

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition        ) Application No. C-3324  
of N.E. Colorado Cellular,            )  
Inc. d/b/a Viaero Wireless,          ) PROTECTIVE ORDER  
Fort Morgan, Colorado, for           )  
designation as an Eligible           )  
Telecommunications Carrier           ) Entered: March 22, 2005  
under 47 U.S.C. § 214(e)(2).

BY THE COMMISSION:

O P I N I O N     A N D     F I N D I N G S

This Matter came before the Nebraska Public Service Commission ("Commission") upon the Joint Motion of the parties for entry of a Protective Order in this application and proposed form of Protective Order. The Commission having considered the Joint Motion, and being otherwise fully advised, finds that the Joint Motion should be granted and the Protective Order entered. The following Protective Order is hereby entered with respect to all confidential information (as defined herein) filed by any of the parties in this proceeding or produced in discovery during this proceeding:

1. Confidential Information. All documents, data, information, studies and other matters filed with the Commission or served on a party that are claimed by a party to be trade secret, privileged or confidential in nature shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order as constituting trade secret, confidential or privileged commercial and financial information (hereinafter referred to as "Confidential Information"), and shall neither be used nor disclosed except for the purposes of these proceedings, and solely in accordance with this Order.

2. Non-Confidential Information. Confidential Information shall not include data and information (i) that was at the time of receipt in the public domain or which subsequently became part of the public domain other than by breach of this Order; (ii) that was lawfully in the possession of the recipient prior to the date hereof; or (iii) that was lawfully acquired from a third party that was under no obligation to keep such data or information secret.

3. Exchange of Confidential Information. All Confidential Information made available pursuant to this Order

shall be given to counsel for the parties, and shall not be used or disclosed except for purposes of these proceedings; provided, however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of these proceedings, to consultants or employees of any party to this proceeding, if said person has signed an agreement to be bound by the terms and conditions of this Protective Order.

4. Notice of Order. Any person to be given access to the Confidential Information contemplated herein shall receive a copy of this Protective Order and execute in writing an agreement in the form attached hereto as Exhibit A to comply with and be bound by all of the terms of this Order; and counsel shall furnish copies of said agreement to comply and be bound by the terms of this Order to counsel for the other party.

5. Marking Confidential Information. Where feasible, Confidential Information will be marked as such prior to delivery to counsel for the party requesting such Confidential Information. If reasonably possible information should be copied on yellow colored paper.

6. Segregation of Information. The materials containing the Confidential Information shall be segregated from any and all other files of the party receiving such Confidential Information and shall be withheld from inspection by any person except under the conditions established pursuant to this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties or by order of the Commission.

7. Disputes. In the event that the parties hereto are unable to agree that certain documents, data, information, studies or other matters constitute Confidential Information, the party objecting to the claim shall forthwith submit the matter to the Commission's Hearing Officer for review pursuant to this Order and in accordance with applicable rules and legal precedents of the Commission. When the Hearing Officer rules on the question of whether any documents, data, information, studies or other matters submitted for review and determination is Confidential Information, the Hearing Officer will enter an order resolving the issue. In the event that either party is dissatisfied with the Hearing Officer's ruling, such party may request the Commission's review of the Hearing Officer's order.

8. Commission Procedure For Information. All written information filed by the parties in these proceedings that has

been designated as Confidential Information, if filed with the Commission, will be sealed by the Commission, as applicable, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order, either through agreement of the parties or, after notice to the parties and hearing, pursuant to an order of the Commission and/or final order of a court having jurisdiction.

9. Restrictions on Use. All persons who may be entitled to receive, or who are afforded access to, any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purposes of preparation for and conducting these proceedings, and then solely as contemplated herein, and shall take such precautions as are necessary to keep the Confidential Information secure and in accordance with the purposes and intent of this Order.

10. Appeal Rights. This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privileged status, and to appeal any such determination of the Hearing Officer or such assertion by a party.

11. Protection of Information During Hearing. In the course of this proceeding, any hearing during which documents or information obtained pursuant to the terms of this order are likely to be disclosed, shall be conducted in camera, attended only by persons authorized to have access to such information under this order, provided that there has been no prior Commission determination that the documents or information in question are not confidential. The transcript of such in camera proceedings shall be kept under seal.

12. Protection of Information During Appeal. In the event of an appeal of the determination of these proceedings, portions of the proceeding record containing Confidential Information may be sealed upon motion of a party hereto and forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for the information and use of the court. If a portion of the record is forwarded to a court under seal for the purposes of an appeal, the providing party shall be notified regarding which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal. Unless otherwise ordered, Confidential

Information shall remain under seal and shall continue to be subject to the protective requirements of this Protective Order after final settlement or conclusion of this matter, including administrative or judicial relief thereof.

13. Procedure at Completion of Application. Upon completion of these proceedings, including any administrative or judicial review thereof, all Confidential Information, whether the original or any duplication or copy thereof, furnished under the terms of this Protective Order, shall be returned to the party furnishing such Confidential Information upon request or destroyed with a written certification of destruction provided to the furnishing party. Confidential Information made part of the record in these proceedings shall remain in the possession of the Commission.

14. Scope of Order. The provisions of this Order are specifically intended to apply to data or information supplied by or from any party to this proceeding, and to any non-party that supplies documents pursuant to process issued in this proceeding.

15. Responses to Subpoena or Order. If any person receiving Confidential Information receives a subpoena or order for production of Confidential Information produced under the terms of this Protective Order, that person shall notify the counsel of record for each party in this proceeding as soon as practical after receiving the subpoena or order and before the documents are produced, identifying the date and location of the ordered or requested production.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Protective Order described herein shall be, and hereby is, adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of March, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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**APPLICATION NO. C-3324**

**EXHIBIT A TO PROTECTIVE ORDER**

I have been presented with a copy of the Protective Order executed by the parties in the above-entitled docket. I have read the Order and agree to be bound by the terms of said Order.

I further agree that the information requested shall be used only for the valid purposes of this proceeding as provided in said Order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_,  
2005.

Signature: \_\_\_\_\_

Address and Telephone: \_\_\_\_\_

Representing: \_\_\_\_\_

Position: \_\_\_\_\_