

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

Before Commissioners: Thomas E. Wright, Chairman  
Joseph F. Harkins  
Ward Loyd

In the Matter of the Petition of NE Colorado, Inc. )  
d/b/a Viaero Wireless, for Designation as an )  
Eligible Telecommunications Carrier 47 U.S.C. ) Docket No. 09-NECZ-747-ETC  
214(e)(2) and for Redefinition of Rural ILEC )  
Service Areas. )

**SUPERSEDING ORDER DESIGNATING VIAERO WIRELESS AN ETC  
IN CERTAIN AT&T AND RLEC EXCHANGES  
AND GRANTING IN PART AND DENYING IN PART REQUEST FOR  
REDEFINITION OF CERTAIN RURAL STUDY AREAS**

The above-captioned matter comes on before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and records, and being duly advised in the premises, the Commission designates NE Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero) an Eligible Telecommunications Carrier (ETC) in certain AT&T and rural local exchange carrier (RLEC) exchanges. The Commission also grants in part, and denies in part, Viaero's request for redefinition of certain RLEC service areas.

1. On March 20, 2009, Viaero filed its petition for designation as an ETC for the purpose of receiving federal Universal Service Fund (FUSF) support<sup>1</sup> and Kansas Universal Service Fund (KUSF) support. In addition, Viaero requested redefinition of certain RLEC service areas to exchange levels (Petition).

---

<sup>1</sup> On May 1, 2008, the Federal Communications Commission (FCC) placed an interim cap on high-cost support. As of that date, the total annual competitive ETC support for each state was capped at the level of support that competitive local exchange carriers in that state were eligible to receive as of March 2008.

2. On August 4, 2009, Viaero amended its Petition to include additional exchanges. Viaero filed its errata of the amended Petition, correcting certain exchanges for which it sought service support.

3. On March 29, 2010, Commission staff (Staff) provided its Memorandum analyzing the Petition. Staff's Memorandum was posted the same day on the Commission's web site to provide interested persons with the opportunity to comment on the Petition. No public comments were received.

4. Staff noted that an ETC would be eligible to receive universal service support in accordance with § 254 of the federal Telecommunications Act of 1996 (Act) as long as it (a) offered the services supported by federal universal service support mechanisms (b) throughout the service areas for which designation is received (c) using either its own facilities or a combination of its own facilities and resale of another carrier's services and (d) advertises the availability of those services and the charges therefor using media of general distribution.

5. Staff next described the services, or functionalities, which a prospective ETC carrier must provide throughout the area for which ETC designation is sought. Staff was satisfied that Viaero had demonstrated the ability to provide the services, or functionalities, supported by federal support mechanisms.

6. Viaero explained to Staff that it would provide personal communications service (PCS) through a network of telecommunications towers. Voice traffic from each tower is backhauled using secured licensed microwave links between Viaero's towers and its switching centers in Colorado and Nebraska. Links between nearly all towers and the switching centers are redundant, allowing for more effective traffic and emergency

management and high reliability. Viaero also explained that, in some instances, it purchases access circuits from incumbent local exchange carriers to the nearest tandem for routing to the public switched telephone network.

7. It was Staff's opinion that Viaero was eligible to be designated an ETC for FUSF and KUSF support when using its own wireless facilities or a combination of its own facilities and resale/roaming agreements. However, Viaero would not be eligible to receive universal service support for customers served via purely resale and/or roaming agreements.

8. With respect to service areas, AT&T is a non-rural telephone company for both federal and state support purposes. Kansas wire centers are the service areas currently designated by the Commission for universal support for areas served by non-rural telephone companies. Viaero is licensed to provide service to the requested AT&T exchanges. Thus, Staff believed that Viaero was eligible to be granted ETC designation in the requested AT&T exchanges, subject to the Commission finding that it is in the public interest to do so.

9. Viaero is required to serve the entire study area of an RLEC, unless the RLEC's study is redefined. Because Viaero requests ETC designation throughout the entire study areas served by Gorham and Council Grove, Staff believed that Viaero was eligible to be granted ETC designation in those service areas, subject to the Commission finding that it is in the public interest to do so.

10. United Telephone Company of Kansas d/b/a CenturyLink is an RLEC for federal support purposes. The Commission has already redefined the CenturyLink-Eastern, CenturyLink-United, Rural Telephone Company and Sunflower/Bluestem study

areas to the wire center level in previous dockets. The FCC concurred with the Commission's action by taking no action on the matter. Staff recommended that the Commission designate Viaero an ETC in the wire centers of these RLECs.

11. Staff conducted a population density per square mile analysis for the Golden Belt, Wheat State, Tri-County, Wilson, S&T, JBN, Wamego, United Telephone Association and Twin Valley study areas to determine whether redefinition of the requested RLEC study areas would create cream-skimming opportunities for Viaero.

12. Having completed its analysis, Staff recommended that the study areas of Golden Belt Telephone Association, S&T Telephone Cooperative Association, Tri-County Telephone Association, Twin Valley Telephone and Wheat State Telephone Company be redefined to the wire center level. Staff advised Viaero that it would need to obtain the FCC's approval of the redefinition of these RLECs. Staff further recommended that the Commission designate Viaero an ETC in these redefined study areas.

13. Staff, however, does not believe that it is in the public interest to redefine the Wamego and JBN service areas because Viaero has the ability to serve low-population, high-cost wire centers but elects not to do so. In addition, Staff does not believe that it is in the public interest to redefine the Wilson and United Telephone Association service areas because of Viaero's inability to provide service to those service areas.

14. Based upon the sample advertising provided by Viaero, Staff believed that Viaero would be able to meet the Commission's advertising requirements. After discussing the material provided by Viaero with regard to the FCC's public interest analysis in the Virginia Cellular Order, and the demonstration of ready compliance to

Commission orders by Viaero, Staff believed that it was in the public interest to designate Viaero an ETC in the requested exchanges served by AT&T and the entire study areas served by Gorham and Council Grove.

15. Staff recommended that Viaero be designated an ETC in the requested CenturyLink wire centers in the United and Eastern study areas, as well as the requested Rural Telephone Company, Sunflower/Bluestem, Golden Belt, Wheat State, Tri-County, S&T, and Twin Valley exchanges.

16. In summary, Staff recommended approval of Viaero's request for designation as an ETC for FUSF and KUSF purposes in the AT&T exchanges of Almena, Atwood, Bird City, Blue Rapids, Colby, Cottonwood Falls, Frankfort, Hanover, Hartford, Hays, Hoxie, McDonald, Oakley, Oberlin, Plainville, St. Francis, Seneca, and Stockton. Staff also recommended approval of Viaero's request for ETC designation for FUSF and KUSF purposes in the Gorham and Council Grove study areas.

17. As noted *supra* ¶ 10, the study areas of CenturyLink Eastern, CenturyLink United, Rural Telephone Company and Sunflower/Bluestem Telephone Company have all been redefined to the exchange level in previous dockets. Staff accordingly recommended that the Commission designate Viaero an ETC in the requested RLEC exchanges.

18. Because of the issues discussed in Staff's Memorandum, Staff recommended that the Commission deny the request of Viaero for redefinition of JBN, Wilson, Wamego, United and Telephone Association service areas and also Viaero's request for ETC designation in these same study areas.

19. The Commission has reviewed Staff's Memorandum and concludes that it should adopt Staff's recommendations.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Commission designates NE Colorado Cellular, Inc. d/b/a Viaero Wireless an ETC for FUSF and KUSF purposes in the 18 AT&T exchanges enumerated in Staff's Memorandum.

B. The Commission designates Viaero an ETC for FUSF and KUSF purposes in the Gorham Telephone Company and Council Grove Telephone Company study areas.

C. The Commission designates Viaero an ETC in the previously redefined service areas of CenturyLink-Eastern, CenturyLink-United, Rural Telephone Company and Sunflower/Bluestem Telephone Company.

D. The Commission redefines the study areas of Golden Belt Telephone Association, Tri-County Telephone Association, Twin Valley Telephone, Wheat State Telephone and S&T Telephone Cooperative Association to the exchange level and designates Viaero an ETC in these redefined areas.

E. Due to the issues described by Staff, the Commission declines to redefine the service areas of JBN Telephone Company, United Telephone Association, Wamego Telephone Company and Wilson Telephone Company. Accordingly, the Commission also denies Viaero's request to be designated an ETC in these service areas.

F. The Commission advises Viaero that the KUSF and FUSF support it receives must be used for the support's intended purpose and that it will be required to self-certify that it does use the support as intended each year and comply with other certification requirements developed by the Commission in Docket No. 05-GIMT-112-GIT. The

Commission also advises Viaero that it will be subject to any future ETC-related determinations made by the Commission. The Commission further advises Viaero that it is not eligible for federal and state support for lines served via purely resale or roaming agreements.

G. This Order supersedes the Order dated June 4, 2010, in this docket.

H. If Viaero wants the Commission to reconsider any final issue decided herein, it must file a petition for reconsideration within 15 days of the service of this Order. If this Order is mailed, service is complete upon mailing and Viaero may add three days to the 15-day suspense period. All petitions for reconsideration must be served on the Commission's executive director.

I. The Commission retains jurisdiction over Viaero and the subject matter of this docket for the purpose of issuing such additional orders as it deems necessary.

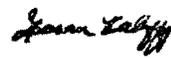
**BY THE COMMISSION IT IS SO ORDERED.**

Wright, Chmn.; Harkins, Com.; Loyd, Com.

Dated: SEP 10 2010

**ORDERED MAILED**

SEP 13 2010

 EXECUTIVE  
DIRECTOR

---

Susan K. Duffy, Executive Director

rl