

1 **BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**  
2

In the Matter of the Petition of the Nebraska ) Application No. NUSF-77.20  
Telecommunications Association for )  
investigation and review of processes and )  
procedures regarding the Nebraska Universal )  
Service Fund: Application to the Nebraska )  
Broadband Pilot Program (NEBP) received from )  
N.E. Colorado Cellular, Inc., d/b/a Viaero )  
Wireless )  
)

3  
4 **TESTIMONY OF**  
5 **ANDREW R. NEWELL**  
6 **ON BEHALF OF**  
7 **N.E. COLORADO CELLULAR, INC., D/B/A VIAERO WIRELESS**  
8  
9  
10

11 **Q: PLEASE STATE YOUR NAME.**

12 A: Andrew R. Newell.

13 **Q: WHERE ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

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

15 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL QUALIFICATIONS.**

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

19 **Q: PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.**

20 A: I have held the General Counsel position at Viaero since February 2009. Prior to joining  
21 Viaero, I maintained a private law practice beginning in 2002. From 1999 to 2001, I held

1 positions of increasing responsibility within the legal department of Jato Communications  
2 Corp., a competitive provider of DSL services, and its successor in interest, a subsidiary  
3 of Lucent Technologies. Prior to joining Jato I worked as a law clerk, and later in  
4 regulatory affairs for Intrado, a provider of enhanced 9-1-1 technologies and services.

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

6 A: Yes, I am.

7 **Q: DID YOU OVERSEE THE PREPARATION OF VIAERO'S "SECOND**  
8 **AMENDED APPLICATION FOR FUNDING FROM THE NEBRASKA**  
9 **BROADBAND PILOT ("NEBP") PROGRAM" FILED WITH THE NEBRASKA**  
10 **PUBLIC SERVICE COMMISSION ("COMMISSION") ON JULY 8, 2013 (THE**  
11 **"APPLICATION").**

12 A: Yes I did.

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

15 A: Yes.

16 As General Counsel, I manage the legal affairs of Viaero, including the preparation of  
17 this Application, which brings us here today. I will address most issues regarding the  
18 Application, and how it meets the requirements of this Commission's Progression Order  
19 No. 5 entered November 21, 2011 in this Docket ("Progression Order No. 5")  
20 establishing a time line for filing requests for support from the NEBP Program and

1 identifying certain information required to be submitted in all petitions for support from  
2 the NEBP Program.

3 Before I discuss the Application itself, I would like to provide some background on  
4 Viaero, its operations as a wireless carrier and ETC in Nebraska, and its service offerings.  
5 Viaero was designated as an ETC by this Commission on October 18, 2005. Since that  
6 designation, Viaero has aggressively expanded its coverage in Nebraska, and currently  
7 owns 296 telecommunications towers covering 700,000 Nebraskans, all of which reside  
8 outside of Omaha and Lincoln. Effectively, Viaero's wireless coverage extends over  
9 80% of the state's landmass.

10 **Q: PLEASE EXPLAIN VIAERO'S PROPOSAL FOR USE OF SUPPORT FROM**  
11 **THE NEBP PROGRAM.**

12 On March 1, 2013, Viaero filed an application and request for funding ("Original  
13 Application") in which it requested funding in the amount of \$5,499,152.63 from the  
14 NEBP for a "Core Project" consisting of the construction of six new towers, and six  
15 optional "Modules" that, in total, consisted of thirty-seven tower site upgrades. After the  
16 filing of the Original Application, and pursuant to the Commission's directive in  
17 Progression Order No. 7 for carriers to engage in a negotiation process to reduce any  
18 disputes between the carriers regarding their respective applications, Viaero negotiated  
19 with numerous carriers that had filed interventions in Viaero's dockets and with those  
20 carriers in whose dockets Viaero had filed an intervention. As a result of those  
21 negotiations, on June 7, 2013, Viaero filed an amended application for funding  
22 ("Amended Application") in which it had reduced the number of new towers from six to

1 four and reduced the number of tower site upgrades from thirty-seven to nineteen. This  
2 resulted in a reduced cost to the NEBP in the amount of \$3,039,227.03. Subsequent to the  
3 filing of the Amended Application, Viaero engaged in further negotiations with United  
4 States Cellular Company regarding two overlapping tower sites which resulted in Viaero  
5 filing a second amended application (“Second Amended Application”) on July 8, 2013, in  
6 which it further reduced the number of tower site upgrades from nineteen to eighteen.

7 In its Second Amended Application, Viaero proposes a project for funding from the  
8 NEBP which will serve areas in north central and northeastern Nebraska consisting of  
9 four (4) optional “modules” that, when taken together, would provide wireless broadband  
10 over licensed spectrum covering a significant amount of remote and high-cost north  
11 central and northwestern Nebraska (collectively, the “Project”). The total cost of the  
12 Project is \$3,903,234.14. Viaero will provide 25% of the funding necessary, leaving a  
13 cost to the NEBP of \$2,927,425.61 for the Project as a whole. However, each optional  
14 “module” (“Module”) would fund wireless broadband coverage on an incremental basis:  
15 Module 2 at a cost of \$675,455.69 to NEBP and \$225,485.23 to Viaero, for a total  
16 Module cost of \$901,940.92; Module 3 at a cost of \$443,205.69 to NEBP and  
17 \$147,735.23 to Viaero, for a total Module cost of \$590,940.92; Module 5 at a cost of  
18 \$1,008,859.96 to NEBP and \$336,286.66 to Viaero for a total Module cost of  
19 \$1,345,146.61; and Module 7 at a cost of \$668,102.85 to NEBP and \$229,367.62 to  
20 Viaero for a total Module cost of \$917,470.46. The total Project cost if all Modules are  
21 funded is \$3,903,234.14, with a cost to the NEBP of \$2,927,425.61.

1 **Q: DOES VIAERO'S PROPOSAL COMPLY WITH THE COMMISSION'S**  
2 **ORDERS CONCERNING THE NEBP PROGRAM, IN PARTICULAR**  
3 **PROGRESSION ORDER NO. 5?**

4 Yes, Viaero believes that the entire Project and all the optional Modules meet each and  
5 every criterion for funding as set forth in the Commission's orders in this Docket,  
6 particularly Progression Order No. 5. Each of the four (4) Modules are severable and  
7 each site within every Module is also severable. Stated another way, each Module, and  
8 each tower upgrade or new tower within each Module can be funded individually. Each  
9 Module provides additional coverage, and may be funded at the Commission's option, in  
10 no particular order. In addition to the dramatically low cost per rural citizen, Viaero  
11 notes that this Project offers two other significant and unique advantages: First, it allows  
12 all GSM wireless customers to access broadband in the proposed service area, with the  
13 likelihood of access for all wireless customers over time. Second, the Project will provide  
14 *mobile* broadband, maximizing its utility for all manner of consumers, including public  
15 safety. At a price that was unimaginable just a few years ago, the Commission can  
16 provide outstanding broadband speeds to a significant number of unserved and  
17 underserved Nebraskans.

18 **Q: WILL OTHER COMPANIES BE ASSOCIATED WITH THE**  
19 **IMPLEMENTATION OF VIAERO'S PROPOSED PROJECT?**

20 A: No. Other than the vendors listed in the Application, the only company associated with  
21 the Project is NE Colorado Cellular, Inc., d/b/a Viaero Wireless ("Viaero").

22 **Q: PLEASE DESCRIBE THE PROPOSED BROADBAND PROJECT PLAN.**

1 A: In brief, the Project consists of two discrete elements: 1) Upgrading existing tower  
2 infrastructure with Base Station Controllers and radios for WCDMA (now widely  
3 referred to in the wireless industry as “4G”); and 2) the costs for construction of four (4)  
4 new 4G-capable towers contained in four (4) separate and optional modules. While other  
5 equipment and systems investments are necessary to enable a functioning broadband  
6 system, Viaero will absorb those costs and has not included them in either the overall  
7 costs or its 25% match. For instance, Viaero will install, at its own cost, a new 4G  
8 switching center in Grand Island, Nebraska to serve the Project’s service area. In  
9 conjunction with Viaero’s existing infrastructure in rural Nebraska (towers, cabling,  
10 backup power, equipment huts and other ancillary equipment) Viaero will provide  
11 broadband speeds within the specified footprint of at least 4 Mbps downstream, and 1  
12 Mbps upstream, with a maximum theoretical download speed of 42 Mbps.  
13 In its Application, Viaero submitted for consideration four (4) Modules for funding. Each  
14 Module, and each tower upgrade or new tower within each Module can be funded  
15 individually. Each Module provides additional coverage, and may be funded at the  
16 Commission’s option, in no particular order.

17 **Q: HOW DID VIAERO IDENTIFY WHICH AREAS WERE “UNSERVED” OR**  
18 **“UNDERSERVED”, AS DEFINED BY THE COMMISSION IN PROGRESSION**  
19 **ORDER NO. 5?**

20 A: Viaero sought to utilize the broadband mapping data developed through the State  
21 Broadband Initiative (“SBI”) grant program, but was unable to obtain the source data for  
22 the SBI map. Consequently, Viaero accessed, through a third-party provider,  
23 substantially identical data from the National Broadband Map for use in determining

1 which areas of the state are served, underserved and unserved. Viaero then identified  
2 “served” areas based upon the Commission’s criterion of 4 Mbps downstream and 1  
3 Mbps upstream compared against the National Broadband Map, which areas have been  
4 excluded from funding by removing any request for funding of the incremental costs of  
5 serving these areas. This was done by excluding tower upgrade costs at locations used  
6 primarily to provide coverage to “served” areas. For instance, all towers in and around  
7 the City of Scottsbluff have been removed from the Application.

8 All remaining areas within the scope of the Application are considered “underserved,” as  
9 Viaero currently provides EDGE data service in those areas. EDGE has a theoretical  
10 download speed of 240 Kbps which meets the Commission’s definition of “underserved,”  
11 but does not meet the FCC’s definition of “broadband.” Viaero’s existing data coverage  
12 does not, therefore, appear on the National Broadband Map. Furthermore, and as a result  
13 of the negotiations with other carriers previously discussed on page 4, Viaero undertook  
14 independent drive testing of the proposed service areas to confirm that those areas for  
15 which Viaero had applied for NEBP grant funding qualified as underserved or unserved  
16 as required by Progression Order No. 5.

17 In examining the data contained within the National Broadband Map for Nebraska, it is  
18 apparent that wireline carriers claim coverage at speeds beyond the Commission’s 4  
19 Mbps download threshold within many municipalities in rural Nebraska. The challenge  
20 moving forward is not, for the most part, in serving Nebraska’s cities, towns and villages,  
21 but the farms, ranches and associated businesses outside these municipalities which are  
22 much more efficient to serve with wireless technology.

1 Output data by 2010 Census Block was provided electronically with the Application as  
2 Amended Exhibits 3A-D.

3 **Q: DID VIAERO SUPPLY ELECTRONIC MAPS OF ALL GEOGRAPHIC**  
4 **LOCATION WHERE BROADBAND FACILITIES WOULD BE DEPLOYED**  
5 **UNDER THE PROPOSED PROJECT?**

6 A: Yes. Viaero attached electronic maps to its Application depicting Viaero's proposed  
7 broadband coverage area against existing "served" areas. The underlying mapping  
8 process was performed using 2010 Census Block boundaries as required by the  
9 Commission, which yielded the population coverage information provided. Viaero  
10 attached all electronic files and maps in editable, ESRI compatible format to its  
11 Application, and all underlying data that has not been provided is available upon request  
12 to the Commission. Coverage maps in .pdf format were attached to the Application as  
13 Exhibits 4A-D. An electronic map file in an editable ESRI-compatible format was also  
14 provided with the Application as Confidential Exhibit 4E.

15 **Q: DID VIAERO PROVIDE AN ESTIMATE OF THE NUMBER OF POTENTIAL**  
16 **NEW BROADBAND SUBSCRIBERS WHICH WOULD BE REALIZED IF THE**  
17 **PROJECT IS IMPLEMENTED?**

18 A: Drawing on its experience as a successful wireless telecommunications operator within  
19 the proposed "underserved" service areas, Viaero has generated an estimate of the  
20 number of broadband subscribers it expects to obtain when the Project is operational.  
21 These estimates were contained within the Application as Confidential Exhibit 7A.

22 **Q: HAS VIAERO DEVELOPED A BROADBAND DEPLOYMENT SCHEDULE FOR**  
23 **THE PROJECT?**

1 A: Yes, Viaero estimates that it can deploy the Project on the schedule set forth below. This  
2 schedule is well within the 24-month timeframe established by the Commission. The  
3 estimate is based on sound experience.

4 **Q: PLEASE DESCRIBE VIAERO'S ESTIMATED DEPLOYMENT SCHEDULE.**

5 A: Viaero's Deployment Schedule is broken down into three phases, as follows:

6 **Phase 1** Ordering and installing of 4G base station controllers and radios for  
7 WCDMA and installation of new 4G switch. Total time: 20 weeks

8  
9 **Phase 2** Ordering, constructing and installing new towers and base stations and  
10 related equipment. Total time: 36 weeks

11  
12 Overall time to Project completion is estimated to be approximately 9 months, excluding  
13 unforeseen delays associated with obtaining equipment, licenses, or zoning permits.  
14 Estimated Project completion milestones and time frames for each milestone are as  
15 follows:  
16

<u>Completion Percentage</u>	<u>Description of Milestone</u>	<u>Time Frame</u>
25%	Completion of all equipment ordering, submission of applications and commencement of update installation	8 weeks
50%	Delivery of all equipment and completion of all construction and implementation plans	16 weeks
75%	Receipt of all approvals and commitments of construction; implementation and deployment	25weeks
100%	Completion of all installations, tuning, testing and turn-up	36 weeks

17 **Q: WHAT IS THE PROPOSED BUDGET FOR THE PROJECT?**

18 A: The proposed budget for the Project was attached to the Application as Confidential  
19 Exhibit 7A and has been generally described earlier in my testimony.

1 **Q: PLEASE DESCRIBE VIAERO'S PROPOSED RETAIL PRICING FOR ITS**  
2 **PROPOSED BROADBAND PROJECT.**

3 A: Viaero's proposed retail pricing for its broadband products was attached to the  
4 Application as Exhibit 8A.

5 **Q: PLEASE DESCRIBE VIAERO'S COMMITMENT TO OFFER BROADBAND**  
6 **SERVICES.**

7 A: Viaero hereby commits to offering broadband service to all households within any  
8 approved service area for at least five (5) years.

9 **Q: PLEASE DESCRIBE VIAERO'S COMMITMENT TO PARTICIPATE IN THE**  
10 **COMMISSION'S MAPPING EFFORTS**

11 A: Viaero hereby commits to participate and provide broadband data to the Commission and  
12 its vendors for the duration of the State Broadband Data and Development (SBDD)  
13 Program.

14 **Q: PLEASE PROVIDE A DESCRIPTION OF VIAERO'S FINANCIAL**  
15 **QUALIFICATIONS**

16 A: Copies of Viaero's audited financial statements as of December 31, 2010 and December  
17 31, 2011 (the latest audited financials available) were filed with Viaero's Original  
18 Application as Confidential Exhibit 11A.

19 **Q: PLEASE DESCRIBE VIAERO'S FINANCIAL, TECHNICAL AND**  
20 **MANAGERIAL COMPETANCE**

21 A: Viaero is managed by a team of experienced telecommunications professionals with  
22 extensive experience providing wireless service, including wireless data service, within

1 the proposed service territory. A description of the background of the senior  
2 management team was attached to the Application as Exhibit 12A.

3 Viaero currently operates an extensive wireless network in the State of Nebraska and has  
4 a proven track record of financial and technical competence in the design and operation  
5 of wireless telecommunications networks. Viaero monitors the performance of its voice  
6 and data network on a site-by-site basis from its Network Operations Center in Fort  
7 Morgan, Colorado on a 24 hours per day, 7 days a week, 365 days a year basis.

8 **Q: IS VIAERO PREPARED TO PROVIDE THE FINANCIAL MATCH NEEDED TO**  
9 **MEET PROJECT COMMITMENTS AS REQUIRED BY THE COMMISSION IN**  
10 **PROGRESSION NO. 5?**

11 A: Yes. A description of Viaero's financial match which will be used to meet Viaero's  
12 commitment in this Application was included in the Proposed Budget for this Project  
13 attached to the Application in Confidential Exhibit 7A and previously described in my  
14 testimony.

15 **Q: HAS VIAERO PROVIDED AN AFFIDAVIT ATTESTING TO THE TRUST AND**  
16 **ACCURACY OF ALL INFORMATION INCLUDED IN THE APPLICATION?**

17 A: Yes, the Affidavit attesting to the truth and accuracy of the information contained in the  
18 Application was attached to the Application as Exhibit 14A.

19 **Q. IN ADDITION TO SATISFYING THE TECHNICAL CRITERIA FOR FUNDING**  
20 **ESTABLISHED BY THE COMMISSION IN ITS PRIOR ORDER IN THIS**  
21 **DOCKET, ARE THERE ANY OTHER REASONS THAT THE COMMISSION**  
22 **SHOULD GRANT VIAERO'S PETITION AND GIVE ITS PROPOSED**  
23 **PROJECT PRIORITY FUNDING STATUS?**

1 A: Yes, Viaero has demonstrated a commitment since 2003 to the deployment of an  
2 extensive wireless network in the State of Nebraska focusing on unserved and  
3 underserved areas. While Viaero has sought and successfully received funding from the  
4 Commission for expansion of its network and the deployment of its 911 capabilities over  
5 the years, Viaero has also constructed and deployed 266 towers in its Nebraska service  
6 territory without subsidies from Commission programs, while 30 towers have been  
7 constructed with NUSF funding subsidies. Viaero has constructed no towers in the  
8 Lincoln and Omaha service areas! Viaero's historic track record of private interest in the  
9 unserved and underserved areas of the State is unique among wireless carriers currently  
10 providing services in the State and underscores Viaero's dedication, knowledge, expertise  
11 and financial commitment to the deployment of a high quality telecommunications  
12 network, which now covers over 80% of the State's geographic area. The granting of  
13 Viaero's Application will serve to enhance its already robust network and bring high  
14 speed mobile and broadband service to rural Nebraska.

15 Viaero believes that not only does its focus on rural areas, where it is difficult for most  
16 carriers to deploy cost effective broadband services, but providing low cost per-  
17 subscriber service, which emphasizes and promotes the Commission's NEBP public  
18 policies. Viaero has repeatedly urged the Commission to select projects for NEBP  
19 funding in a manner which prioritizes costs of service and efficiency in a meaningful  
20 way. The overriding consideration of the Commission in its project selection  
21 methodology should be the most cost effective and efficient means of delivering  
22 broadband services, regardless of technology. Any artificial or non-economic allocation  
23 methodology which does not heavily weight costs of deployment on a per-subscriber

1 basis will not satisfy the Commission's funding responsibility to prudently marshal the  
2 scarce public resources managed by the Commission in the NEBP fund.

3 **Q: HAVE YOU REVIEWED THE RECOMMENDATION FROM THE**  
4 **COMMISSION STAFF FILED ON AUGUST 28, 2013 REGARDING FUNDING**  
5 **AWARDED UNDER THE NEBP PROGRAM AND DO YOU HAVE ANY**  
6 **COMMENTS ON THE COMMISSION STAFF'S RECOMMENDATION?**

7 A: Yes, I have carefully reviewed the Recommendations of the Commission Staff and I  
8 generally support the Staff's recommended project funding schedule. However, a key  
9 aspect for the Staff's Recommendations was each applicant's group assignment and the  
10 Group Assignments for each project have not been made public, yet. Consequently, as  
11 discussed at the NUSF-77 Workshop on September 10, 2013, no Applicant has been able  
12 to meaningfully evaluate the Commission's prioritization or funding allocation  
13 calculation in connection with any specific project. Without such information, it is  
14 impossible to evaluate the Commission's staff funding recommendations with any  
15 mathematical certainty or in a manner that can reasonably be calculated to determine if  
16 the Commission's public policy obligations in this Program have been satisfied or  
17 advanced. Where the proposed funding recommendation explicitly established a  
18 preference for smaller projects, there is no competitive ranking which explains the  
19 preference in either a quantitative or qualitative basis, leaving applicants with little  
20 direction for how small projects satisfy the Commission's objective for subsequent  
21 funding rounds. The Staff Recommendations do allocate some funding to thirteen (13) of  
22 the sixteen (16) applicants, with no carrier receiving more than 20% of the entire  
23 available fund for this round. On average, wireless carriers each received 7% each of the

1 available fund, while wireline carriers received 7.8% of the available fund. However,  
2 while three (3) applicants received no funding, four carriers received 100% project  
3 funding. While full project funding for any carrier is certainly possible, without  
4 competitive information from which to evaluate the recommended awards, no applicant  
5 can realistically determine how their project compares to other projects, either in  
6 evaluating geographic area of service, cost per-subscriber or scope of investment.  
7 Clearly, the Commission Staff Recommendation recognizes and reward projects in  
8 numerous geographic areas, however little can be learned from the proposed  
9 recommendations concerning how to develop, construct or propose future project  
10 applications. As suggested in the Workshop, at a minimum, the Commission should  
11 provide applicants with the Group Assignments and ranking for each applicant's project  
12 so that some useful information can be gleaned from the Staff's funding methodology.  
13 Finally, the parties noted at the Workshop that the carrier negotiations process was  
14 expensive and arduous, and likely did not achieve the desired results because all carriers  
15 were working without essential comparative information concerning weighted values of  
16 these projects. Likewise, some applicants saw a drastic reduction in the scope of their  
17 applications as a result of the negotiation process. There was no quantified structure  
18 available to judge the negotiation process other than to rely on assumptions and internal  
19 economic priorities which were entirely unrelated to the project criteria used by the  
20 Commission to weight and prioritize the projects for funding. As a result, until there is  
21 better access to a ranking methodology for each project, utilization of the negotiation  
22 process may not be useful or valuable to the applicants.

1           While Viaero is certainly disappointed with its recommended award, Viaero will be  
2           pleased to develop the projects funded by the Commission and appreciates the funding  
3           which has been recommended.

4   **Q:    DOES THIS CONCLUDE YOUR TESTIMONY?**

5   **A:    Yes. I am pleased to respond to any questions.**

**CERTIFICATE OF SERVICE**

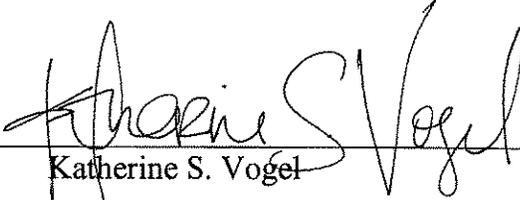
The undersigned hereby certifies that on this 27<sup>th</sup> day of September, 2013, an original, five copies and an electronic copy of the Initial Testimony of Andrew Newell in Docket No. NUSF-77 were delivered to:

Steve Meradith  
Executive Director  
Nebraska Public Service Commission  
1200 N Street, Suite 300  
Lincoln, NE 68508  
[Steve.meradith@nebraska.gov](mailto:Steve.meradith@nebraska.gov)

Shana Knutson  
Nebraska Public Service Commission  
1200 N Street, Suite 300  
Lincoln, NE 68508  
[shana.knutson@nebraska.gov](mailto:shana.knutson@nebraska.gov)

Brandy Zierott  
Nebraska Public Service Commission  
1200 N Street, Suite 300  
Lincoln, NE 68508  
[brandy.zierott@nebraska.gov](mailto:brandy.zierott@nebraska.gov)

Sue Vanicek  
Nebraska Public Service Commission  
1200 N Street, Suite 300  
Lincoln, NE 68508  
[sue.vanicek@nebraska.gov](mailto:sue.vanicek@nebraska.gov)

  
Katherine S. Vogel