help develop a uniform system and implementation plan to permit the Commission to drive this program and provide guidance to all PSAPs concerning the best and most cost-effective solution to implement. The use of a third-party expert for advice only on an ad hoc basis for review of unguided and uncoordinated applications seems to miss a vital opportunity to use that vendor’s expertise for thoughtful advanced planning and coordination before this Program commences funding Applications.

7. **Application Process.** The Application process set forth in the Staff Proposal begins with the PSAP submitting a request for Text-to-911 service to one or more wireless carriers. This step seems entirely premature until the PSAP has submitted an application to the Commission for Funding. The proposed form set forth in the Staff Proposal for a Funding

Assistance Request requires the PSAP applicant to identify the specific type of Text-to-911 solution it plans to implement however, it is the role of the Enhanced Wireless 911 Advisory Board and the Commission, with its expert vendor, to review each application for funding to be sure the proposed solution is the best and most cost-effective available. What purpose would be served to require a PSAP to request specific service from a wireless carrier before it has received the review of, and recommendations from, the Advisory Board and the Commission and its expert as to the best solution and the funding to enable it to implement that solution? What would the consequences be to wireless carriers to provide service to a PSAP under a formal Request for Service if the PSAP application is denied by the Commission? Only after the Application review and funding approval process through the Commission should a PSAP be able to request a specific Text-to-911 service from a wireless carrier.

8. Advanced Consultation with the Commission. The Staff Proposal states that a proposed PSAP applicant “should consult with the NPSC E911 Department Staff prior to submitting an Application”. What is the purpose of such consultation? The Commission has declined to establish any specific technology solution for PSAPs to deploy and plans to use its expert vendors only to review and advise the Commission about actual applications. In the absence of any policy or technology solution standards established by the Commission, requiring a pre-application consultation with the Commission seems superfluous.

9. Public Education Campaign. Viaero agrees with the Comments of CTIA regarding the need to involve all stakeholders, including wireless providers and the public safety community, in working collaboratively to educate the public about the capabilities and limitations of interim of Text-to-911 solutions. Certainly, all public education campaigns

must be consistent with any national efforts to educate the public, including any developed by the FCC, to avoid public confusion and to carefully manage public expectations about these interim technical solutions. The Workshop on public education initiatives established under the Staff Proposal for October 30, 2014 should emphasize these objectives.

10. Additional Funding for Wireless E911 Initiatives. The Commission repeatedly states that the Enhanced Wireless 911 Fund is not intended to cover all costs associated with the operation of a 911 Center, which is certainly true under Nebraska law. Likewise, the 911 Act establishes a statutory cap on the surcharge authorized to fund the enhanced Wireless 911 Fund, which may limit the ability of the Enhanced Wireless Fund to fully pay the costs of PSAPs and wireless carriers to implement wireless 911 service. However the Commission has a duty to determine the amount of revenue necessary to carry out the purposes of the Act and to set the surcharge accordingly. The Commission's annual hearing to set the surcharge is set for October 28, 2014 and Viaero urges the Commission to revisit the surcharge for the Enhanced Wireless 911 Fund for 2015 in light of this Docket and the evolution of the State's 911 network to 4G.

III. CONCLUSION

Viaero believes that the Commission's best efforts should be focused on driving the development of a uniform, interoperable, statewide Text-to-911 system to ensure uniform service quality and consumer utilization expectations. Viaero believes that the Commission's decision to hire the services of a third-party vendor with expertise in this area can serve as a meaningful resource to establish meaningful guidelines and standards for implementing Text-to-911 solutions and/or facilitate such guidelines on the review and evaluation of PSAP Applications. Finally, Viaero urges the Commission to carefully reconsider setting the 911 wireless surcharge

at a level that will result in adequate funding for Text-to-911 solutions for both PSAPs and wireless carriers.

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

Respectfully submitted this 3rd day of October, 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of October, 2014, an original, five copies and an electronic copy of the Comments of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, in Application No. 911-060/PI-191, Progression Order No. 2 were delivered to:

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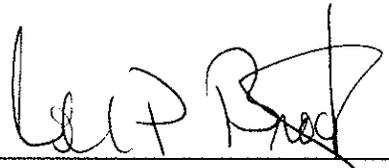
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