

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)
Designation in the State of)
Nebraska.) Entered: February 18, 2011

BY THE HEARING OFFICER:

This matter comes before me on the Motions to Compel the production of discovery information filed 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 February 7, 2011, in the above-referenced docket. Oral argument on the motions was heard on February 15, 2011, pursuant to the schedule established in the Procedural Order entered on November 15, 2010. 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 and Mr. Todd Lantor argued on behalf of the Protestants.

The Protestants sought an order compelling full and complete responses in regard to the First Set of Discovery Requests served on Cellco Partnership d/b/a Verizon Wireless. Specifically, the Protestants requested an order regarding Request Nos. 1, 8, 9, 12, 18, 23, 25, 26, 27, 37, 42, 44, 45 and 46. On February 15, 2011, Verizon Wireless filed a Response to the Motions to Compel. In the response, Verizon Wireless partially supplemented its discovery responses. At the oral argument, counsel for the Protestants partially withdrew its motion to compel with respect to the following discovery requests: Request Nos. 8, 12, 23, 25, 26, 27, 42, 44 and 45.

Request No. 1: This request asked Verizon Wireless whether it was receiving or seeking support for its legacy Verizon subscribers and not merely for its acquired Alltel subscribers. Counsel for the Protestants argued that a straightforward answer was requested but not received. Counsel for Verizon Wireless stated that the company answered the question fully, but clarified that Verizon Wireless reports its lines through the Alltel subsidiary and that all lines including lines served by Verizon Wireless prior to the Verizon/Alltel merger were being reported once it consolidated its business operations. After argument was heard, it was agreed that Verizon Wireless had verbally clarified its response to Request No. 1 to the

satisfaction of the Protestants. Accordingly, no ruling is required.

Request No. 9: This request sought an explanation as to why Verizon did not file its application contemporaneously with the Verizon-Alltel merger but instead filed this application more than 18 months after the merger closed. The Protestant's counsel argued that Verizon Wireless did not fully respond by explaining why Verizon Wireless waited so long. In addition, counsel argued that the lack of full response by Verizon Wireless is a reflection of the Applicant's candor. Verizon Wireless counsel responded that all facts related to this question have been provided. He added that there was no additional information to provide.

After consideration of the arguments presented, I hereby deny the request to compel a further response from Verizon Wireless. Verizon Wireless claims to have responded fully and factually to the request. To the extent the Protestants wish to submit a supplemental discovery request, they can do so after direct testimony has been filed in accordance with the Procedural Order entered in this proceeding.

Request No. 18: This request sought identification of each state where Verizon has either relinquished or has a pending application to relinquish an ETC designation held by Verizon Wireless. Counsel for the Protestants argued that what happens in other states may lead to relevant evidence pertaining to the Nebraska application. As an example, the Commission requests information from competitive providers as to complaints, certificates and actions in other states when determining whether to certificate a provider in Nebraska.

Counsel for Verizon Wireless argued that the objection to this request should be sustained. Mr. Slavin argued the basis for seeking this information was for Protestants to claim that past actions will predict future conduct. This basis, according to Verizon Wireless counsel, was speculative at best. He further stated that the question of relinquishment in Nebraska was asked and answered in response to Request No. 32.

After consideration of the arguments presented, I hereby deny the request to compel as it pertains to Request No. 18. The issue of possible ETC relinquishment is relevant as it pertains to Verizon Wireless' ETC designation in Nebraska. However, this information sought by Protestants is either already known or is publicly available to the Protestants through other resources. I further agree that Verizon Wireless' past actions in other states does not necessarily predict what its intentions are in

Nebraska. Accordingly, the request to compel additional information from Verizon Wireless is denied.

Request No. 37: In this request the Protestants asked whether the Commission was notified by Verizon Wireless of any dismantling of telecommunications networks built with Support. Protestants argued that Verizon Wireless' response was not responsive to the specific question. Counsel for Protestants also argued that this question was related to the candor of the applicant with the Commission about the nature of its request. The request was also considered relevant to Verizon Wireless' ability to provide service to its customers.

Counsel for Verizon Wireless replied that Protestants were deviating from the original question. In addition, Mr. Slavin argued that the response by Verizon Wireless to this question had been adequate. Verizon had responded that it filed an annual report on its service improvement projects which is the only notification required by the Commission.

After consideration of the arguments presented, I agree that the question itself was responded to by Verizon Wireless and that the Protestants are seeking additional information related to network changes and the company's ability to provide service to its customers throughout the designated territory. To the extent the Protestants wish to submit a supplemental discovery request aimed at gathering this information, they can do so after direct testimony has been filed in accordance with the Procedural Order entered in this proceeding. I hereby find the request to compel further response from Verizon Wireless on discovery Request No. 37 should be denied.

Request No. 46: This request seeks disclosure and a description of any discussions that any representative of Verizon Wireless has had with any member of the FCC concerning the *Corr Wireless* proceeding within the past 90 days. The Protestants believe that not all information was disclosed. Counsel for Verizon Wireless stated that all substantive discussions were disclosed. He further stated that internal Verizon Wireless attorneys were asked to produce and report this information to him for the response to Request No. 46. He believes that all written records of substantive discussions were produced in full. Counsel for the Protestants would like an order compelling Verizon Wireless to produce any information not disclosed in the initial response or in the alternative, would like counsel for Verizon Wireless to certify under oath that the response filed does reflect all discussions that any representative of Verizon Wireless has had with any member of

the FCC concerning the *Corr Wireless* proceeding within the last 90 days.

After consideration of the arguments presented, I find the request to compel additional information or response from Verizon Wireless should be denied. Verizon Wireless counsel has stated that he has responded to this request completely and fully and that the attachments provided contain all substantive communication with FCC staff concerning the *Corr Wireless* proceeding within the last 90 days.

We remind counsel that Verizon Wireless would be "under a duty to seasonably amend this response if counsel obtains information upon the basis of which A) he knows that the response was incorrect when made; or B) he knows that the response though correct when made is not longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment" consistent with Neb. Ct. R. Disc. § 6-326(e)(2).¹ In addition, the Protestants will have the opportunity to explore these issues either with witnesses under oath or through supplemental discovery requests after direct testimony has been filed in accordance with the Procedural Order entered in this proceeding.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in this matter that the motions to compel filed by U.S. Cellular and N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless are denied to the extent provided herein.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of February, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

By: _____
Frank E. Landis
Hearing Officer

¹ See Neb. Admin. Code Title 291, Chapter 1 § 016.11.

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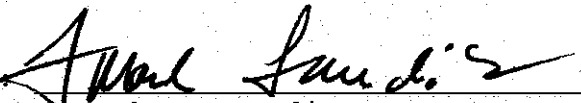
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