

STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application)	
Wisper ISP Inc. for Designation as an)	Case No. CA-2019-0196
Eligible Telecommunications Carrier)	
)	

Response to Application to Intervene

On January 18, 2019, Conexon, LLC, GoSEMO, LLC, and Callabyte Technology, LLC (“Petitioners”) filed a joint application to intervene in Case No. CA-2019-0196. On January 28, 2019, the Commission granted the application to intervene. Apparently, Petitioners’ operations are in areas for which Wisper was awarded Connect America Fund II (“CAF II”) financing to deploy broadband and voice services. Wisper takes no position on the rights of the parties to intervene, however, Petitioner’s concerns regarding Wisper’s ability to deploy its services are misinformed. Moreover, Petitioners have not been deputized to monitor Wisper’s compliance with CAF II buildout requirements. That role squarely rests with the Federal Communications Commission.

To clarify Wisper’s deployment plans, Wisper filed Exhibit H and Exhibit I (Confidential) in this docket. Wisper does not currently offer services at the 100 Mbps/20 Mbps above baseline/low latency service level but is technically capable to do so in several of its markets. Wisper will, however, provide 100 Mbps/20Mbps services to the areas it has been awarded CAF II funds and for which it is seeking eligible telecommunications carrier (“ETC”) designation.

In addition to the plans available on Wisper's website, Wisper also offers 25 Mbps and 50 Mbps download packages in areas with recently updated fiber backhaul capacity to certain towers. Those plans are not advertised on the website to prevent customer confusion. Instead, the higher speed plans are offered directly to customers that qualify via direct mail, door hangers, or calls to existing customers. From a technical perspective, these customers are also capable of receiving 100 Mbps download speeds but there has not been sufficient business rationale to offer that as a speed tier yet in those markets.

To offer the above baseline/low latency service plans requiring 100 Mbps/20 Mbps for CAF II, Wisper will first need to increase the fiber backhaul density in its network. Across its entire network currently, Wisper operates or leases 55 fiber feeds. After the CAF II areas are built, Wisper will have added 150 to 200 fiber circuits to its network. This fiber densification will allow Wisper to provide the higher speeds in the CAF II areas. As a result, the customers in each of the six state-awarded CAF II census blocks will have access to a 100 Mbps/20 Mbps service tier as soon the network is built to serve a given census block and services are turned up for delivery. Per Wisper's CAF II award requirements, 40% of the CAF II recipients should be capable of receiving 100 Mbps/20 Mbps speeds by the end of the third funding year, 60% at the end of the fourth, 80% at the end of the fifth, and 100% by the end of the sixth. Petitioners' concerns regarding Wisper's ability to deliver the required above baseline/low latency should therefore be disregarded.

Apparently, one of the Petitioners, Conexon, filed a similar intervention in Case No. DA-2019-01012. In that case, Staff rejected Conexon's concerns and granted Air Link Rural Broadband's application to become an ETC. Staff noted that the application process was

nor designed to consider Conexon's issues.

The ETC application process is not designed to assess a winning bidder's technology broadband speed and latency capabilities. The ability of a company to deliver the broadband speed and latency promised by a winning bid will be addressed by means other than the ETC application process. In regards to Auction 903 winning bidders, the FCC will separately evaluate a winning bidder's technology before releasing any funding. In addition, mechanisms are in place during the funding process to test and verify whether a company is meeting service obligations.¹

Staff also acknowledged that it is the FCC's responsibility to determine whether a CAF II awardee is in compliance with the program's requirements.

If ETC status is granted and the FCC approves a company's Form 683, the company will continue to be held accountable by the FCC for delivering broadband service with the expected broadband speed and latency to the funded area. Specific testing requirements have been established by the FCC and will be applied throughout the funding process.¹⁰ Test results are subject to audit and will be submitted annually in a format to be determined by the FCC. Financial penalties apply if a company is found to be in noncompliance.

Petitioners acknowledge they competed for the CAF II awards and lost to Wisper's bids.

Petitioners' obvious motivation in seeking intervention is to delay and/or prevent CAF II awardees from receiving ETC designation by the FCC's February 25, 2019 deadline. For the foregoing reasons, Petitioners concerns should be rejected and Wisper's ETC application approved.

¹ See Exhibit 2. Staff's Recommendation to Approve Air Link Rural Broadband, LLC's Request for Designation as an Eligible Telecommunications Carrier in Missouri (January 16, 2019).

Respectfully submitted,

_____/s/_____

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January 29, 2019

Exhibit 1

Staff Recommendation to Approve Air Link Rural Broadband, LLC's Request
for Designation as an Eligible Telecommunications Carrier in Missouri

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)
Air Link Rural Broadband, LLC for)
Designation as an Eligible)
Telecommunications Carrier)
In the State of Missouri)

Case No. DA-2019-0102

RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Recommendation* in this matter hereby states:

1. On October 12, 2018, Air Link Rural Broadband, LLC, (Company or Air Link) filed an *Application and Verification of Air Link Rural Broadband, LLC for Designation as an Eligible Telecommunications Carrier in the State of Missouri* with the Commission requesting that the Commission issue an order designating Air Link as a high-cost and low-income eligible telecommunications carrier (ETC). The Company's request, if approved, would permit it to receive federal support pursuant to the Connect America Fund II (CAF II) auction held by the Federal Communications Commission (FCC) and for Lifeline.

2. The CAF II program is part of the FCC's reform and modernization of its universal service fund support programs designed to accelerate the expansion of broadband services to rural areas and any areas which presently lack the infrastructure capable to support at least 10/1 Mbps of fixed broadband services. The FCC held an auction to allocate funds to various companies which could further the goals of the CAF II program. The FCC requires each winning company to obtain ETC designation from its respective public utilities commission prior to receiving the allocated

funds. Winners of the auction must certify within 180 days of the release of the Public Notice from the FCC which closed the CAF II auction that they have obtained ETC designation. Public Notice was issued August 21, 2018, so Air Link must certify that it has obtained ETC designation no later than February 25, 2019.

3. Conexon, LLC, filed an *Application to Intervene* on November 14, 2018, stating that it opposed Air Link's ETC application because it had concerns that Air Link's wireless technology may not be capable of meeting the speed or latency requirements of the CAF II program. Conexon stated that it continued to explore Air Link's technical capabilities. Air Link in several supplemental filings expressed that the technology it intends to use is adequate to meet the requirements for speed and latency set by the FCC. The FCC requires all winning bidders to submit a Form 683 that includes information about a company and its plans to fulfill its bid requirements and which must be approved prior to a company receiving any funds.

4. The Company is presently registered in the state of Missouri to provide interconnected voice over internet protocol (IVoIP) services. The Company included an Exhibit 1 with its *Application* which outlines the specific census blocks for which it requests ETC designation.

5. Commission rule 4 CSR 240-31.130 governs the specific eligible telecommunications carrier requirements that each applicant must meet. Applications must also comply with 4 CSR 240-2.060 and shall be verified by oath as to the truthfulness contained in the application by an officer or director of the applicant.

6. Staff conducted an investigation and has provided a memorandum attached to this pleading as Appendix A. Staff's memorandum outlines the reasons why Staff believes Air Link has met the requirements of 4 CSR 240-31.130 and should receive ETC designation. The memorandum also outlines the oversight process of the FCC to ensure that Air Link has the necessary capabilities to provide the services it committed to provide in its CAF II bid.

WHEREFORE, Staff recommends that the Commission approve Air Link Rural Broadband, LLC's, request for designation as an eligible telecommunications carrier for the purpose of receiving federal high-cost and low-income support; that the designation be limited to the area identified by census blocks in Air Link Rural Broadband, LLC's, initial application; and grant such other and further relief as the Commission considers just in the circumstances.

/s/ Whitney Payne

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 16th day of January, 2019, to all counsel of record.

/s/ Whitney Payne

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. DA-2019-0102

From: Kari Salsman, Utility Policy Analyst I
John VanEschen, Utility Regulatory Manager
Telecommunications Department

Subject: Staff's Recommendation to Approve Air Link Rural Broadband, LLC's Request for Designation as an Eligible Telecommunications Carrier in Missouri.

Date: January 16, 2019

On October 12th, Air Link Rural Broadband, LLC (Air Link) filed an application for designation as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving federal high cost and low-income support. Air Link is a registered IVoIP provider in Missouri.¹ The company was recently awarded Connect America Fund Phase II support in a reverse auction process, Auction 903.² The funding requires the company to extend broadband service to a designated number of locations in certain census blocks.³ The FCC expects each winning bidder to obtain ETC status by February 25, 2019 from the applicable state commission.

On October 15th, Conexon, LLC (Conexon) filed an application to intervene. Conexon in its application outlines a primary concern that Air Link's technology may be incapable of meeting the speed and/or latency requirements required of Air Link's auction commitments. In addition, Conexon appears to raise a concern about Air Link's assumed subscription rate for voice and broadband services.

On December 28th Air Link supplemented its application to address certain lacking ETC application requirements. Air Link also responded to Conexon's concern about Air Link's technology. Air Link asserts that it has the capability to provide broadband service which is capable of delivering speeds of at least 100 Mbps downlink and 20 Mbps uplink with a latency of 100 milliseconds or less. Air Link states, "...Air Link has committed to exclusively use a fiber-to-the premises access technology to insure all Auction 903-award locations, for which Air Link has sought ETC designation from the FCC and the Commission, can reliably take broadband services meeting the conditions of its federal support."

¹ Case No. DA-2019-0071

² The company has been awarded \$11,371,438 over 10 years to extend broadband service to 2,321 locations at a speed of $\geq 100/20$ Mbps and a low latency of ≤ 100 ms. Per the FCC's directions a company participating in Auction 903 could offer to provide broadband service based on four speed tiers and two latency tiers. Air Link's bid is classified as above the minimum baseline broadband speed of 10/1 Mbps.

³ Census block service areas are listed in Exhibit 1 of ETC application.

On January 9, 2019 Conexon responded to Air Link’s supplemental filing. Conexon points out inconsistencies between Air Link’s initial and supplemental filings regarding the type of technology Air Link intends to deploy. Conexon appears to be solely concerned if Air Link ultimately uses a fixed wireless technology. Conexon does not appear to be concerned if Air Link uses fiber-to-the-premises technology. Conexon requests the Missouri Commission allow additional time for discovery by the parties and to hold a hearing “...in order to provide an opportunity to obtain testimony regarding the capabilities of Air Link’s proposed fixed wireless network components before ruling on Air Link’s ETC application.”

On January 14, 2019, Air Link submitted a second supplemental filing for the purpose of further responding to Conexon. Air Link’s second supplemental filing clarifies Air Link’s plan is to build a fiber-to-the-premises network. Air Link indicates it has committed to passing each location in the proposed ETC area with fiber.

Federal authority enables state commissions to grant ETC status to a company.⁴ Missouri’s ETC application requirements are contained in existing Missouri Commission rule 4 CSR 240-31.130(1).⁵ Staff reviewed the company’s request for compliance against Missouri’s rule as well as the federal requirements.⁶ Staff finds the company has adequately met all Missouri ETC application requirements. As previously stated, the primary issue raised by Conexon is whether Air Link’s technology will be able to meet the broadband speed and latency requirements promised by Air Link’s winning bid. Air Link’s supplemental filings suggest it has committed to meeting the requirements. Staff also suggests this issue will be addressed by other means than the ETC application process.

The ETC application process is not designed to assess a winning bidder’s technology broadband speed and latency capabilities. The ability of a company to deliver the broadband speed and latency promised by a winning bid will be addressed by means other than the ETC application process. In regards to Auction 903 winning bidders, the FCC will separately evaluate a winning bidder’s technology before releasing any funding. In addition, mechanisms are in place during the funding process to test and verify whether a company is meeting service obligations.

Even if a winning bidder already has ETC status the FCC will not release the funding until the FCC approves the company’s plan to meet the obligations imposed by the company’s winning bid. For instance, each winning bidder is required to submit subsequent information to the FCC through FCC Form 683. This form requires information about the company and its plan for fulfilling bid requirements. This plan

⁴ 47 U.S.C. §214(e)(2) and FCC rule §54.201.

⁵ On December 30, 2018 this rule was rescinded and streamlined ETC application requirements are now contained in 4 CSR 240-31.016. The new rule simplifies ETC application requirements.

⁶ Staff’s review is based on compliance with the more onerous requirements contained in rescinded rule 4 CSR 240-31.130(1). Federal requirements are based on FCC rules and FCC Public Notice; WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier; WC Docket Nos. 09-197, 10-90; DA 18-714; released July 10, 2018. (*FCC ETC Designation Reminder*).

includes detailed information about the technology it intends to deploy including a requirement for a professional engineer to certify a company's technology can meet the speed and latency provided by the company's bid.⁷ Winning bidders will be considered in default and subject to auction forfeiture if they fail to submit FCC Form 683 or are found to be ineligible or unqualified to receive the support.

In addition, Form 683 requires a company to submit information about the status of obtaining ETC designation from a state commission, implying that the ETC application process should be started prior to filing the form. There is also an expectation ETC designation will be obtained within 180 days of a company being announced as a winning bidder, which in this matter translates to February 25, 2019.⁸ It should be noted that certain information required in Form 683 is also due February 25, 2019. It remains unclear if unintended consequences may result at the federal level if a state commission postpones the granting of ETC designation until after the FCC approves a company's Form 683.⁹

If ETC status is granted and the FCC approves a company's Form 683, the company will continue to be held accountable by the FCC for delivering broadband service with the expected broadband speed and latency to the funded area. Specific testing requirements have been established by the FCC and will be applied throughout the funding process.¹⁰ Test results are subject to audit and will be submitted annually in a format to be determined by the FCC.¹¹ Financial penalties apply if a company is found to be in noncompliance.

Additional accountability provisions will be applicable throughout the funding process. For example, a company will need to seek annual recertification from the respective state commission.¹² Failure by a company to receive such state recertification can delay or halt the company's federal high cost support funding in that state for the next calendar year. Companies receiving high-cost support will be subject to various reporting obligations such as the Annual Section 54.313 Report (FCC Form 481 Report)¹³, Annual Reporting

⁷ See [FCC Form 683 instructions](#). Page 5 describes how a winning bidder must provide, "...a detailed description of the technology and system that will be used to meet the Auction 903 public interest obligations, including a network diagram certified by a professional engineer meeting the relevant requirements."

⁸ In Staff's view, the FCC expects a company to obtain ETC status prior to the FCC approving Form 683. This expectation is based on Form 683's instructions as well as the observation ETC status was originally a qualifying requirement for any company to submit a bid in Auction 903. The FCC simply relaxed this requirement to try to ensure a maximum number of bidders.

⁹ For example, an unintended consequence may be an interpretation by the FCC that a state commission does not intend to exercise its authority to issue ETC designation. Alternatively the FCC may delay issuing a decision on a company's Form 683.

¹⁰ Order; WC Docket No. 10-90 In the Matter of Connect America Fund; DA 18-710; released July 6, 2018. (*FCC's Broadband Testing Order*)

¹¹ A company may be subject to submitting test results on a quarterly basis if they are found to not be fully in compliance. ¶67 of the FCC's Broadband Testing Order.

¹² FCC rule 47 CFR §54.314 describes the state commission role in the annual certification of support for ETCs.

¹³ Missouri rule 4 CSR 240-31.015(3) places additional annual reporting requirements on all ETCs.

of Location Information and Milestone Certifications. Consequences exist if a support recipient fails to fulfill any term or condition for the support.¹⁴

Staff remains confused by Conexon's second concern that Conexon "...plans to explore, among other things, Air Link's technical capabilities to meet its CAF-II performance obligations which assume that it Air Link will have at least a 70 percent subscription rate for its voice and broadband services by the time Air Link meets its final CAF-II service milestone."¹⁵ Staff is unaware of any state or federal requirement for a company to meet a minimum subscription rate in order to qualify for funding. This concern is not explained by Conexon or addressed by Air Link. However, Staff suggests that this concern is not integral to a state granting ETC status, and more specifically not integral to the Commission granting Air Link ETC status.

Staff recommends for the reasons outlined above that the Commission grant ETC status to Air Link Rural Broadband, LLC for the purpose of receiving federal high-cost and low-income support. Any concerns raised in the course of the application process will be addressed by the framework put in place by the FCC. ETC designation should be limited to the area identified by census blocks in Exhibit 1 of the company's initial filing.¹⁶

¹⁴ The post ETC designation reporting obligations are listed and described in the FCC's ETC Designation Reminder; pages 6-8. Consequences for non-compliance are described on page 9.

¹⁵ Conexon's Application to Intervene; ¶ 6.

¹⁶ A state commission must designate the service area for ETC designation per 47 CFR 54.201(b). FCC rules give states some latitude in defining a service area per 47 CFR 54.207.