

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 AMENDED PROTECTIVE  
designation as a non-rural ) ORDER DENIED, MOTION TO STRIKE  
wireless Eligible ) GRANTED AND MOTION TO COMPEL  
Telecommunications Carrier. ) GRANTED  
)  
) Entered: January 22, 2015

BY THE HEARING OFFICER:

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

This matter comes before the Commission on TAG Mobile, LLC's ("Applicant's") Motion for Amended Protective Order and Motion to Strike Certain Non-Disclosure Agreements and on the Motion of N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless ("Viaero") to Compel Responses to Certain Discovery Requests. The Motions were filed on January 9, 2015, and January 16, 2015, respectively. Oral arguments on the Motions were heard on January 21, 2015, in the Commission Niobrara Conference Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska. Mr. Russell Westerhold appeared on behalf of the Applicant. Mr. Loel Brooks appeared on behalf of Viaero.

In the Applicant's Motion, Applicant requested further protective treatment of highly confidential information sought in Viaero's discovery requests. Applicant stated the information sought by Viaero is commercially sensitive, that Viaero is its potential competitor, and the Commission's standard Protective Order does not sufficiently protect its commercially sensitive information. Applicant seeks to amend the Protective Order to create "Highly Confidential-Restricted Review Only" classification restricting review of such information to the Commission and its staff. Viaero objects to the Motion to Amend the Protective Order. Viaero states as a Formal Intervenor, it should be able to review the information.

Applicant further requests the Commission enter an Order striking certain non-disclosure agreements (NDAs) received from Viaero. Applicant states the NDAs at issue were signed by persons with strategic planning or other responsibilities in the areas of marketing, pricing, product development, market analysis or market entry. Paragraph 4 of the Commission's Protective Order provides that with limited exceptions, confidential information will not be shared with persons having such responsibilities. In response, Viaero stated it would consent to the striking of the NDAs signed by Mr. DiRico and Mr.

Felicissimo, but would object to the Motion with respect to the NDAs signed by Mr. Preston and Mr. Burnett.

In Viaero's Motion to Compel, Viaero seeks responses to Discovery Requests No. 36, 38 and 42. In opposition to the Motion, Applicant argued the responses to the discovery requests sought by Viaero would contain confidential information that should not be released to Viaero representatives with marketing, pricing, and product development responsibilities. Accordingly, Applicant opposed Viaero's Motion to Compel.

In consideration of the Motions filed and arguments heard, I am of the opinion and find the Motion to Amend the Protective Order should be denied. However, the Motion to Strike Certain Non-Disclosure Agreements should be granted with respect to the NDAs signed by certain persons having responsibilities in the areas of marketing, pricing, product development, market analysis or market entry. As discussed in the oral argument, Viaero may file written attestation for the representatives not having such responsibilities prior to obtaining the confidential information from the Applicant. Applicant is not required to disclose any confidential information to certain Viaero representatives with responsibilities in the areas of marketing, pricing, product development, market analysis or market entry consistent with the terms of Paragraph 4 of the Commission's Protective Order.

In addition, in light of the foregoing findings relative to confidentiality, I find the Motion to Compel should be granted. Applicant shall be given until **February 2, 2015**, to provide Data Request Responses to Viaero consistent with the findings in this Order and consistent with the Hearing Officer's December 2, 2014, Order Granting in Part and Denying in Part the Motion for Protective Order.

#### O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in the above-captioned matter that the Motion to Amend the Protective Order be and it is hereby denied; and the Motion to Strike Certain Non-Disclosure Agreements be, and it is hereby granted as provided herein.

IT IS FURTHER ORDERED that the Motion to Compel filed by N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless should be granted.

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IT IS FINALLY ORDERED that Applicant be given until **February 2, 2015**, to serve its outstanding discovery responses consistent with the Commission's December 2, 2014, Hearing Officer Order and consistent with the decision in this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of January, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

By:



Tim Schram

Hearing Officer

