

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

AUG 04 2009

In the Matter of the Petition of NE Colorado)
Cellular, Inc., DBA Viaero Wireless, for)
Designation as an Eligible Telecommunications)
Carrier Under 47 U.S.C. § 214(E)(2) and for)
Redefinition of Rural ILEC Service Areas.)

Docket No. 09-NECZ-747-ETC

Susan K. Duffy Docket Room

**VERIFIED AMENDED PETITION OF NE COLORADO CELLULAR, INC.,
DBA VIAERO WIRELESS, FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER AND FOR REDEFINITION OF
RURAL ILEC SERVICE AREAS**

COMES NOW NE Colorado Cellular, Inc., dba Viaero Wireless (“Viaero”), by its attorneys, and hereby submits this Verified Amended Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 214(e)(2), Section 54.201 of the Federal Communications Commission’s (“FCC”) rules, 47 C.F.R. § 54.201, and K.S.A. 66-2008(b). Viaero seeks Commission designation as a wireless ETC to receive per-line support from the Federal Universal Service Fund (“USF”) and Kansas Universal Service Fund (“KUSF”) within the wire centers set forth below.

Viaero is making this amended application to reflect an additional nine counties (Ellis, Gove, Graham, Logan, Ness, Rooks, Sheridan, Thomas and Trego) where the company is requesting ETC certification.

In addition, Viaero requests that the Commission redefine the service areas of Rural Telephone Service Company, Gorham Telephone Company, S&T Telephone Cooperative Association, Golden Belt Telephone Association, United Telephone Assn, Inc., Wilson Telephone Company and Sunflower Telephone Company (the “Rural ILECs”) pursuant to the

authority granted to it by 47 U.S.C. § 214(e)(5). It is necessary to grant this request so that Viaero can serve the entire service areas of the Rural ILECs as required by 47 U.S.C. § 214(e)(2).

As part of this Petition, Viaero submits a sworn declaration to establish its eligibility for ETC status. In support of this Petition, the following is respectfully shown:

I. BACKGROUND OF PETITIONER

1. The legal name, address and telephone number of Viaero and its designated contact person is as follows:

Andrew R. Newell
General Counsel
NE Colorado Cellular, Inc.
1224 W. Platte Ave.
Fort Morgan, CO 80701
(970) 467-3145

2. The name, address, and telephone number of the attorneys representing Viaero in this proceeding are as follows:

Mark P. Johnson Ks Bar #22289
Susan B. Cunningham Ks Bar # 14083
Sonnenschein Nath & Rosenthal LLP
4520 Main Street
Suite 1100
Kansas City, Missouri 64111
(816) 460-2400

Copies of all correspondence, pleadings, orders, and testimony should be directed to the foregoing and to Mr. Newell.

3. Viaero is incorporated in the State of Colorado and is in good standing with the Secretary of State of Kansas. See attached **Exhibit A**. Viaero incorporates by reference the

declaration filed by Michael Felecissimo in support of Viaero's original application in this docket. See Exhibit D to original application.

II. IDENTIFICATION OF THE SERVICE AREA

4. Viaero provides, or will provide, wireless service on both a prepaid and postpaid basis in Ellis, Gove, Graham, Logan, Ness, Rooks, Sheridan, Thomas and Trego, Sherman, Cheyenne, Rawlins, Decatur, Norton, Phillips, Smith and Osborne counties, Kansas. Specifically, Viaero seeks designation as a competitive Eligible Telecommunications Carrier (ETC) within the Southwestern Bell exchanges set forth in **Exhibit B**, and the Rural ILEC exchanges set forth in **Exhibit C**.

5. Section 214(e)(2) of the Act provides that ETC designations shall be made for a "service area" designated by the state commission. In areas served by a non-rural company, the state commission may establish an ETC service area for a competitor without federal concurrence. *See* 47 U.S.C. § 214(e)(5). In other words, the Commission may designate Viaero as a wireless ETC in non-rural service areas immediately and may define that area as it sees fit. Accordingly, for the non-rural local exchange carrier ("LEC") exchanges within Viaero's service area listed in **Exhibit B** hereto, Viaero requests immediate ETC designation.

6. 47 U.S.C. § 214(e)(5) further states that, with respect to rural companies, "service area" means the company's "study area," unless modified by the FCC and the states. 47 C.F.R. § 54.207 provides procedural guidance for state commissions seeking to redefine the service areas of rural companies. Viaero requests, to the extent necessary, that the Commission redefine the service areas of the Rural ILECs in a manner that will allow Viaero to serve the exchanges listed in **Exhibit C** as a competitive ETC.

7. Redefinition of the Rural ILECs' service areas is in the public interest because it will allow Viaero to receive support for its competitive service offerings throughout the area it serves. This will provide additional support for all customers served, enabling the company to make further investments in its network and keep prices for its services comparable to those paid by urban wireless subscribers, furthering the policy goals of the Act. 47 U.S.C. § 254(b)(3).

8. Redefinition will also ensure that the Commission's treatment of competitive ETCs is technologically neutral. Because wireless licenses are not granted by the FCC along exchange area boundaries, it is common for the service territories of wireless and wireline carriers to differ. To restrict a wireless ETC's access to federal funding solely on the basis that it cannot serve an entire exchange due to the geographical limitations of its licenses would favor wireline ETCs over wireless ETCs. This would run contrary to the FCC's clear directive that support be provided on a technologically neutral basis. 47 C.F.R. § 201(h).

III. SPECIFICATION OF THE SERVICES OFFERED BY VIAERO

9. Viaero will provide "mobile service" as defined at 47 U.S.C. § 153(27). Viaero presently provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.703(a). Wireless telecommunications providers are eligible to be designated as ETCs. *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 8858-59 (1997) ("*First Report and Order*"). Viaero is a telecommunications carrier as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5(a), and is a telecommunications carrier for the purposes of Part 54 of the FCC's rules. 47 U.S.C. §§ 54.1 *et seq.* Viaero is therefore considered a common carrier under the Act.

10. In its *First Report and Order* implementing Sections 214(e) and 254 of the Act, the FCC enumerated the services a carrier must provide to be designated as an ETC in order to receive federal universal service support. *See First Report and Order, supra*, 12 FCC Rcd at 8809-25. For areas served by non-rural LECs, such as Southwestern Bell, Section 214(e) of the Act requires the Commission to designate Viaero as an ETC throughout the service area for which ETC status is sought, if Viaero agrees to: (i) offer the enumerated services that are supported by federal universal service support mechanisms; and (ii) advertise the availability of such services.

11. If Viaero provides the services which meet the requirements for federal ETC designation under Section 214(e), it also meets the requirements under K.S.A. 66-2008(b) for KUSF ETC designation: “distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers, and wireless telecommunications providers that are deemed eligible both under Section 214 of the [Federal Act] and by the commission.”

12. The services that are supported by the federal USF, and thereby qualify a carrier for ETC status for KUSF purposes, are: (1) voice grade access to the public switched network, (2) local usage, (3) dual tone multi-frequency (“DTMF”) signaling or its functional equivalent, (4) single-party service or its functional equivalent, (5) access to emergency services, (6) access to operator services, (7) access to interexchange service, (8) access to directory assistance, and (9) toll limitation for qualifying low-income consumers. *See* 47 C.F.R. § 54.101(a). Viaero will be a full-service wireless carrier which offers all of these services, as described in detail below, throughout its service area utilizing some facilities owned by the company and other facilities leased from other providers.

13. Viaero provides voice grade access to the public switched network through interconnection arrangements with local telephone companies. Viaero will offers its wireless subscribers this service at bandwidths between 300 and 3,000 Hz as required by 47 C.F.R. § 54.101(a)(1), thereby providing voice grade access.

14. Viaero's rate plans will provide a variety of local usage levels, consistent with Section 54.101(a)(2) of the FCC's Rules. In the *First Report and Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide to qualify for ETC designation. Viaero will offer its Lifeline customers a local usage plan within Viaero's service area as a part of its monthly service package options. Viaero will comply with any minimum local usage requirements which the FCC and this Commission adopt. Viaero will also meet the requirement by including substantial local usage in all of its rate plans.

15. Pursuant to the FCC's rules, Viaero will provide DTMF signaling to facilitate the transportation of signaling throughout its network, and will provide that signaling to its wireless customers.

16. "Single-party service" means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line. *First Report and Order, supra*, 12 FCC Rcd at 8810. Viaero will provide single party wireless service, as that term is defined in Section 54.101 of the FCC's rules. *Id.*

17. As set forth in the Declaration of Michael Felicissimo ("the Felicissimo Declaration") filed with the original application, Viaero currently provides 911 access to emergency services throughout its service area, and will continue to do so as an ETC.

18. As set forth in the Felicissimo Declaration, Viaero provides customer access to operator services. Wireless customers will be able to reach operator services in the traditional manner by dialing “0”.

19. Viaero has entered into interconnection arrangements with interexchange carriers for its wireline services, and it will provide its wireless customers access to interexchange services. Customers may also “dial around” to reach their interexchange carrier of choice.

20. Subscribers to Viaero’s wireless services will be able to dial “411” or “555-1212” to reach directory assistance from their mobile phones.

21. Viaero has toll limitation capabilities which will enable Viaero to provide toll limitation service for its Lifeline wireless customers.

IV. ADVERTISING SERVICE OFFERINGS

22. Viaero will advertise the availability of its wireless Lifeline services throughout the proposed service area. Viaero has, and will continue to publish the availability of its wireless service offerings throughout its service area. The methods of advertising utilized may include television, radio, newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. Viaero will use media of general distribution to advertise its universal service offerings and charges and will comply with any advertising requirement adopted by the Commission or the FCC.

V. DESIGNATING VIAERO AS A WIRELESS ETC IS CONSISTENT WITH COMMISSION PRECEDENT

23. Designating Viaero as a wireless ETC for the specified service areas is consistent with the Commission's action in other ETC proceedings. In January 2000, the Commission granted CMRS carriers Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint") and GCC License Corporation d/b/a Western Wireless ("Western") ETC status in non-rural LEC wire centers for purposes of receiving federal universal service support.¹ In October 2001, the Commission designated Western as an ETC for federal and state universal service support in rural areas of Kansas served by the company.² The Commission has designated numerous ETCs since that time. For example, as recently as October 17, 2008, the Commission granted ETC status to a wireless carrier, Nex-Tech Wireless, for both FUSF and KUSF purposes. *See Order* of October 17, 2008, Docket No. 08-NTWZ-1076-ETC.

¹ See *In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier; Application of Sprint Spectrum (d/b/a Sprint PCS) For Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal and State Universal Service Support*, Docket Nos. 99-GCCZ-156-ETC, 99-SSLC-173-ETC, *Order #6* (Jan. 18, 2000) ("Non-Rural ETC Order"), *recon. denied in part, granted in part* in *Order #7* (Feb. 29, 2000), *Order #9* (Apr. 17, 2000) and *Order #10* (May 19, 2000). Although the *Non-Rural ETC Order* only granted ETC status for the purposes of federal universal service support, the Commission extended its designation to eligibility for support under the Kansas Universal Service Fund soon afterward, conditional upon the companies' compliance with any applicable service quality standards that might be adopted in a separate proceeding. *See Order #7* at pp. 2-3.

² See *In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. 99-GCCZ-156-ETC, *Order on Petition of Western Wireless for Designation as an Eligible Telecommunications Carrier* (Oct. 12, 2001) ("Rural ETC Order"), *recon. denied* (Nov. 30, 2001).

VI. DESIGNATION OF VIAERO AS AN ETC IS CONSISTENT WITH THE PUBLIC INTEREST

24. As noted above, it is not required that the Commission apply a public interest analysis in determining whether Viaero should be granted wireless ETC status. However, as the Commission pointed out in paragraph 10 of its May 30, 2008 *Order in In the Matter of the Application of dPi Teleconnect, LLC for Certification as an Eligible Telecommunications Carrier*, Docket No. 06-DPIT-713-ETC, the Commission may consider several factors relating to the advantage of designating a carrier as an ETC. Among the factors which the Commission may consider are the benefits of increased competitive choice, the impact of additional ETC designations on the USF, the advantages offered by the applicant's service offerings, the commitment to offer quality service, and the applicant's ability to provide the supported services throughout the requested service areas in a reasonable period of time. In each case, Viaero's service offerings will meet the Commission's test.

25. The increased competitive choice presented by Viaero's unique wireless service offering is obvious. Although there are many wireless carriers in Kansas today, the number of carriers serving rural western Kansas are fewer, and no carrier has constructed network facilities offering the quality of coverage that Viaero provides within rural service territories. These facilities will offer rural Kansans a viable choice for telecommunications services.

26. Viaero specializes in providing high-quality wireless service in rural areas, and actively pursues not just roaming revenue but *rural customers*. Viaero typically establishes a local presence in the areas it serves not only through local advertising, but through the establishment of retail outlets and the construction of towers and other network facilities designed to serve rural residents, as well as those who travel through and visit rural areas. The

construction and maintenance of a robust wireless network offers increased convenience, competition, and enhancements to public safety of great benefit to Kansans.

27. Viaero prides itself on providing superior service, not only in terms of service quality and coverage, but also customer service and pricing. Viaero believes its service compares favorably with any telecommunications service, wireless or wireline, in rural Kansas.

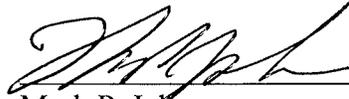
28. Viaero has aggressively expanded its network in the past six years, and has constructed hundreds of towers in rural Colorado, Nebraska, Wyoming, and Kansas. Viaero has a demonstrated track record of building high-quality wireless network facilities, and has motive only to continue this performance as it expands its network in rural Kansas. Until Viaero constructs facilities, it cannot expand its customer base. Without USF and KUSF support, it cannot expand its facilities to serve rural Kansas.

29. In considering any impact on the USF and KUSF, the Commission should weigh any possible increase in demand on the funds against the clear economic and public safety benefits of improved telecommunications service in rural Kansas. Viaero is not simply a competitor to existing incumbent LECs; it offers the convenience and public safety benefits of *mobile* telecommunications products and corresponding network facilities. In other words, the funds are not simply paying for competition; they are supporting the construction of network facilities that will dramatically improve rural Kansans' access to affordable and convenient telecommunications.

WHEREFORE, pursuant to Section 214(e)(2) of the Act and K.S.A. 66-2008(b), Viaero requests that the Commission enter an order (1) granting the ETC designation of Viaero's

wireless service offerings at the earliest possible date, (2) redefine the Rural ILEC service areas and (3) for such other relief as it considers appropriate.

Respectfully submitted,



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and

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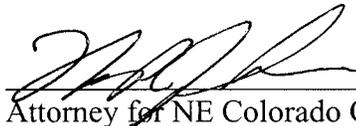
ATTORNEYS FOR NE COLORADO CELLULAR, INC.,
DBA VIAERO WIRELESS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been mailed electronically, this 3rd day of August, 2009, to:

4th

Robert Lehr, Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

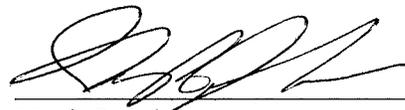


Attorney for NE Colorado Cellular, Inc.,
dba Viaero Wireless

VERIFICATION

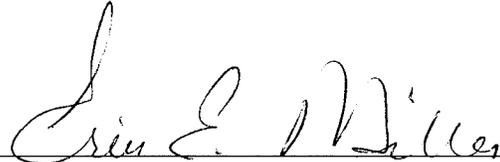
STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

I, Mark P. Johnson, being duly sworn upon oath, depose and say that I am an attorney for NE Colorado Cellular, Inc.; that I am authorized to make this verification on its behalf; that I have read the foregoing Application and state that its contents are true and correct to the best of my knowledge and belief.



Mark P. Johnson

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 3rd day of August, 2009.



NOTARY PUBLIC

MY COMMISSION EXPIRES:

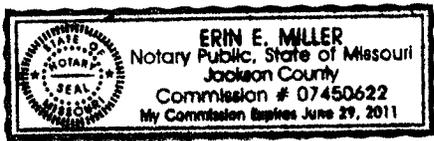


EXHIBIT A

CERTIFICATE OF GOOD STANDING

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE

I, Bernie Buescher, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

NE COLORADO CELLULAR, INC.

is a **Corporation** formed or registered on 02/27/1991 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19911012401.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 07/29/2009 that have been posted, and by documents delivered to this office electronically through 08/03/2009 @ 12:02:31.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 08/03/2009 @ 12:02:31 pursuant to and in accordance with applicable law. This certificate is assigned Confirmation Number 7427279.



Bernie Buescher

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Certificate Confirmation Page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click Business Center and select "Frequently Asked Questions."

EXHIBIT B

Southwestern Bell Exchanges

St. Francis
Bird City
Atwood
McDonald
Oberlin
Almena
Hanover
Blue Rapids
Frankfort
Seneca
Cottonwood Falls
Hartford
Hays
Oakley
Plainville
Stockton
Hoxie
Colby

EXHIBIT C

Rural ILEC Exchanges

<u>Exchange</u>	<u>Rural ILEC</u>	<u>Exchange</u>	<u>Rural ILEC</u>
Downs	Rural Telephone	Longford	Wheat State
Kensington	Rural Telephone	Leonardville	Wheat State
Lebanon	Rural Telephone	Riley	Wheat State
Osborne	Rural Telephone	Olsburg	Wheat State
Jennings	Rural Telephone	Matfield Green	Wheat State
Prairie View	Rural Telephone	Olpe	Wheat State
Long Island	Rural Telephone	St. George	Wamego
Woodruff	Rural Telephone	Wamego	Wamego
Agra	Rural Telephone	Dwight	Tri-County
Athol	Rural Telephone	White City	Tri-County
Gaylord	Rural Telephone	Delavan	Tri-County
Alton	Rural Telephone	Wilsey	Tri-County
Natoma	Rural Telephone	Lost Springs	Tri-County
Rexford*	Rural Telephone	Dunlap	Tri-County
Selden*	Rural Telephone	Mayetta	United
Lenora*	Rural Telephone	Hoyt	United
Edmond*	Rural Telephone	Denison	United
Logan*	Rural Telephone	Meridien	United
Paradise*	Gorham	Valley Falls	United
Waldo*	Gorham	Ozawkie	United
Luray	Gorham	Oskaloosa	United
Tipton	Wilson	Perry	United
Lucas	Wilson	McLouth	United
Weskan	Sunflower	Winchester	United
Sharon Springs	Sunflower	Emmett	United
Wallace	Sunflower	St. Mary's	United
Kanorado	S&T	Delia	United
Brewster*	S&T	Rossville	United
Soldier	JBN	Circleville	United
Corning	JBN	Alma	United
Goff	JBN	Alta Vista	United
Wetmore	JBN	Eskridge	United
Greenleaf	Wheat State	Harveyville	United
Clifton	Wheat State	Holton	United
Morganville	Wheat State	Silver Lake	United
Green	Wheat State		
Wakefield	Wheat State		

Lebo	United		
Waverly	United	Saffordville	Bluestem
Burlington	United	Americus	Bluestem
Gridley	United	Council Grove	Council Grove
LeRoy	United	Woodson	Rural Telephone
Cedar Point	Bluestem	Zurich	Rural Telephone
Victoria	Rural Telephone	Menlo	S & T
Gorham	Gorham	Rexford	Rural Telephone
Ellis	Golden Belt	Seldon	Rural Telephone
Natoma	Rural Telephone	Jennings	Rural Telephone
Gove	Rural Telephone	Levant	S & T
Quinter	Rural Telephone	Brewster	S & T
Grainfield	Rural Telephone	Collyer	Rural Telephone
Grinnel	S & T		
Utica	Golden Belt		
Winona	S & T		
Russell Springs	S & T		
Wallace	Sunflower		
Leoti	Sunflower		
Hill City	Rural Telephone		
WaKenney	Rural Telephone		
Moreland	Rural Telephone		
Lenora	Rural Telephone		
Edmond	Rural Telephone		
Logan	Rural Telephone		
Damer	Rural Telephone		
Palco	Rural Telephone		
Ransom	Golden Belt		
Brownell	Golden Belt		
McCracken	Golden Belt		
Alexander	Golden Belt		
Bazine	Golden Belt		
Ness City	Golden Belt		
Beeler	Golden Belt		
Burdett	Golden Belt		
Hanston	United		

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August 4, 2009

VIA FAX FILING & FEDERAL EXPRESS

Ms. Susan K. Duffy
Executive Director
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027

STATE CORPORATION COMMISSION

AUG 04 2009

 Docket
Room

RE: Docket No. 09-NECZ-747-ETC

Dear Ms. Duffy:

Please find enclosed the original and nine copies of the Verified Amended Petition of NE Colorado Cellular, Inc., dba Viaero Wireless, for Designation as an Eligible Telecommunications Carrier and for Redefinition of Rural ILEC Service Areas in the above-referenced proceeding. Please return a filed-stamped copy of the responses to me in the enclosed return envelope.

If you have any questions, please give me a call.

Very truly yours,



Mark P. Johnson

MPJ/rg
Enclosures