

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

In the Matter of the Application	)	
for Designation as an Eligible	)	
Telecommunications Carrier	)	<b><u>Case No. CA-2019-0196</u></b>
for Purposes of Receiving Federal	)	
Universal Service Support from the	)	
FCC Connect America Fund – Phase II	)	

**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 December 21, 2018, Wisper ISP Inc., (Company or Wisper) filed an *Application of Wisper ISP Inc. for Designation as an Eligible Telecommunications Carrier* with the Commission requesting that the Commission issue an order designating Wisper 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 Wisper must certify that it has obtained ETC designation no later than February 25, 2019.

3. The Company is presently certificated in the state of Missouri as a local exchange communications carrier and is registered to provide interconnected voice over internet protocol (VoIP) services. The Company included an Exhibit B with its *Application* which outlines the specific census blocks for which it requests ETC designation.

4. Conexon, LLC, GoSEMO, LLC, and Callabyte Technology, LLC, filed a *Joint Application to Intervene* on January 18, 2019, stating that they collectively opposed Wisper's ETC application because the company in its *Application* misstates the performance obligations for the broadband speed and latency requirements of the CAF II program. The potential intervenors ask the Commission to require Wisper to correct its ETC application filing. .

5. The Commission granted the *Application to Intervene* on January 28, 2019; and *Wisper* responded to the intervenors on January 29, 2019. *Wisper's* response clarifies the broadband speed *Wisper* will provide to the targeted areas. In addition *Wisper's* response and supplemental filings outline its capability to offer services at the levels required by its CAF II winning bid in some

markets and its plans to increase its capabilities using the CAF II funding in the remaining areas.

6. Commission rule 4 CSR 240-31.016 now governs the specific eligible telecommunications carrier requirements that each applicant must meet; although the recently rescinded rule 4 CSR 240-31.130 has also been taken into Staff's consideration for this matter. 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.

7. 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. Further, the ETC process under 4 CSR 240-31.016 and 4 CSR 240-31.130 does not address and is not designed to assess a company's technology broadband speed and latency capabilities.

8. 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 Wisper has met the requirements of both 4 CSR 240-31.016 and 4 CSR 240-31.130 and should receive ETC designation. Staff suggests that Wisper's supplemental filings are a sufficient response to the intervenors' *Motion*. Staff's memorandum explains the oversight process of the FCC related to the CAF II program.

**WHEREFORE**, Staff recommends that the Commission approve Wisper ISP Inc.'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 Wisper ISP Inc.'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 31st day of January, 2019, to all counsel of record.

**/s/ Whitney Payne**

## MEMORANDUM

**To:** Missouri Public Service Commission Official Case File  
Case No. CA-2019-0196

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

**Subject:** Staff's Recommendation to Approve Wisper ISP Inc.'s Request for  
Designation as an Eligible Telecommunications Carrier in Missouri.

**Date:** January 31, 2019

On December 21, 2018, Wisper ISP Inc. (Wisper) filed an application for designation as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving federal high cost and low-income support. Wisper is a certificated local exchange communications carrier and registered IVoIP provider in Missouri.<sup>1</sup> The company was recently awarded Connect America Fund Phase II support in a reverse auction process, Auction 903.<sup>2</sup> The funding requires the company to extend broadband service to a designated number of locations in certain census blocks.<sup>3</sup> The FCC expects each winning bidder to obtain ETC status by February 25, 2019 from its applicable state commission.

On January 18, 2019, Conexon, LLC, Callabyte Technology, LLC and GoSEMO, LLC . (collectively, "companies") filed a joint application to intervene. The companies in their joint application outline a primary concern that Wisper's ETC application commits to offer 25/3 Mbps speeds which contradicts Wisper's bidding and performance obligations to provide 100/20 Mbps speeds to all of the 68,269 locations in Missouri. The companies ask the Commission to require Wisper to correct and re-file its application. In addition the companies raise concern that Wisper's technology may be incapable of meeting the speed and/or latency requirements required of Wisper's auction commitments.

On January 29, 2019, Wisper responded to the companies' concerns. Wisper states it "will, however, "...provide 100 Mbps/20 Mbps services to the areas it has been awarded CAF II funds..." Wisper's response also further explains its plan to expand broadband service to these areas.

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<sup>1</sup> Case Nos. CA-2007-0175 and DA-2012-0265. DN-2019-0194 and CN-2019-0205 changed the company name from Aurora Communications, Inc. to Wisper ISP, Inc. due to a transfer of control.

<sup>2</sup> The company has been awarded \$176,319,409.30 over 10 years to extend broadband service to 68,269 locations. 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. Wisper's bid is classified as above the minimum baseline broadband speed of 10/1 Mbps.

<sup>3</sup> Census block service areas are listed in Exhibit B of ETC application.

Federal authority enables state commissions to grant ETC status to a company.<sup>4</sup> Missouri's ETC application requirements are contained in existing Missouri Commission rule 4 CSR 240-31.130(1).<sup>5</sup> Staff reviewed the company's request for compliance against Missouri's rule as well as the federal requirements.<sup>6</sup> Staff finds the company has adequately met all Missouri ETC application requirements. In addition, in Staff's opinion, Wisper's response adequately clarified the broadband speed Wisper intends to provide to the targeted areas. As a result Wisper should not be expected to re-file its application for ETC designation. In regards to the concern of whether Wisper's proposed technology can adequately meet Wisper's performance obligations, Staff 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 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.<sup>7</sup> 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

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

<sup>5</sup> 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.

<sup>6</sup> 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*).

<sup>7</sup> 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."

winning bidder, which in this matter translates to February 25, 2019.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> Test results are subject to audit and will be submitted annually in a format to be determined by the FCC.<sup>11</sup> 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.<sup>12</sup> 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)<sup>13</sup>, Annual Reporting of Location Information and Milestone Certifications. Consequences exist if a support recipient fails to fulfill any term or condition for the support.<sup>14</sup>

Staff recommends for the reasons outlined above that the Commission grant ETC status to Wisper ISP Inc. 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 B of the company's initial filing.<sup>15</sup>

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<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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*)

<sup>11</sup> 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.

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

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

<sup>14</sup> 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.

<sup>15</sup> 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.