

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3324
of N.E. Colorado Cellular, Inc.)
d/b/a Viaero Wireless, Fort)
Morgan, Colorado, seeking a) HEARING OFFICER ORDER
designation as an eligible)
telecommunications carrier under)
47 U.S.C. Section 214(e)(2).) Entered: April 26, 2005

BY THE HEARING OFFICER:

On December 23, 2004, an application was filed by N. E. Colorado Cellular, Inc., d/b/a Viaero Wireless of Fort Morgan, Colorado (Viaero) seeking a designation as an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2). Protests were timely filed by the Rural Telecommunications Coalition of Nebraska (RTCN) f/k/a NICE-BCS¹ and the Rural Independent Companies (RIC)².

On March 1, 2005, the Hearing Officer issued a planning conference order. All discovery objections were to be filed on or before March 30, 2005. On April 4, 2005, an oral argument on the discovery objections was held in the Commission Library. On April 6, 2005, the Hearing Officer issued an order ruling on the objections. Subsequently, the Commission received several motions from the Protestants, including a Preliminary Motion to Compel filed by the RIC, a Motion to Compel filed by the RTCN, Motions to Revise the Pre-Hearing Schedule, and a Motion to Open a Policy Docket to Clarify the Standards for Designation of Eligible Telecommunications Carriers. An oral argument on these motions was held on April 26, 2005 in the Commission Library. Ms. Shana Knutson appeared as Commission counsel. Mr. Loel Brooks appeared on behalf of Applicant, Mr. Dan Klaus, Mr. Tim Clare, and Mr. Troy Kirk appeared on behalf of the RTCN, and Mr. Paul Schudel and Mr. James Overcash appeared on behalf of RIC.

¹ The RTCN is comprised of the following companies: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Curtis Telephone Company, Diller Telephone Company, Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges Inc., Keystone-Arthur Telephone Company, Mainstay Communications, Plainview Telephone Company, Wauneta Telephone Company, and Westel Systems f/k/a Hooper Telephone Company.

² RIC is comprised of the following companies: Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co, Clarks Telecommunications Co., Consolidated Telco, Inc. Consolidated Telcom, Inc. Consolidated Telephone Company, Dalton Telephone Company, Inc. Eastern Nebraska Telephone Company, Elsie Telecommunications, Inc., Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc. Hemingford Cooperative Telephone Co., Hershey Cooperative Telephone Company, K & M Telephone Company, Nebraska Central Telephone Company, Northeast Nebraska Central Telephone Company, Roc, County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

Upon consideration of the arguments given by counsel, I hereby find as follows:

I. RIC Preliminary Motion to Compel

Verification of the discovery responses must be provided by Applicant. It appears that Applicant has now come into compliance with many of the responses, but to the extent that any responses or supplemental responses were served without verification, Applicant is instructed to correct this by 5:00 p.m. on April 28, 2005.

The RIC's preliminary Motion to Compel is granted with respect to Request Nos. 3, 4, 18, 20, 22 and 23. With respect to Request No. 20, the Hearing Officer acknowledges that Applicant did respond in its Opposition to the Preliminary Motion to Compel, however, the Hearing Officer instructs Applicant to file a more detailed response which is designed to be a full and complete response to the request. With respect to all discovery requests, but particularly for Request Nos. 22 and 23, the Hearing Officer has found the requested information to be relevant to the determination of public interest in this proceeding despite Applicant's initial objections.

Applicant shall supplement its responses to RIC as directed by the Hearing Officer herein and serve its responses on or before 5:00 p.m. on April 28, 2005. These responses can be served and filed electronically and followed up with paper copies.

No relief will be ordered for Request Nos. 1, 1a, 5, 6, 8, 9, 11, 13, 14, 16, and 24. To a certain extent, Applicant has responded to some of the requests in its opposition filing. Those responses must be verified if not already verified by Applicant. To the extent that Applicant has not responded to RIC in its opposition filing, the Hearing Officer finds that Applicant should not be compelled to file further information as the Hearing Officer views the responses provided as sufficient.

Overall, the Hearing Officer finds to the extent that any information or documentation requested by RIC in its data requests is not provided by Applicant on or before April 28, 2005, such information or documentation cannot be introduced or relied upon by Applicant in the hearing.

II. RTCN Motion to Compel

The RTCN's Motion to Compel is granted with respect to Request Nos. 1, 10, 11, 12 and 16. Applicant is instructed to supplement its responses to RTCN with full and complete information and documents. With respect to Request Nos. 10, 11 and 12, the Hearing Officer has found the information sought by these requests is relevant to the determination of public interest in this proceeding. Applicant is instructed to provide the documents which correspond to its response to Request No. 16.

Applicant shall supplement its responses to RTCN as directed by the Hearing Officer herein and serve its responses on or before April 28, 2005. These responses can be served and filed electronically and followed-up with paper copies.

No relief will be ordered for Request No. 4. Applicant has provided a sufficient response in the oral argument and in its opposition filing to the Motion to Compel which supplemented its response to Request No. 4.

Overall, to the extent that any information or documentation requested by RTCN in its data requests has not been provided by Applicant on or before April 28, 2005, such information or documentation cannot be introduced or relied upon by Applicant in the hearing.

III. Motions to Revise the Pre-Hearing Schedule

Upon consideration of the alternatives put before the Commission, the Hearing Officer declines to move the hearing dates set by the March 1, 2005 Planning Conference Order. The Hearing Officer is unwilling to move the hearing back until July. A June hearing date would have been considered had it been an alternative acceptable to the parties. Although the Hearing Officer realizes that an aggressive schedule has been set, May 24, 25 and 26, 2005 at the times and places provided in the March 1, 2005 Planning Conference Order shall be preserved as the hearing date in this proceeding.

The Hearing Officer will move the deadline for the filing and exchange of Direct Testimony and exhibits to May 5, 2005 by 5:00 p.m. Direct Testimony shall be exchanged and filed by electronic mail on May 5, 2005 and followed up with paper copies. The Hearing Officer will move the deadline for Rebuttal Testimony to May 18, 2005 by 5:00 p.m. Rebuttal Testimony and exhibits shall be exchanged and filed by electronic mail on May 18, 2005, and followed up with paper copies.

IV. Motion to Open a Policy Docket to Clarify Standards for Designation of Eligible Telecommunications Carriers

The Commission plans to open a docket to clarify standards for designation of eligible telecommunications carriers which will serve as a guideline during the rulemaking proceeding.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in the above-captioned matter that the rulings on the motions identified herein are adopted.

IT IS FURTHER ORDERED that the required responses to the data requests identified in this Order must be provided by Applicant no later than April 28, 2005 as provided above.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of April, 2005.

BY:



HEARING OFFICER