

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

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

**PRELIMINARY RESPONSE TO STAFF RECOMMENDATION
AND MOTION FOR ADDITIONAL TIME TO RESPOND**

COMES NOW Conexon, LLC, GoSEMO, LLC, and Callabyte Technology, LLC (hereinafter, collectively “Intervenors”), by and through undersigned counsel, and for their Preliminary Response to Staff Recommendation and Motion for Additional Time to Respond, hereby states as follows:

1. In the Staff Recommendation, Commission Staff recommends that Wisper can be granted Eligible Telecommunications Carrier (“ETC”) designation in the State of Missouri. Intervenors have significant concerns regarding the potential grant of ETC status at this preliminary stage. Many of Intervenors’ concerns are identified in Intervenors’ Joint Application to Intervene and in Intervenors’ Data Requests, attached hereto as Exhibit A, that were only recently served upon Wisper and to which Wisper has not yet responded.
2. For example, Intervenors have identified fundamental misrepresentations Wisper made to the Commission regarding Wisper’s broadband performance obligations as a CAF-II winner bidder which Intervenors seek to clarify through their aforementioned Data Requests.
3. In addition, Intervenors have sought further information regarding concerns about Wisper’s ability to provide customer access to critical E911 services in certain

situations. The provision of E911 services is a requirement of all ETCs.¹ In fact, Wisper admits in its ETC application that in the event of a failure of the IP connection or the local AC power, its VoIP service, including the E911 feature, will not function.

4. Intervenors have sought to clarify these and other issues through Data Requests propounded to Wisper. As of this date, Intervenors have not received answers to said Data Requests and, therefore, Intervenors respectfully request the Commission allow them to more fully respond to Staff's Recommendation through a supplemental response once discovery has been completed.
5. For their preliminary response, Intervenors state that Wisper's ETC application is deficient, both in the essential element of what is being proposed, and for many and varied procedural reasons. The first deficiency is that Wisper is seeking approval for something it was not granted by the FCC -- which is funding for 25/3 Mbps service -- when Wisper is obligated to provide 100/20 Mbps broadband service in the vast majority of its CAF-II winning areas in Missouri. If the Commission elects to grant Wisper's ETC Application (which Intervenors oppose), then the Commission should only grant Wisper ETC designation in the limited areas of Missouri where Wisper was a CAF-II winner at the "baseline" (25/3 Mbps) performance standard.
6. The materials presented thus far by Wisper in its ETC application proceeding are insufficient to demonstrate that Wisper has network diagrams, spectrum, fiber assets, or even plans to meet its 100/20 Mbps broadband performance obligations that must

¹ See e.g., 47 C.F.R. § 54.101(a)(1) ("Eligible voice telephony services must provide ... emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's [service area](#) has implemented 911 or enhanced 911 systems; and 47 C.F.R. § 202(a)(2) ("In order to be designated an [eligible telecommunications carrier](#), any common carrier in its application must... demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.").

be made available to at least 95% of the locations in its CAF-II winning areas using a network capable of delivering 100/20 Mbps speeds to at least 70% of the locations at peak hours, or to even meet its 25/3 Mbps broadband performance obligation in limited areas of Missouri. In addition, Wisper appears unable to comply with certain other obligations as an ETC (e.g., provision of E911 services).

7. Intervenors have sought additional information through aforementioned Data Requests in order to determine whether Wisper is merely withholding information, or whether it is simply not capable of fulfilling its obligations as a CAF-II winning bidder and as an ETC. The procedural deficiencies, including the extremely late initial filing of its ETC Application, the misrepresentations made by Wisper in its ETC Application, the failure to include all exhibits in its ETC Application (*See* Intervenor's Data Request #2), are in and of themselves sufficient to justify denial of the ETC application – and, at a minimum, are certainly sufficient to avoid any rush to judgment by this Commission to grant Wisper's deficient ETC application – a fact that has been clearly demonstrated by the Intervenors.
8. For Wisper, this ETC Application may be just about money, but to the people of Missouri, the Application is about service and whether the high-speed broadband and voice services promised under the CAF-II program by Wisper to tens of thousands of residents in rural Missouri will be delivered. Commission action granting this Application – without confidence in the delivery of service and without further exploration of Wisper's actual broadband and voice capabilities – will foreclose the possibility of funding for other potential service providers who have demonstrated that they are capable of delivering 100/20 Mbps and higher broadband services to

these same rural Missouri residents.

WHEREFORE, Intervenor respectfully request the Commission grant Intervenor's Motion for Additional Time to Respond and allow Intervenor to more fully respond to Staff's Recommendation shortly after discovery has been completed.

Respectfully submitted,

/s/Megan E. Ray _____

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing document was served by electronic mail or U.S. Mail, postage prepaid, this 8th day of February 2019 upon all counsel of record and the following:

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