

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4302
of Cellco Partnership and its)
Subsidiaries and Affiliates to)
Amend Eligible) ORDER ON MOTIONS TO COMPEL
Telecommunications Carrier) AND PROCEDURAL ORDER
Designation in the State of)
Nebraska.) Entered: May 10, 2011

BY THE HEARING OFFICER:

This matter comes before me on the Motions to Compel filed by Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless or Applicant); and by N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero) and United States Cellular Corporation (U.S. Cellular)(collectively referred to as the Protestants), on April 22, 2011, in the above-referenced docket.

Oral arguments on the motions were heard on May 4, 2011, pursuant to the Hearing Officer's Procedural Order entered on April 28, 2011. Mr. Matthew Slaven argued on behalf of the Applicant, Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless). Mr. Steven Seglin appeared as local counsel on behalf of Verizon Wireless. Mr. Loel Brooks, Mr. Todd Lantor and Mr. Robert Koppel argued on behalf of the Protestants.

Applicant's Motion to Compel

The Applicant sought an order compelling full and complete responses in regard to the Discovery Requests served on the Protestants. Specifically, the Applicant requested an order regarding Interrogatory Nos. 2, 3, 4, 5, 10, 11, 12, 13, 14 and Request for Production Nos. 2, 4 and 5. On May 2, 2011, the Protestants filed an Opposition to the Motions to Compel.

Interrogatory No. 2: This request asked the Protestants to state each and every fact upon which they rely on to oppose Verizon Wireless' Application; identification of any and all communications between the Protestants and any other person concerning said facts; identification of all persons whom Protestants know or believe have information regarding said facts; and to identify all documents which reflect, show or relate to said facts. The Protestants objected to Interrogatory No. 2, stating that the question was overly broad. Upon consideration of this request and objection, I hereby sustain the objection and deny the request to compel responses from the Protestants relative to Interrogatory No. 2.

Interrogatory No. 3: This request asked the Protestants to identify by name and Common Language Location Identifier (CLLI) Code each wire center included within their designated service area. The Protestants objected stating that the question has no relevance to the merits of the Applicant's ETC amendment application.

After consideration of the arguments presented, I hereby grant the request to compel a further response from the Protestants. The Protestants argue that a grant of the application will have a detrimental impact to the Protestants' ability to receive a sufficient amount of federal universal service fund support. While I agree the focus of the application should be on the merits of the Applicant's ability to meet the standards articulated by the Commission for ETC designation, a response to this inquiry may reasonably lead to relevant information about the impact of a favorable Commission decision on other competitive eligible telecommunications carriers and their ability to draw federal universal service fund support. Accordingly, the Protestants shall be compelled to respond to Interrogatory No. 3.

Interrogatory No. 4: The Applicant requested a description from the Protestants about their internal processes for responding to subscribers' requests for service and a production of all documents describing or relating to the procedures for determining whether a request qualifies as a reasonable request for service in accordance with 47 C.F.R. § 54.202. The Protestants objected stating the question had no relevance on the merits of the Applicant's ETC amendment application.

After consideration of the arguments presented, I hereby deny the motion to compel as it pertains to Interrogatory No. 4. The issue of how the Protestants respond to requests for service has no bearing on any alleged deficiencies asserted by the Protestants in pre-filed testimony. I find this request is not reasonably calculated to lead to relevant information regarding the Applicant's ability to meet the Commission's ETC designation and maintenance standards. Accordingly, the Protestants shall not be compelled to respond to Interrogatory No. 4.

Interrogatory No. 5: In this request the Applicant sought identification and production of the Protestants' ETC compliance documents. The Protestants objected based on relevance.

After consideration of the arguments presented, I hereby deny the motion to compel as it pertains to Interrogatory No. 5. The request to identify and produce Protestant's ETC compliance documents is not reasonably calculated to lead to the discovery

of relevant evidence as to whether the Commission should grant Verizon Wireless' application. Accordingly, the Protestants shall not be compelled to respond to Interrogatory No. 5.

Interrogatory No. 10: This request seeks identification of Protestants' subsidiaries, affiliates, and related entities operating in the State of Nebraska as well as an organizational chart. The Protestants objected based on relevance.

After consideration of the arguments presented, I find the request to compel additional information or response from the Protestants should be granted. I find the information requested may possibly lead to the discovery of admissible and relevant evidence regarding the extent to which the Protestants operate as competitive eligible telecommunications carriers in Nebraska. Accordingly, the Protestants shall be compelled to respond to Interrogatory No. 10.

Interrogatory No. 11: This request seeks identification of Protestants' entities that hold Nebraska FCC licenses. The Protestants objected based on relevance.

After consideration of the arguments presented, I find the request to compel a response from the Protestants should be granted. I find the information requested may possibly lead to the discovery of admissible evidence regarding the extent to which the Protestants operate as competitive eligible telecommunications carriers in Nebraska. Accordingly, the Protestants shall be compelled to respond to Interrogatory No. 11.

Interrogatory No. 12: This request seeks identification of the amount of federal universal service fund support the Protestants anticipate receiving in calendar years 2011, 2012 and 2013 including an explanation of the facts and methodology used in making the estimate. The Protestants object based on relevance and due to the competitively sensitive nature of the request.

After consideration of the arguments presented, I find the request to compel a response from the Protestants should be granted only to the extent that federal universal service fund support has been determined for calendar years 2011, 2012 and 2013. I find the request to compel shall be denied to the extent that the information sought has not been determined and would require the Protestants to speculate or forecast the amount of federal universal service fund support to be received. The information requested, to the extent that the federal support amounts are known, may be relevant in determining the

impact of a favorable Commission decision on the Protestants in this case. Accordingly, the Protestants shall be compelled to respond to Interrogatory No. 12 to the extent provided herein.

Interrogatory No. 13: This request seeks identification of any discussion that any representative of US Cellular has had with any Commissioner or staff person of the FCC since August 1, 2010, concerning the *Corr Wireless* proceeding. Initially, the Protestant's objected based on relevance. In their response to the Motion to Compel, the Protestants stated that any discussions were subject to ex parte requirements and could be found publicly at www.fcc.gov under WC Docket No. 05-337 and CC Docket No. 96-45.

After consideration of the arguments presented, I find the request to compel a further response from the Protestants should be denied. Protestants provided the Applicant with a response to its interrogatory by demonstrating that all information is publicly available. Accordingly, the Protestants shall not be compelled to respond to Interrogatory No. 13.

Interrogatory No. 14: This request seeks identification of any discussions with USAC about the Protestants' own or Alltel's receipt of universal service support. The Protestant's objected based upon relevance.

After consideration of the arguments presented, I find the request to compel a response from the Protestants should be denied. I find the inquiry is not reasonably calculated to lead to relevant or admissible evidence. Accordingly, the Protestants shall not be compelled to respond to Interrogatory No. 14.

Request for Production No. 2: This request seeks production of any and all documents which reflect, show or relate to communications between the Protestants and other parties in the proceeding; excluding communications between Protestants and Verizon Wireless.

After consideration of the arguments presented, I find the request to compel production of such information should be denied. I find the inquiry is overly broad and not reasonably calculated to lead to admissible evidence. Accordingly, the Protestants shall not be compelled to respond to Request for Production No. 2.

Request for Production No. 4: This request seeks production of copies of subscriber line reports submitted to USAC by or on behalf of U.S. Cellular pursuant to 47 C.F.R. § 54.307 and/or 47

C.F.R. § 54.802 since January 2009. The Protestants objected based on relevance and due to the competitively sensitive nature of the information.

After consideration of the arguments presented, I find the request to compel the production of copies of subscriber line reports should be granted. While the nature of this information is competitively sensitive, a Protective Order has been entered in this proceeding. This information may be reasonably calculated to demonstrate the extent to which a favorable decision in this case may be detrimental to the other competitive carriers providing service in Nebraska.

Request for Production No. 5: This request seeks production of copies of each request for review of a USAC decision filed by U.S. Cellular pursuant to 47 C.F.R., Part 54, Subpart I since January 1, 2008. The Protestants objected based on relevance.

After consideration of the arguments presented, I find the request to compel the production of Protestants' requests for review of USAC decisions should be denied. I find the request is not reasonably calculated to provide relevant admissible evidence. Accordingly, the Protestants shall not be compelled to respond to Request for Production No. 5.

Protestants' Motions to Compel

The Protestants sought an order compelling full and complete responses in regard to the discovery requests served on Cellco Partnership d/b/a Verizon Wireless. Specifically, the Protestants requested an order regarding Request Nos. 12, 21, 23 and 24. On April 28, 2011, Verizon Wireless filed a response to the motions to compel.

Request No. 12: This request seeks information related to communications between Applicant and USAC, the FCC or the Commission regarding a change in practices regarding its reporting of line counts to USAC. The Applicant responded that Alltel has had no communications, written or verbal with USAC, the FCC or the Commission and Cellco does not report lines in Nebraska to USAC for universal service purposes. Applicant also objected to the extent that the inquiry seeks information unrelated to this proceeding and outside the designated area.

After consideration of the arguments presented, I find the request to compel should be granted. The Applicant's response should include communications made by Verizon Wireless or Cellco to USAC, the FCC or the Commission regarding a change in practice regarding the Applicant's reporting of line counts to

USAC. I find communications pertaining to Verizon's practice of reporting line counts to USAC would reasonably encompass how the company reports all lines eligible for universal service support, including but not limited to, Nebraska subscriber lines. The Protestants' interrogatory relates to the Applicant's ability and willingness to comply with federal and state ETC rules and regulations which could be considered relevant to the Commission's determination in whether to grant or deny the application. Accordingly, I find the Applicant should be compelled to respond fully to the Interrogatory No. 12.

Request No. 21: This request seeks information regarding why Verizon Wireless did not include the lines in SAC 371128 prior to the first quarter of 2011. The Applicant responded that Cellco does not report subscriber lines in Nebraska to USAC for universal service purposes and Alltel changed its practice as part of an ongoing effort to ensure that its practices and procedures identify and include all designated wire centers in its Form 525 reports. The Protestants request an Order compelling the Applicant to provide a more complete response.

After consideration of the arguments presented, I find the motion to compel a more complete response to Request No. 21 should be denied. The Applicant admitted that Alltel reported Verizon legacy lines to USAC and provided a response of when and why it changed its practice. I find the Applicant sufficiently responded to the request for information. Accordingly, I find the Applicant should not be compelled to respond further to Interrogatory No. 21.

Request No. 23: This request seeks information related to the number of customer lines in SAC 371128 as of the day before the Alltel/Verizon merger and as of the day after. If the number of lines is not known, then the request seeks information responsive as of the date closest to, but prior to, the closing of the merger. The Applicant responded that it did not possess the information requested.

After consideration of the arguments presented, I find the request to compel a more complete response to Request No. 23 should be denied. Applicant stated that it did not possess the information requested. I find the Applicant should not be compelled to respond further to Request No. 23.

Request No. 24: This request seeks information related to the reason Verizon Wireless did not file this application until more than 18 months after the Alltel/Verizon merger had closed. The Applicant responded that it provided a response to this

request during the first round of discovery (Request No. 9) and that they did not have any additional information.

After consideration of the arguments presented, I find the request to compel a more complete response to Request No. 24 should be denied. Applicant provided a response as to why an application was not filed earlier during the first round of discovery. I find the Applicant should not be compelled to respond further to Request No. 24.

Timeframe for Responding to Supplemental Discovery and Filing Reply Testimony

The parties shall have ten (10) days from the date this order is issued to respond to the discovery requests required by the foregoing rulings. Reply testimony shall be contemporaneously filed by all parties thirty (30) days from the date supplemental responses are served.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in this matter that the Motion to Compel filed by Verizon Wireless is hereby granted in part and denied in part to the extent provided herein.

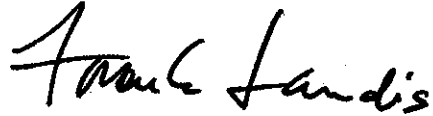
IT IS FURTHER ORDERED that the Motions to Compel filed by U.S. Cellular and N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless are granted in part and denied to the extent provided herein.

IT IS FURTHER ORDERED that the parties shall have ten (10) days from the date this order is issued to respond to the discovery requests compelled herein.

IT IS FURTHER ORDERED that the parties shall have thirty (30) days from the date supplemental discovery responses are served to file reply testimony in this matter.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of
May, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

A handwritten signature in black ink, reading "Frank Landis". The signature is written in a cursive style with a large initial "F" and a stylized "L".

By: _____

Frank E. Landis
Hearing Officer

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MADE AND ENTERED at Lincoln, Nebraska, this 10th day of
May, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

Frank Landis

By: _____
Frank E. Landis
Hearing Officer