

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
NE Colorado Cellular, Inc. dba Viaero Wireless, ) File No.: EB-FIELDWR-18-00026229
Kersey, CO ) Acct. No.: 201932030001
) FRN: 0001607225
)
)

ORDER

Adopted: November 1, 2019

Released: November 1, 2019

By the Deputy Chief, Enforcement Bureau:

1. The Commission takes seriously its role in preventing unauthorized operation in the 3650-3700 MHz band. The registration requirement for base stations operating on this band ensures that licensees can operate without interference. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether NE Colorado Cellular, Inc., dba Viaero Wireless (Viaero), operated an unregistered base station without authorization in the 3650-3700 MHz band. Because this band operates on a shared basis, knowledge of the location of the registered emitters is essential for frequency coordination. Unregistered stations can undermine successful coordination and cause harmful interference to other licensed stations. To settle this matter, Viaero admits that it operated an unregistered base station without authorization, will implement a compliance plan, and will pay a \$16,000 civil penalty. This action demonstrates the importance of preventing harmful interference caused by the unauthorized operation of unregistered base stations in the 3650-3700 MHz band.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, terminating the referenced investigation and resolving the Notice of Apparent Liability for Forfeiture (NAL) regarding Viaero's compliance with section 301 of the Communications Act of 1934, as amended (Act),<sup>1</sup> and sections 1.903(a) and 90.1307(a) of the Commission's rules.<sup>2</sup>

2. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Viaero's basic qualifications to hold or obtain any Commission license or authorization.<sup>3</sup>

3. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), and 503(b) of the Act<sup>4</sup> and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,<sup>5</sup> the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

4. IT IS FURTHER ORDERED that the above-captioned matter IS TERMINATED and the NAL IS RESOLVED in accordance with the terms of the attached Consent Decree.

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 CFR §§ 1.903(a), 90.1307(a)

<sup>3</sup> See 47 CFR § 1.93(b).

<sup>4</sup> 47 U.S.C. §§ 154(i), 503(b).

<sup>5</sup> 47 CFR §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against Viaero related to the above-captioned investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Francis J. DiRico, Director, NE Colorado Cellular, Inc., 1224 West Platte Avenue, Ft. Morgan, CO 80701, and to David A. LaFuria, Esq., Lukas, LaFuria, Gutierrez & Sachs, LLP, 8300 Greensboro Drive, Suite 1200, Tysons, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion  
Deputy Chief  
Enforcement Bureau

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NE Colorado Cellular, Inc. dba Viaero Wireless, ) File No.: EB-FIELDWR-18-00026229
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CONSENT DECREE

1. The Commission takes seriously its role in preventing unauthorized operation in the 3650-3700 MHz band. The registration requirement for base stations operating on this band ensures that licensees can operate without interference. The Enforcement Bureau of the Federal Communications Commission and NE Colorado Cellular, Inc., dba Viaero Wireless, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Viaero violated section 301 of the Communications Act of 1934, as amended and sections 1.903(a) and 90.1307(a) of the Commission’s rules in connection with the unauthorized operation of an unregistered station in the 3650-3700 MHz band. As set forth herein, to resolve this matter Viaero admits it violated the 3.6 GHz Base Station Registration and Operation Rules, agrees to implement a compliance plan to ensure such violations do not occur in the future, and agrees to pay a \$16,000 civil penalty. This action will help minimize interference by unregistered base stations.

I. DEFINITIONS

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
(a) “3.6 GHz Base Station Registration and Operation Rules” means section 301 of the Act, sections 1.903(a) and 90.1307(a) of the Rules and other provisions of the Act, the Rules, and Commission orders related to the licensing, registration and operation of base stations operating in the 3650-3700 MHz band (3.6 GHz Band).
(b) “Act” means the Communications Act of 1934, as amended.1
(c) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
(f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Viaero is subject by virtue of its business activities, including but not limited to the 3.6 GHz Base Station Registration and Operation Rules.
(g) “Complaint” means any third-party complaint alleging violation of the 3.6 GHz Base Station Registration and Operation Rules received by the Commission or Bureau as of the Effective Date.

1 47 U.S.C. § 151 et seq.

- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
- (i) “Covered Employees” means all employees and agents of Viaero who perform, or supervise, oversee, or manage the performance of, duties that relate to Viaero’s responsibilities under the Communications Laws, including the 3.6 GHz Base Station Registration and Operation Rules.
- (j) “Effective Date” means the date by which both the Bureau and Viaero have signed the Consent Decree.
- (k) “Investigation” means the investigation commenced by the Bureau in EB-FIELDWR-18-00026229 and a the NAL issued as DA 19-64 on February 8, 2019,<sup>2</sup> regarding whether Viaero violated the 3.6 GHz Base Station Registration and Operation Rules.
- (l) “NAL Account” means the account associated with NAL Account number 201932030001.<sup>3</sup>
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Viaero to implement the Compliance Plan.
- (n) “Parties” means Viaero and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “Viaero” or “Company” means NE Colorado Cellular, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

## II. BACKGROUND

3. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States beyond the terms, conditions, and periods of the license granted by the Commission.<sup>4</sup> Section 1.903(a) states that “Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission.”<sup>5</sup> Section 90.1307 of the Rules states that in the 3.6 GHz Band “[a] licensee cannot operate a fixed or base station before registering it under its license . . . .”<sup>6</sup> The Commission previously granted licenses in the 3.6 GHz Band on a non-exclusive nationwide basis.<sup>7</sup> Once an entity obtains such a license, it is required to register individual fixed and base stations before operation.<sup>8</sup> A licensee has no authority to operate a fixed or base station in this band before registering it under its license.<sup>9</sup> Because this band

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<sup>2</sup> *NE Colo. Cellular, Inc. dba Viaero Wireless, Kersey, CO*, Notice of Apparent Liability, DA 19-64, 2019 WL 549397 (EB Feb. 8, 2019) (NAL).

<sup>3</sup> *See generally* NAL.

<sup>4</sup> 47 U.S.C. § 301.

<sup>5</sup> 47 CFR § 1.903(a).

<sup>6</sup> 47 C.F.R. § 90.1307.

<sup>7</sup> 47 CFR § 90.1307(a) (“The 3650-3700 MHz band is licensed on the basis of non-exclusive nationwide licenses.”). The Commission subsequently adopted rules licensing the Citizens Broadband Radio Service, and grandfathered the licenses previously granted in the 3.6 GHz Band. *See* 47 CFR § 90.1338.

<sup>8</sup> 47 CFR § 90.1307(a) (“Non-exclusive nationwide licenses will serve as a prerequisite for registering individual fixed and base stations. A licensee cannot operate a fixed or base station before registering it under its license...”).

operates on a shared basis, knowledge of the location of the registered emitters is essential for frequency coordination. Unregistered stations can undermine successful coordination and cause harmful interference to other licensed stations. Accordingly, Commission action in this area against unregistered operators is essential.

4. On February 8, 2018, the Commission received a complaint of harmful interference near Kersey, Colorado to licensed and registered base stations operating in the 3650-3700 MHz band. On February 13, 2018, an agent from the Bureau's Denver Field Office began investigating the complaint. Using direction-finding techniques, the agent determined that the source of the interference was a transmission by Viaero from a communications tower with FCC Antenna Structure Registration #1278898,<sup>10</sup> near Kersey, Colorado (Kersey Location). The agent contacted Viaero, which agreed to end the 3.6 GHz Band transmission from the Kersey Location. The agent confirmed with the complainant that the interference subsequently ceased. The agent also consulted the Commission's records and confirmed that Viaero had not registered to operate at or near the Kersey Location. The Bureau mailed a Notice of Violation to Viaero on April 4, 2018.<sup>11</sup>

5. In response to the NOV, Viaero stated that "on or about February 12, 2018, Viaero's operations team, working on the incorrect assumption that the Kersey Location had already been registered, conducted periodic testing at the Kersey Location that continued through February 13, 2018."<sup>12</sup> It also states that it failed to coordinate with other licensees prior to this testing.<sup>13</sup> Further, Viaero stated that on March 29, 2018, it registered the Kersey Location and that it would commence operations only after it completed frequency coordination with other licensees to ensure that no harmful interference would happen in the future.<sup>14</sup> Commission records confirm that Viaero registered the Kersey Location on that date.<sup>15</sup>

6. Based on the Bureau's investigation and the Viaero NOV Response, on February 8, 2019, the Bureau issued the NAL Viaero for apparently operating without authorization at the Kersey Location in violation of 3.6 GHz Base Station Registration and Operation Rules.<sup>16</sup> Viaero filed a response to the NAL on March 11, 2019 stating that it accepts responsibility operating base stations prior to registration at the Kersey Location and that procedures are now in place to prevent such unauthorized operation from

(Continued from previous page) \_\_\_\_\_

<sup>9</sup> *Id.*; see *World Data PR Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 2360, 2361, para. 2 (2011) ("The Commission adopted specific measures to address the potential for interference between and among non-exclusive licenses that may otherwise result from a shared, area-wide licensing regime. . . [A]ll applicants and licensees must cooperate in the selection and use of frequencies in the 3650 MHz band. A licensee in this spectrum band is not authorized to operate a fixed or base station under its nationwide license until registering that station in the Commission's Universal Licensing System (ULS). To facilitate the required cooperation and sharing, all registration data is available publicly, online, in ULS. . . . A registration is not complete until it is in 'Accepted' status and the nationwide license is updated on ULS." (internal footnotes omitted)).

<sup>10</sup> ASR #1278898 is registered to Industrial Tower and Wireless, LLC.

<sup>11</sup> *NE Colo. Cellular, Inc. dba Viaero Wireless*, Notice of Violation (Los Angeles Regional Office, Apr. 4, 2018), <https://transition.fcc.gov/eb/Orders/2018/DOC-350067A1.html> (NOV).

<sup>12</sup> See Letter from David A. LaFuria and Todd Slamowitz, Counsel for NE Colorado Cellular, Inc, to Federal Communications Commission, Los Angeles Regional Office at 2 (Apr. 20, 2019) (Viaero NOV Response) (on file EB-FIELDWR-18-00026229).

<sup>13</sup> See *id.* at 1-2.

<sup>14</sup> See *id.* at 2-3.

<sup>15</sup> See Universal Licensing System, License Call Sign WQUP435, ULS Application File Nos. 0008154666, 0008154673, and 0008154682.

<sup>16</sup> See NAL, 2019 WL 549397 at \*2, para. 5. Under section 90.1307(a) of the Commission's rules, "[a] licensee cannot operate a fixed or base station before registering it under its license . . . ." 47 CFR § 90.1307(a).

recurring.<sup>17</sup> Subsequently, Viaero and the Bureau engaged in settlement negotiations. To settle this matter, the Bureau and Viaero enter into this Consent Decree and agree to the following terms and conditions.

### III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Viaero agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation and dismiss the Complaint. In consideration for the termination of the Investigation and dismissal of the Complaint, Viaero agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Viaero concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Viaero's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.<sup>18</sup>

11. **Admission of Liability.** Viaero admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its actions that were the subject of the NAL violated the 3.6 GHz Base Station Registration and Operation Rules.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Viaero shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Viaero complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the 3.6 GHz Base Station Registration and Operation Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Viaero agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the 3.6 GHz Base Station Registration and Operation Rules, Viaero will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Viaero shall establish Operating Procedures that all Covered Employees must follow

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<sup>17</sup> See Letter from David A. LaFuria and Todd Slamowitz, Counsel for NE Colorado Cellular, Inc, to Federal Communications Commission, Enforcement Bureau, Office of the Field Director at 2 (March 11, 2019) (on file EB-FIELDWR-18-00026229).

<sup>18</sup> See 47 CFR § 1.93(b).

to help ensure Viaero's compliance with the 3.6 GHz Base Station Registration and Operation Rules. Viaero's Operating Procedures shall include internal procedures and policies specifically designed to ensure that it registers all base stations prior to use and that its base stations do not interfere with other users of the 3.6 GHz Band. Viaero shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the 3.6 GHz Base Station Registration and Operation Rules.

- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the 3.6 GHz Base Station Registration and Operation Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Viaero's compliance with the 3.6 GHz Base Station Registration and Operation Rules. Viaero shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Viaero shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Viaero shall establish and implement a Compliance Training Program on compliance with the 3.6 GHz Base Station Registration and Operation Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Viaero's obligation to report any noncompliance with the 3.6 GHz Base Station Registration and Operation Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Viaero shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** Viaero shall report any noncompliance with the 3.6 GHz Base Station Registration and Operation Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Viaero has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Viaero has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to david.marks@fcc.gov with a copy submitted electronically to field@fcc.gov.

15. **Compliance Reports.** Viaero shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Viaero's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the 3.6 GHz Base Station Registration and Operation Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Viaero, stating that the Compliance Officer has personal knowledge that Viaero: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of

noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 14 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.<sup>19</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Viaero, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Viaero has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Viaero has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to david.marks@fcc.gov, with a copy submitted electronically to field@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** Viaero will pay a civil penalty to the United States Treasury in the amount of sixteen-thousand dollars (\$16,000) within thirty (30) calendar days of the Effective Date. Viaero shall send electronic notification of payment to field@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),<sup>20</sup> or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>21</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>22</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.

<sup>19</sup> 47 CFR § 1.16.

<sup>20</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>21</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>22</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. **Event of Default.** Viaero agrees that an Event of Default shall occur upon the failure by Viaero to pay the full amount on or before the due date specified in this Consent Decree.

19. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 %, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Viaero.

20. **Waivers.** As of the Effective Date, Viaero waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Viaero shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Viaero nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Viaero shall waive any statutory right to a trial *de novo*. Viaero hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>23</sup> relating to the matters addressed in this Consent Decree.

21. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Viaero does not expressly consent) that provision will be superseded by such Rule or order.

24. **Successors and Assigns.** Viaero agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

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<sup>23</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

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Christopher L. Killion  
Deputy Chief  
Enforcement Bureau

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Date

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Francis J. DiRico  
Director  
NE Colorado Cellular, Inc.

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Date