

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, Fort Morgan, Colorado, seeking a designation as an eligible telecommunications carrier under 47 U.S.C. Section 214(e) (2).) Application No. C-3324)
)
)
) RULING ON OBJECTIONS
)
)
) Entered: April 6, 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. 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. James Overcash appeared on behalf of RIC.

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

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.

I. Viaero's Objections to RIC's Data Requests**Instructions:**

With respect to the definitions section, as Hearing Officer I find the phrase which requires Viaero to produce all drafts and preliminary versions of documents to be unduly burdensome. Applicant is responsible for producing documents which are in final form and is not required to produce drafts or preliminary versions of documents unless the requested documents are not yet in final form or when the documents in final form are unavailable.

Data Requests:

1. Request No. 1a. The Hearing Officer overrules the objections. The Hearing Officer finds request 1a to be reasonably calculated to lead to relevant information, and not overly broad or vague. Applicant is required to respond to Request No. 1a.

2. Request Nos. 1b, 1c, 1d, 1e and 2. The Hearing Officer sustains the objections. The Hearing Officer finds Request Nos. 1b, 1c, 1d, 1e and 2 are not reasonably calculated to lead to the discovery of relevant information for the purposes of this proceeding. Applicant is not required to respond to Request Nos. 1b, 1c, 1d, 1e, and 2.

Request Nos. 4 and 9. The Hearing Officer overrules the objections. The Hearing Officer finds the requests to be reasonably calculated to lead to the discovery of relevant information and not overly broad or unduly burdensome. Specifically, the Hearing Officer finds Request No. 4 to be relevant to the determination of whether public interest would be served by a grant of ETC designation of Viaero. The Hearing Officer finds that Request No. 9 is also relevant to the issue of public interest and customer benefit. Applicant is required to respond to Request Nos. 4 and 9.

Request No. 5. The Hearing Officer overrules the objections in part and sustains the objections in part. The Hearing Officer finds Applicant should provide a copy of its last three-year end income statements, balance sheets and financial statements, including its capital expenditures for Nebraska for 2003 and 2004 as this information is relevant to the issue of Applicant's ability to serve the requested designation area and may serve as a baseline to a five year plan. However, the remainder of Request No. 5 which requests

Applicant's capital expenditure budget for 2005, 2006, 2007, 2008 and 2009 is so speculative that it is not likely to lead to the discovery of information which is relevant at this point in the proceeding.

Request Nos. 16 and 18. The Hearing Officer overrules the objections. The Hearing Officer finds Request Nos. 16 and 18 are reasonably calculated to lead to the discovery of relevant information for the purposes of this proceeding. With respect to the objection to Request No. 18, please see the Hearing Officer ruling on instructions above. Applicant is required to respond to Request Nos. 16 and 18.

Request No. 19. The Hearing Officer sustains the objections. The Hearing Officer finds Request No. 19 is not reasonably calculated to lead to the discovery of relevant information for the purposes of this proceeding. Applicant is not required to respond to Request No. 19.

Request No. 21. The Hearing Officer overrules the objections. The Hearing Officer finds Request No. 21 is reasonably calculated to lead to the discovery of relevant information, specifically because of Applicant's statements in its Application relating to its call completion percentage. See Application para. 34. Accordingly, Applicant is required to respond to Request No. 21.

Request Nos. 22, 23 and 24. The Hearing Officer overrules the objections, but limits the scope of Request Nos. 22, 23 and 24 to all facts or information requested by Protestants which will be used by Applicant in the hearing.

II. Viaero's Objections to RTCN's Data Requests

Instructions:

A: The Hearing officer sustains the objection. Applicant is required to provide responses that relate to Viaero and its application for ETC designation. Applicant is not required to identify information or produce documents on behalf of its partners or other related entities that are not relevant to the proceedings at hand.

Data Requests:

Request Nos. 2, 3, 13, 32 and 34. The Hearing Officer overrules the objections but limits Request Nos. 2, 3, 13, 32 and 34 to all facts and information requested by Protestants which Applicant will use at the hearing.

Request Nos. 10, 11, and 12. The Hearing Officer overrules the objections. The Hearing Officer finds Request Nos. 10, 11 and 12 are reasonably calculated to lead to the discovery of relevant evidence, and are not unduly burdensome. Applicant will be required to respond to Request Nos. 10, 11 and 12.

Request Nos. 14 and 15. The Hearing Officer sustains the objections. The Hearing Officer finds the information requested in Request Nos. 14 and 15 relating to projected start and completion dates for network improvements and customer estimates is extremely speculative at this point and not reasonably calculated to lead to the discovery of relevant evidence for this proceeding. Applicant is not required to respond to Request Nos. 14 and 15.

III. RIC's and RTCN's Objections to Viaero's Data Requests

Data Requests:

Request No. 1. The Hearing Officer sustains the objections. While a 5 year plan may be requested of Protestants at some point in the future, the Hearing Officer finds that Request No. 1 is not reasonably calculated to lead to the discovery of admissible evidence for the purposes of this proceeding. Accordingly, Protestants are not required to respond to Request No. 1.

Request Nos. 2 and 3. The Hearing Officer overrules the objections. The Hearing Officer finds Request Nos. 2 and 3 are reasonably calculated to lead to the discovery of relevant and admissible evidence for the purposes of this proceeding as Applicant intends to show a comparison between Applicant's service and that which is provided by the Protestants. Accordingly, Protestants are required to respond to Request Nos. 2 and 3.

Request Nos. 4 and 5. The Hearing Officer overrules the objections. Some Protestants have indicated that they will respond to Applicant despite its stated objections to Request No. 4 and have agreed to provide Applicant with a confidential response to Request No. 5. Protestants are required to respond to Request Nos. 4 and 5.

Request No. 6. The Hearing Officer overrules the objections. The Hearing Officer finds Request No. 6 is reasonably calculated to lead to the discovery of admissible evidence. Protestants are required to respond to Request No. 6.

Request Nos. 7 and 8. The Hearing Officer sustains the objections. The Hearing Officer finds Request Nos. 7 and 8 are

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not relevant for the purposes of this proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Protestants are not required to respond to Request Nos. 7 and 8.

Request No. 9. The Hearing Officer overrules the objections. The Hearing Officer finds Request No. 9 is reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Protestants are required to respond to Request No. 9.

IV. All other objections

All other objections not specifically identified in this order are overruled.

O R D E R

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

IT IS FURTHER ORDERED that responses to the data requests be exchanged by the parties no later than April 11, 2005.

MADE AND ENTERED at Lincoln, Nebraska, this 6th day of April, 2005.

BY:

Gerald F. Chap

HEARING OFFICER

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