

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4685/NUSF-97
of TAG Mobile, LLC, Carrollton,)
Texas, seeking authority for)
Designation as a Non-Rural) DISMISSED
Wireless Eligible)
Telecommunications Carrier.) Entered: July 21, 2015

APPEARANCES:

For TAG Mobile, LLC:

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Lincoln, Nebraska 68508

For N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless:

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1248 O Street, Suite 984
Lincoln, Nebraska 68508

For the Commission:

Shana Knutson
300 The Atrium Building
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

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

This matter comes before the Commission upon a Motion to Dismiss filed by N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless ("Viaero") on April 10, 2015. Viaero is an Intervenor in this matter.

TAG Mobile, LLC ("TAG") of Carrollton, Texas filed an application on May 19, 2014, seeking designation as a Lifeline Eligible Telecommunications Carrier so that it may receive reimbursement from the federal and state universal service funds for Lifeline customers. Notice of the Application appeared in the Daily Record, Omaha, Nebraska on May 23, 2014. Viaero timely filed a Petition for Formal Intervention which was granted on August 12, 2014. A Protective Order was issued by the Commission on July 22, 2014.

Consistent with an Order and Notice of Hearing issued on September 19, 2014, Viaero as a party in this proceeding was permitted to propound discovery on TAG which it did on October 17, 2014. Thereafter, discovery disputes were heard and ruled on by the Hearing Officer.

On December 2, 2014, the Hearing Officer ruled on discovery motions, granting in part and denying in part TAG's motion for relief. On December 15, 2014, the Hearing Officer issued a Procedural Order allowing additional discovery motions to be filed, scheduling an argument date for the discovery motions, and service deadlines.

On January 22, 2015, the Hearing Officer ruled on further motions granting TAG's Motion to Strike certain Nondisclosure Agreements and granting Viaero's Motion to Compel relative to certain discovery responses. TAG was ordered to serve discovery responses on Viaero no later than February 2, 2015. According to Viaero, TAG's discovery responses were not served.

On February 12, 2015, the Hearing Officer ruled that TAG was required to comply with its Order with regard to the discovery requests or be subject to further action by the Commission including a Show Cause as to why the application should not be dismissed. The Hearing Officer suspended further action on TAG's Application until further Order.

On March 23, 2015, the Hearing Officer again ruled TAG must comply with his Order and not unilaterally place restrictions on the information with regard to the discovery orders. On April 3, 2015, the Hearing Officer denied a Motion for Reconsideration filed by TAG and reminded TAG that Lifeline benefits are public benefits and stating the Commission's need for a transparent and considerate review of the Application.

According to Viaero's Motion to Dismiss, after each Hearing Officer Order, TAG has responded with continuing objections and motions and has refused to provide the information to Viaero pursuant to the terms of the Protective Order as ordered. Viaero argues Section 6-337(b)(2)(c) of the Nebraska Court Rules, authorizes the Commission to sanction noncompliance with, among other things, dismissing the action. Neb. Admin. R. & Regs. Title 291, Ch. 1, § 16.11 provides in pertinent part "discovery in proceedings before the Commission is governed by the rules and regulations of the Nebraska Supreme Court." Viaero further argued the determination of public interest in this case is one that is peculiarly in the Commission's jurisdiction.

On April 17, 2015, TAG filed an opposition to the motion to dismiss. TAG continued to argue in its Opposition filing that the Commission's Protective Order did not provide sufficient comfort that confidential information would be protected and not used by Viaero inappropriately. Viaero objected to TAG's argument on the basis that such concerns had already been heard and ruled upon.

The Commission being fully advised in the premises finds that Viaero's Motion to Dismiss should be granted. The Applicant has failed to comply with the Hearing Officer's Orders in this proceeding relative to discovery. Consistent with Viaero's arguments, the Commission believes dismissal of the Application is appropriate.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Viaero's Motion to Dismiss shall be, and it is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of July, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Vice Chairman

ATTEST:

Executive Director

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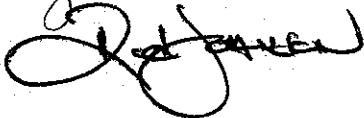
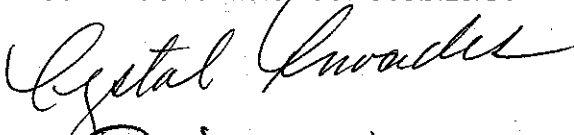
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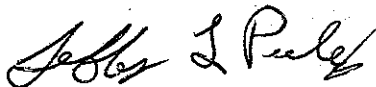


//s//Frank E. Landis
//s//Tim Schram



Vice Chairman

ATTEST:



Executive Director