

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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) MOTION FOR PROTECTIVE ORDER
designation as a non-rural) GRANTED IN PART AND DENIED IN
wireless Eligible) PART
Telecommunications Carrier.)
) Entered: December 2, 2014

BY THE HEARING OFFICER:

On May 19, 2014, TAG Mobile, LLC (TAG Mobile) of Carrollton, Texas, filed an application seeking designation as a non-rural wireless Eligible Telecommunications Carrier for the purpose of receiving support from the federal Universal Service Fund and from the Nebraska Telephone Assistance Program (NTAP). Notice of the application appeared in the Daily Record, Omaha, Nebraska on May 23, 2014. On June 23, 2014, N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero) filed a Petition for Formal Intervention. On August 12, 2014, the Commission granted Viaero's Petition.

On October 17, 2014, Viaero propounded to TAG Mobile its discovery requests pursuant to the Commission's Planning Conference Order in this matter. On November 7, 2014 TAG Mobile filed a Motion for Protective Order with respect to the following data requests propounded by Viaero: Requests 3 through 13, 15 through 19, 25, 26, 30 through 36, and 39 through 46 ("Disputed Requests"). On November 10, 2014, Viaero filed an Objection to the Motion and a request for oral argument. Oral arguments were heard on November 24, 2014.

In consideration of the Motion for Protective Order, the Response by Viaero, and the arguments presented, I find as follows:

The Motion for Protective Order should be denied as it relates to Request Nos. 3, 4, 5, 11, 12, 13, 15, 17, 18, 19, 25, 26, 30, 31, 36, 42, 43, 44, and 45. The Motion for Protective Order should be granted as it relates to Request Nos. 6, 7, 8, 9, 10, 16, 32, 33, 34, 35, 39, 40, 41 and 46.

Responses to the information sought in Request Nos. 3 through 5, 15, 43 and 45 are reasonably calculated to lead to the discovery of admissible evidence as it relates to the Commission's requirement to determine that the applicant possesses the financial and technical ability to offer the

proposed Lifeline service.¹ In consideration of Data Request No. 46 related to all financing sources of TAG Mobile, I find the request too broad and overly burdensome. Therefore, the Motion for Protective Order related to that request is granted.

Request Nos. 11 through 13 relate to applicant's ability to provide directory assistance and the cost of such service. Although the federal regulations eliminated directory assistance from the list of supported services, the Commission's rules still require eligible telecommunications carriers to offer access to directory assistance.² I find the requests are reasonably calculated to lead to the discovery of admissible evidence; and accordingly, a response should be provided.

Request Nos. 17 and 18 ask the applicant to describe what percentage of its customer base does not receive Lifeline and whether TAG would offer service in Nebraska absent Lifeline support. I find these requests are reasonably calculated to lead to the discovery of admissible evidence; and accordingly, a response should be provided.

Request No. 19 asks the applicant to identify advertising expenditures for its Lifeline and non-Lifeline service offerings. Eligible telecommunications carriers are required to advertise the supported services through general media distribution. I find this request, to the extent that it seeks information related to the advertising of Lifeline services, is reasonably calculated to lead to the discovery of admissible evidence and a response should be provided. TAG Mobile is not required to provide a response identifying and describing its non-Lifeline advertising expenditures.

Request No. 30 requests the applicant provide information on enforcement action taken by any state or federal government agency on Amvensys Capital Group, LLC. Request No. 44 asks TAG Mobile to file the names and resumes of Amvensys Capital Group, LLC and any affiliate or subsidiary of Amvensys Capital Group. I find these request are reasonably calculated to lead to the discovery of admissible evidence pertaining to the applicant's technical ability to provide the supported service and accordingly, a response should be provided.

Request No. 31 requests copies of resale agreements used by TAG Mobile to provide resold Lifeline service with listed

¹ See 47 C.F.R. § 54.201(h). See also *In the Matter of Lifeline and Link Up Reform et al.* WC Docket No. 11-42 et al., Order and Further Notice of Proposed Rulemaking, 27 F.C.C.R. 6656, 6818 (February 6, 2012).

² See Neb. Admin. Code Title 291, Chapter 10, § 004.02D1.

providers. I find the request is reasonably calculated to lead to the discovery of admissible evidence pertaining to the applicant's technical ability to provide the supported service and accordingly, a response should be provided.

Request No. 36 is aimed at determining where TAG Mobile is able to provide the supported Lifeline service in Nebraska. I find the request is reasonably calculated to lead to the discovery of admissible evidence. A response to this request should be provided by TAG Mobile.

Request No. 42 requests a list of all states where TAG Mobile or TAG affiliate has a pending ETC application and the case number. I find the request reasonably calculated to lead to the discovery of admissible evidence and therefore a response should be provided.

Request Nos. 6 through 10 request information about TAG Mobile's handsets. The Commission has not previously determined handset quality is a component to the designation of a Lifeline-only eligible telecommunications carrier. Nor does it have rules establishing a threshold for handset performance. I find the questions related to handset manufacturers and agreements to be beyond what is reasonably calculated to lead to the discovery of admissible evidence in this proceeding and therefore grant TAG Mobile's Motion for a Protective Order as it relates to Request Nos. 6 through 10.

Request No. 16 asks TAG Mobile to speculate what TAG Mobile would do if carriers elected to terminate their relationship with TAG Mobile. I find this request to be too speculative in nature and not a request reasonably calculated to lead to the discovery of admissible evidence. Accordingly, TAG Mobile does not need to provide a response to Request No. 16.

Request Nos. 32 through 35 are aimed at TAG Mobile's process for determining eligible Lifeline customers. As the Commission determines eligibility of the Lifeline customers and TAG Mobile will not be able to use its third-party vendor in Nebraska to determine eligibility customers, I find the Motion for Protective Order should be granted and no response to Request Nos. 32 through 35 need to be provided.

Likewise, Request Nos. 25 and 26 seek information on the determination of duplicate Lifeline support. Because both the Commission and the National Lifeline Accountability Database (NLAD) determine requests for duplicate support, and because the Commission not TAG Mobile determines Lifeline eligibility, I find the Motion for Protective Order should be granted as it

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relates to Request Nos. 25 and 26 and no response needs to be provided.

Request Nos. 39 through 41 seeks information about TAG Mobile's compliance with certain federal requirements. The Commission staff requested and received data responses from TAG Mobile on any and all federal enforcement proceedings. The completeness and veracity of that information may be explored by the parties at the hearing. While the Commission believes compliance with state and federal requirements to be important, the Commission does not review or enforce federal compliance filings nor do I believe that the data requests are aimed at obtaining information that will be determinative to its Lifeline ETC designation in Nebraska. If Viaero has a complaint that needs to be filed with the FCC relative to TAG Mobile's federal compliance reports, it should direct its complaint there. Accordingly, I find no response to Request Nos. 39 through 41 need be provided.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in the above-captioned docket that the Motion for Protective Order be and it is hereby granted in part and denied in part as described herein.

MADE AND ENTERED at Lincoln, Nebraska, this 2nd day of December, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

By: 
Anne C. Boyle
Hearing Officer