

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application Nos. C-4773/NUSF-103  
of TracFone Wireless, Inc., )  
Miami, Florida, seeking )  
designation as an Eligible ) ORDER GRANTING LATE-FILED  
Telecommunications Carrier in ) PETITION FOR FORMAL INTERVENTION  
the State of Nebraska for the )  
limited purpose of offering )  
Lifeline service to qualified ) Entered: August 19, 2015  
households.

BY THE HEARING OFFICER:

On June 29, 2015, TracFone Wireless, Inc. ("TracFone" or "Applicant") of Miami, Florida, filed an application with the Nebraska Public Service Commission ("Commission") seeking designation as an Eligible Telecommunications Carrier ("ETC") in the State of Nebraska for the limited purpose of participating in the Lifeline program. Notice of the docket was published in The Daily Record, Omaha, Nebraska, on July 3, 2015.

On August 4, 2015, NE Colorado Cellular, Inc. d/b/a Viaero Wireless ("Viaero") filed a Petition for Formal Intervention and a Motion to Accept the Late-Filed Petition with the Commission. Pursuant to Commission rules, petitions for formal intervention should be filed within 30 days of publication of notice by the Commission.<sup>1</sup> In the above-captioned proceeding, petitions for formal intervention were due to the Commission by the end of business on August 3, 2015.

On August 7, 2015, TracFone filed an Objection to Viaero's Motion to Accept the Late-filed Petition for Intervention, citing insufficient grounds offered by Viaero for the Commission to depart from strict application of its procedural rules and Viaero's lack of meaningful interest in the proceeding to warrant formal intervenor status.

On August 17, 2015, Viaero filed written opposition to TracFone's Objection to its Motion, arguing the Commission has discretion to allow a late-filed formal interventions, no party will be prejudiced by granting the motion, and Viaero has a bona fide interest in the proceeding and will be materially prejudiced if not allowed to fully participate in the above-captioned proceeding.

Formal Intervention

Both TracFone and Viaero argue regarding the discretion of the Commission to waive its procedural rules and allow a party to formally intervene beyond the 30 day period contained in our rules. Both discuss a Supreme Court decision in *In re Application of Jantzen*, 245 Neb. 81 (1994) regarding discretionary waiving by an agency of certain procedural rules. However, pursuant to the Nebraska Administrative Procedure Act<sup>2</sup> ("APA"), to which the Commission is subject, formal interventions may

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<sup>1</sup> 291 NAC 1 § 015.01B (May 4, 1992).

<sup>2</sup> See *Neb. Rev. Stat. § 84-901 et seq.* (Reissue of 2014).

be timely filed up to five (5) days prior to a hearing in the proceeding.<sup>3</sup> Therefore, the question of whether to allow Viaero to formally intervene in the above-captioned proceeding is not one of timing.

Commission rules require a petitioner seeking formal intervention to demonstrate an interest in the proceeding. The APA imposes a higher standard, requiring a petitioner seeking formal intervention to demonstrate that its legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding.<sup>4</sup>

The APA and Commission rules further give broad discretion to a hearing officer to impose conditions upon a formal intervenor's participation in a proceeding including limiting participation to certain issues and imposing limits on the use of discovery, cross examination, and other procedures.

I agree with TracFone that Viaero's stated interests in the above-captioned proceeding are limited. However, as Viaero points out, the Commission's past practice has been to err on the side of allowing participation where the interests of justice would not be prejudiced. Previous denials of formal intervention requests came typically after significant time had elapsed since the 30 day protest period and the proceeding was substantially advanced toward adjudication. In the current proceeding, Viaero filed one day after the expiration of the protest period and no substantive action had been taken on the application at that time. The above-captioned proceeding is still in its initial stages and Viaero's formal intervention will not impair the prompt and orderly conduct of the application or prejudice the interests of the Applicant.

However, Viaero's participation in this proceeding will be limited to, "how TracFone's designation as a Lifeline ETC will substantially affect the interests of Viaero." To date, the Commission has adjudicated twelve (12) wireless ETC applications similar to TracFone's and is very much aware of TracFone and its past practices. The Commission is more than capable of protecting the integrity of the Lifeline program in Nebraska and the public interest by investigating and thoroughly reviewing TracFone's application and qualifications.

Therefore I find the Petition for Formal Intervention by Viaero should be granted with the limitation discussed above.

#### O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that NE Colorado Cellular Inc. d/b/a Viaero Wireless's Motion to Accept a Late-filed Petition for Formal Intervention be, and is hereby, granted.

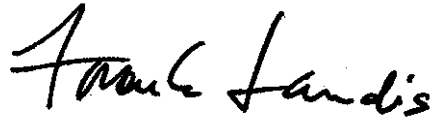
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<sup>3</sup> Neb. Rev. Stat. § 84-912,02(1) (a) (Reissue of 2014).

<sup>4</sup> Neb. Rev. Stat. § 84-912,02(1) (b) (Reissue of 2014) (emphasis added).

IT IS FURTHER ORDERED that NE Colorado Cellular Inc. d/b/a Viaero Wireless's Petition for Formal Intervention be, and is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 19<sup>th</sup> day of August, 2015.

A handwritten signature in black ink, reading "Frank Landis". The signature is written in a cursive, slightly slanted style.

BY:

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Frank E. Landis  
HEARING OFFICER