

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

NE COLORADO CELLULAR, INC., A )  
Colorado Cooperation, d/b/a VIAERO )  
WIRELESS, )

Case No. 4:10-cv-3059

Plaintiff, )

ANSWER OF DEFENDANT  
VILLAGE OF DONIPHAN

vs. )

VILLAGE OF DONIPHAN, )  
NEBRASKA, )

Defendant. )

The Village of Doniphan, Nebraska ("Doniphan"), for its answer to the plaintiff's complaint:

1. In answer to paragraph 1, admits this is an action for injunctive relief. The remaining allegations of paragraph 1 are denied.
2. Based on information and belief, admits paragraph 2.
3. In answer to paragraph 3, Doniphan is without sufficient information to either admit or deny paragraph 3 for which reason it is denied.
4. Admits paragraph 4.
5. Paragraph 5 of the complaint asserts legal conclusions which can be neither admitted or denied. Doniphan, therefore, respectfully refers all issues of law to the Court to decide. To the extent that a response to this allegation is required, Doniphan denies the same.
6. Admits paragraph 6.
7. Admits paragraph 7.
8. In answer to paragraph 8, admits Viaero provides personal wireless services over a network. The remaining allegations of paragraph 8 are denied.
9. Denies paragraph 9.
10. Admits paragraph 10.
11. Doniphan is without sufficient information or knowledge to either admit or deny the allegations in paragraph 11, for which reason they are denied.

12. Doniphan is without sufficient information or knowledge to either admit or deny the allegations in paragraph 12, for which reason they are denied.

13. Doniphan is without sufficient information or knowledge to either admit or deny the allegations in paragraph 13, for which reason they are denied.

14. Admits paragraph 14.

15. Doniphan is without sufficient information or knowledge to either admit or deny the allegations in paragraph 15, for which reason they are denied.

16. Admits Viaero submitted an application for a conditional use permit, and that on March 8, 2010, the Board voted unanimously to deny the permit application.

17. Denies paragraph 17.

18. In answer to paragraph 18, Doniphan incorporates paragraphs 1 through 17 of its answer as set forth above.

19. Paragraph 19 of the complaint asserts legal conclusions which can be neither admitted or denied. Doniphan, therefore, respectfully refers all issues of law to the Court to decide. To the extent that a response to this allegation is required, Doniphan denies the same.

20. Denies paragraph 20.

21. Denies paragraph 21.

22. In answer to paragraph 22, Doniphan incorporates paragraphs 1 through 21 of its answer as set forth above.

23. Paragraph 23 of the complaint asserts legal conclusions which can be neither admitted or denied. Doniphan, therefore, respectfully refers all issues of law to the Court to decide. To the extent that a response to this allegation is required, Doniphan denies the same.

24. Denies paragraph 24.

25. In answer to paragraph 25, Doniphan incorporates paragraphs 1 through 24 of its answer as set forth above.

26. Paragraph 26 of the complaint asserts legal conclusions which can be neither admitted or denied. Doniphan, therefore, respectfully refers all issues of law to the Court to decide. To the extent that a response to this allegation is required, Doniphan denies the same.

27. Denies paragraph 27.

28. Denies paragraph 28.

29. In answer to paragraph 29, Doniphan incorporates paragraphs 1 through 28 of its answer as set forth above.

30. Denies paragraph 30.

31. Denies paragraph 31.

32. Denies paragraph 32.

33. Denies paragraph 33.

34. Denies paragraph 34.

35. Paragraph 35 of the complaint asserts legal conclusions which can be neither admitted or denied. Doniphan, therefore, respectfully refers all issues of law to the Court to decide. To the extent that a response to this allegation is required, Doniphan denies the same.

36. Denies paragraph 36.

37. Denies paragraph 37.

38. In answer to paragraph 39, Doniphan incorporates paragraphs 1 through 38 of its answer as set forth above.

39. Denies paragraph 39.

40. Denies, generally and specifically, each and every remaining allegation not previously admitted.

#### AFFIRMATIVE DEFENSES

41. Doniphan states and alleges that the specific relief requested by the plaintiff in its complaint violates the Tenth Amendment to the United States Constitution and is an unlawful attempt by Congress, in particular as used by this plaintiff in this action, to command or coerce a method of regulating by a state or local zoning authority.

WHEREFORE, the Village of Doniphan, Nebraska, prays that the plaintiff's complaint be dismissed at the plaintiff's cost.

VILLAGE OF DONIPHAN, NEBRASKA,  
Defendant

BY: Baylor, Evnen, Curtiss, Gमित & Witt  
1248 O Street, Suite 600  
Lincoln, NE 68508

By:           /s/ Randall L. Goyette            
Randall L. Goyette, # 16251

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Shawn D. Renner  
Cline, Williams, Wright, Johnson & Oldfather, LLP  
1900 US Bank Building  
233 South 13<sup>th</sup> Street  
Lincoln, NE 68508

and I mailed a copy by postage prepaid, First Class United States mail to the following:

Andrew R. Newell  
Viaero Wireless  
1224 W Platte Avenue  
Fort Morgan, CO 80701

By:           /s/ Randall L. Goyette            
Randall L. Goyette, # 16251