



RESPONSE TO STAFF REPORT AND RECOMMENDATION

COMES NOW Aristotle Unified Communications L.L.C. (“Aristotle”), and for its Response to the Public Service Commission of Missouri’s *Report and Recommendation*, states herein as follows:

For the reasons stated herein, Aristotle asks that the Commission include it in the upcoming 47 CFR § 54.314 certification, notwithstanding Staff’s negative recommendation.

Missouri PSC staff’s memorandum dated September 15, 2023, provides four justifications for Staff’s recommendation that Aristotle’s ETC status in Missouri not be renewed.

Aristotle believes that Staff’s frustration with what they misperceive to be prevarication or dishonesty has colored their understanding of the circumstances, and that the recommendation to remove Aristotle’s ETC status is not in the best interest of Missouri consumers. By the same token, Aristotle objects to transmitting Staff’s recommendation to the FCC.

A central point is that Aristotle has been forthcoming to PSC staff and at no point has misrepresented our service area or intent. Aristotle has had to make day-to-day business decisions in light of an anticipated transfer of its limited Missouri service area to another, Missouri-based, company (the “acquiring company”), and consummation of that transaction has dragged out far beyond original expectations.

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For the reasons we explain below, Aristotle objects to Staff's recommendation to omit Aristotle from the list of certified ETCs to be sent to the FCC.

Staff Argument: Aristotle Has Not Accurately Explained Tower Progress

Staff acknowledges that what Aristotle told Missouri PSC staff and what was reported to the FCC in May of 2022 were consistent. What was reported was also true. Aristotle had engaged in several months of site acquisition work, and by May of 2022 was in the process of negotiating land leases with several cattle farmers and other landowners in the three CAF II counties. In addition, Aristotle had begun the process of adding co-location towers pursuant to our Master Service Agreements with Tilman Infrastructure and American Tower Corporation. Shortly thereafter, discussions with the acquiring company made clear that most of the tower locations we had identified were either unnecessary (in the acquiring company's opinion) or were duplicative of towers that company already had access to, including U.S. Cellular locations.

Because of the change in circumstance, Aristotle rethought our engineering and, believing that it was in the best interest of Missouri consumers, chose to pivot our strategy so that we did not spend money unnecessarily building vertical assets that would not ultimately be used by the acquiring company. Given that the 40% milestone could be met utilizing existing U.S. Cellular towers, Aristotle saw no need to construct additional towers at great expense and chose instead to retain those funds for future use in Missouri rather than expend them. This decision was made for two reasons: First, not expending the funds would allow the acquiring

company to use them later to deploy to the locations in a manner they felt was preferable. And second, if the Section 214 transfer did not go through or, if the operating agreement between the acquiring company and Aristotle fell apart, the towers could be constructed in later phases of project development. Therefore, Aristotle elected to reverse the order of network development in Missouri to utilize existing infrastructure and spectrum assets in the first instance and to construct towers later as needed.

Staff is correct that Aristotle does not have a co-location agreement with U.S. Cellular. This is because Aristotle has not co-located equipment on the U.S. Cellular towers. Originally Aristotle planned to use collocations as reported to the FCC, but for now Aristotle will rely primarily on pre-existing equipment on U.S. Cellular towers and lease circuits to be able to reach consumers. Regardless of utilizing these spectrum assets, Aristotle remains 100% responsible for the consumer end-user experience, including sales, installation, and technical support and will deploy Aristotle equipment, routers, and infrastructure at the consumer's location. The acquiring company has a similar arrangement with U.S. Cellular, and by utilizing this arrangement, Aristotle is able both to serve the number of locations required with minimum speeds of 25/3 (up to 300 megs) and also ensure that there is no wasteful expenditure of CAF II funds building towers in locations that are undesirable to the acquiring company. Put another way, Aristotle deferred the construction of the towers we had sited in May of 2022 to enable the Section 214 transfer of CAF II blocks to the acquiring company time to go through, thereby preserving the bulk of CAF II funds for the use of the company that ultimately will bear the deployment obligation. However, because the work on site acquisition

has already been done, should the Section 214 transfer go sideways, Aristotle is prepared to move expeditiously with the build-out.

On the other hand, if the Section 214 transfer falls through but Aristotle is no longer an ETC in Missouri, Aristotle will lose access to the remaining CAF II funds. This means that Missouri also will lose these funds, which will return to the FCC for redeployment elsewhere.

Aristotle is fully aware of our obligations to the State of Missouri under CAF II and has at no time anticipated not meeting those obligations. The fact that Aristotle's business strategy, engineering, and timing of construction changed between May and December of 2022 is not evidence of a lack of deployment, and Staff's conclusion to the contrary is based on a fundamental misunderstanding of what Aristotle has told them on the phone and in our responses to their inquiries.

Staff makes a point of noting that the information provided in the August 1 response was in error, and they imply that Aristotle was somehow caught out by this fact. PSC staff is ascribing a nefarious motive to a simple mistake. Aristotle did attach the incorrect spreadsheet to the August 1 response, which mistake we realized as soon as PSC staff asked follow-up questions related to tower counts, etc. The replacement spreadsheet provided was, in fact, accurate, including information regarding back-up tower locations that would only be used if the primary locations were unable to serve the necessary number of CAF II locations. The correct spreadsheet is quite clear as to what assets have and have not been built. Aristotle provided further detail in response to Staff DR 5. Telecom construction plans constantly change to meet the needs of the moment, and this fact should not be misconstrued as trying to hide

the ball. That said, there still seems to be some confusion regarding the total number of towers deployed. In our initial engineering, Aristotle anticipated needing 14 towers; however, upon reviewing the location of U.S. Cellular towers, we determined that there are 15 usable towers and, in addition, that Aristotle can serve customers from a Tilman-owned tower. This is total of 16 deployed towers as reflected on the corrected spreadsheet.

Finally, PSC staff seems to think that because Aristotle listed the date of deployment of the 16 towers as December 31, 2022, this is somehow evidence of prevarication. Aristotle used this date for no other reason than because it was the date of reporting. All of the U.S. Cellular towers and the Tilman tower were pre-existing, and each has a different construction date. Aristotle could not see how using original construction dates would make sense, especially since many of those construction dates likely pre-date Aristotle's receipt of CAF II funds. Therefore, Aristotle used the date of reporting rather than the original build date. If it is important, Aristotle can track down the original build dates for each of these facilities and submit them to PSC staff.

Aristotle followed a similar logic with respect to the addressable customer base and used the reporting date rather than the date of tower construction. It did not occur to Aristotle that this would be confusing, since we had no active customers or consumer interest in Missouri at the time. Aristotle regrets any confusion this decision may have caused.

In sum, Aristotle met the December 2022 40% milestone of targeted locations and will meet the December 2023 60% milestone.

Staff Argument: Aristotle Did Not Adequately Explain How Funding is Being Used

Aristotle will be happy to provide a detailed breakdown of all Missouri-related CAF II expenses along with spreadsheets, invoices, etc. to Staff if needed. It was not Aristotle's intent to be overly general; we provided the information to Missouri PSC staff in the same format as we provided it to other states in which we won CAF II support. Staff did not specify what specific information they wanted, and Aristotle misunderstood the level of detail Missouri PSC staff intended to request.

To address generally the specific areas of concern raised in the Memorandum:

- **Long-form application.** CAF II rules allow the funding to be used for any expenditure provided that expenditure is in or for the state for which the funds are awarded. It is not relevant that the Long-Form Application was filed prior to receipt of CAF II funds. Aristotle was awarded the funding in November of 2018 and, while it was not finally authorized until June of 2019, the expenses incurred preparing that form—which include engineering, legal, and accounting services—are reimbursable out of CAF II proceeds. This is no different than other federally funded broadband programs. For example, USDA Reconnect specifically allows reimbursement of pre-grant award engineering, financial, legal, and compliance expenses.
- **Maintaining ETC Status in Missouri.** Aristotle acknowledges that this category title may be confusing. This expenditure category includes legal and regulatory work related to (1) obtaining ETC status in Missouri (which involved both FCC

regulatory counsel and local Missouri counsel), (2) annual filings and reports to the Missouri PSC, and (3) annual filings and reports to the FCC and USAC.

- **Network Deployment.** Aristotle has purchased steel, radios, base cabinets, routers, switches, and cabling for use in Missouri and has also expended money in travel time and consultants for site acquisition, surveying, and topographic and environmental research. The equipment and Cell Towers on Wheels (COWs) that have been purchased are for deployment in Missouri and, if not deployed by Aristotle, will be utilized by the company to whom the CAF II blocks are being transferred.

Staff Argument: Aristotle Did Not Disclose Lobbying Efforts for Broadband Deployment Relief

Staff is correct that Aristotle's failure to disclose our response to the FCC's April 7, 2022, letter of concern was an oversight. The other four FCC letters PSC staff attached to their memorandum are summaries of in-person meetings between the Coalition of RDOF Winners, of which Aristotle is a member, and the FCC. However, PSC staff's characterization of Aristotle's meetings with the FCC regarding our RDOF award as "lobbying" or as requesting "broadband relief" is inaccurate.

Aristotle's meetings with the FCC were pursuant to our obligations under the RDOF program, and the meetings were to discuss options for addressing an unprecedented increase in the cost of materials that has significantly reduced the relative value of the RDOF award. Aristotle's CEO was Chair of the FCC's Broadband Deployment Advisory Committee, and in that

capacity, had numerous conversations with the FCC regarding the RDOF program, including reducing the standby letter of credit requirement in RDOF, which the FCC ultimately took some steps to do. This type of regulatory advocacy is not lobbying.

Second, Aristotle's meetings with the FCC were not related to our "ability or inability to meet [our] broadband deployment obligations," which was the scope of Staff's inquiry (DR 30). These meetings were to discuss improvements to the RDOF program that will ensure efficient deployment of RDOF funds. Aristotle is part of a 38-member coalition that has requested the FCC increase funds available to RDOF recipients because of unprecedented cost increases for materials due to inflation and increased demand for fiber and other broadband-related infrastructure. While some of the members of the coalition have asked for broadband relief, their requests are due to being overbuilt by ARPA and Capital Projects funds, and Aristotle is not among these companies. Aristotle has made clear in every meeting with the FCC that we are not asking for broadband relief, nor will we be defaulting on any of our broadband obligations; however, the FCC recently *sua sponte* increased the amount of money being given to A-CAM recipients due to these unprecedented cost increases, and it is Aristotle's position that if this dispensation is being given to one set of USF recipients, it should be given to all recipients. While some members of the coalition do have additional agendas with respect to the RDOF program, Aristotle's interest is related to the overall needs of the program and the concern that if companies do default, this will prevent the underlying locations from being served, since those locations will miss the window to be included in BEAD funding. This is a policy position taken by Aristotle's CEO, not a reflection of Aristotle's ability or inability to meet broadband obligations under RDOF.

Third, Aristotle's RDOF award is in Arkansas, Illinois, and Mississippi and, therefore, is completely unrelated to any of Aristotle's CAF II obligations in Missouri. Aristotle reasonably understood the Missouri PSC's request for correspondence to be referring to correspondence relevant to Aristotle's Missouri CAF II deployment. For this reason, Aristotle disclosed that USAC was conducting an audit; however, it did not occur to Aristotle to disclose unrelated FCC meetings regarding RDOF, particularly when those meetings were not concerning our ability to meet our broadband deployment obligations, much less our CAF II obligations in Missouri.

Finally, Aristotle is unclear what the letter from Senator Wicker, et al. has to do with Aristotle other than that it makes a similar point regarding the need for additional RDOF funding. It should be noted that the reference to amnesty in the Senator's letter was put there by the Senator even though the Coalition of RDOF Winners requested that it be removed because most of the coalition members are not interested in amnesty. The note remained, and for that reason, whenever Aristotle has met with the FCC concerning RDOF, FCC staff has brought the issue up. At no point in time has Aristotle requested, nor is Aristotle entertaining the thought of, defaulting on any of our RDOF obligations, so will have no need for an amnesty. Aristotle has made this fact abundantly clear to the FCC on every occasion.

Staff Argument: Aristotle is Not Advertising Service Availability

Aristotle acknowledges that we have not put out yard signs or door hangers to announce our service availability in Missouri. It is Aristotle's normal practice to "soft launch" in new markets prior to engaging in on-the-ground marketing. In addition, Aristotle had concern

that such direct advertising would cause consumer confusion by aggressively promoting Aristotle services only to have another company take on provision of services a few weeks later when the Section 214 transfer was consummated. At the beginning of the year, Aristotle did not apprehend that the Section 214 transfer might take more than six months. When Aristotle became aware of the elongated timeline, we began to promote our service in Missouri via word of mouth and added our Missouri deployment on our website. This approach to marketing is not unique to Missouri. In fact, in every market Aristotle serves, the website and other online outreach are Aristotle's primary marketing engine because directing consumers to our website allows potential customers to request service directly without having to call in to customer service.

Two important notes:

- **The timing of adding Missouri information to Aristotle's website was not related to the USAC audit.** Once we understood that a Section 214 transfer would not be imminent (and, therefore, consumer confusion would be minimal because there would be time to explain the transfer of services before it occurred), we requested that our web designer add Missouri to the website. This request was made several weeks before the changes were implemented.
- **Aristotle does not list Missouri cities on our website because none of our CAF II areas are located inside any of the cities in the respective counties.** Aristotle lists cities in Arkansas because we received CARES Act funding through the Arkansas Rural Connect program, and the listed cities are either in a "guaranteed service area" or are in cities served by our legacy network. Aristotle's Arkansas

network is much larger than just the listed cities, as it also covers much of the area outside the cities' limits. Our experience in Arkansas has been that sometimes, by listing a specific city or town, consumers will incorrectly assume we do not serve areas outside the city or town's limits and that listing specific cities and towns sometimes leads consumers to incorrectly assume that service is *not* available at locations that are *not* listed. If it is important for our website to list cities and towns in Ozark, Howell, and Oregon for some reason, we can add those cities that we do cover; however, since none of our CAF II locations are in those cities, we elected to list the counties to encourage those who live in the county to call Aristotle.

Aristotle uses search engine optimization to boost our website's reach, and we currently have 158 leads in Missouri, the oldest of which was received on January 3, 2023, and the most recent was today (September 27). Of those leads, Aristotle can serve 56 locations with broadband. Of those 56 locations, only three are in the three counties for which Aristotle receives CAF II funding, and none are located in any of our CAF II blocks. Should Aristotle receive a lead from a CAF II area, we will be able to serve that location within the required 10 days. Regardless of the fact that no leads are inside our CAF II areas, Aristotle is nonetheless in the process of closing sales with those potential customers we can serve. Moreover, Aristotle does have two customers in Missouri, but we did not mention them previously because they are not broadband customers.

Aristotle will confirm broadband speeds in Missouri when it has customers with which to do so. If PSC staff would like Aristotle to do street-level testing outside some CAF II locations,

that is something we can do. That said, Aristotle's CAF II areas are spread out across three counties in fairly remote locations, so if the Missouri PSC does make this request, we ask that it select proximate locations.

Staff Argument: Removing Aristotle's ETC Status Will Not Affect Broadband Funding in Missouri

Staff asserts that removing Aristotle's ETC status will not impact the ability of the acquiring company to receive CAF II funds in Howell, Ozark, and Oregon counties once the Section 214 transfer is complete. Aristotle does not know for a fact whether this is true, but we assume that Staff confirmed this with the FCC. What Staff fails to apprehend, however, is that once Aristotle enters into an operating agreement with the acquiring company, the acquiring company will stand in Aristotle's shoes until the Section 214 transfer is complete, and the loss of ETC status by Aristotle will impact the acquiring company's ability to perform.

The FCC specifically allows CAF II deployment to be accomplished by a CAF II recipient operating through a third-party. Aristotle has exactly this relationship with a company in Illinois, which relationship was approved by the FCC in 2019. That company is responsible for deployment in Illinois of the CAF II locations, which includes the network, customer acquisition, advertising (done in that company's name), customer installation, and repairs. Aristotle is responsible for compliance, testing, and reporting and is ultimately responsible for deployment should the operating company fail to perform.

By November of 2022, Aristotle and the acquiring company agreed in principle regarding the Section 214 transfer, and, with legal counsel, determined that the two companies would enter into an operating agreement¹ pending Section 214 transfer. Pursuant to this operating agreement, the acquiring company would be responsible for deployment of the network, customer acquisition, customer installation, and repairs, and during this operating period—as in Illinois—Aristotle will ultimately remain responsible for reporting, compliance, and ensuring the CAF II obligations are met until such time as Section 214 transfer is complete. In exchange for operating the network, Aristotle will transfer to the operating company the bulk of the CAF II funds, retaining only enough to cover regulatory, legal, and compliance matters.

When Aristotle responded to PSC staff's question regarding the impact on the acquiring company of non-renewal of Aristotle's ETC status, Aristotle said that there would not be an impact because the acquiring company also is an ETC. However, our response was made prior to the realization that the timing of the cessation of the funding stream to Aristotle and the closing of the Section 214 transfer would not align.

Staff recognizes that the Section 214 transfer will not be completed by January 2024. Therefore, while Staff's recommendation not to certify Aristotle's ETC status will not have a practical effect on Aristotle (since the operating agreement will require the majority of future CAF II funds to be transferred to the acquiring company anyway), it will impact the acquiring company's ability to operate the CAF II network. If Aristotle does not have access to CAF II funds

¹ The acquiring company's attorney has been working on documenting the operating agreement for the past few months. We have been told that we will receive a copy of that agreement this week or next. The preliminary written agreement between the parties, a copy of which was previously provided by Aristotle to Staff, was not countersigned. Aristotle has attached the countersigned version of this preliminary agreement. It is a confidential document.

come January, neither will the acquiring company. This necessarily will delay any further CAF II deployment Missouri until such time as the Section 214 transfer is complete, assuming Staff is correct that the money will be held in reserve until such time as the transfer takes place. Moreover, as noted earlier, if the Section 214 transfer is not approved for any reason, Missouri risks losing the remaining CAF II funds entirely, even if an operating agreement is in place. This is because Aristotle, as the CAF II recipient, will no longer qualify to receive funds if we are not an ETC, and the operating agreement will cease to be in effect.

Staff Recommendation

Terminating Aristotle's ETC status will not help Missouri consumers. Aristotle made a commitment to serve Missouri consumers through the CAF II program, and that is what we have done and continue to do. Part of that commitment is taking the form of transferring our CAF II blocks to a third party that is present in Missouri and who has asked to take over because many of the CAF blocks sit inside of their existing network. For this reason, the acquiring company is better able to leverage the CAF II funds to ensure they are utilized in the most efficient way possible to serve the maximum number of Missouri consumers. The cost of building a single tower has skyrocketed over the past two years from the \$75,000 Aristotle paid during our CARES Act build to over \$200,000 due to inflation and demand for broadband materials. Transferring the CAF II funds to the acquiring company will ensure that broadband service is more affordable by ensuring that the remaining CAF II funds are used in the most impactful way for Missouri consumers. Not renewing Aristotle's ETC status would serve an

unjustified punitive purpose, and stopping the CAF II income stream, even for a temporary space in time, will not benefit Missouri in light of the pending transfer of the CAF II blocks and the current and ongoing enormous need for broadband in these counties.

Staff's Report addresses matters that are not pertinent to Section 54.314 certification. For the forgoing reasons, we object to Staff's recommendation to omit Aristotle from the list of certified ETCs to be sent to the FCC. For the same reasons, we oppose Staff's recommendation that its memorandum be sent to the FCC and request, at a minimum, that if Staff's memorandum is transmitted that this response is also attached.

FURTHER AFFIANT SAYETH NOT.



L. Elizabeth Bowles
CEO
Aristotle Unified Communications L.L.C.

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this day 27th day of September, 2023.



Notary Public

My Commission expires on: 9-27-2025

ROBERT H. LINDSTROM
NOTARY PUBLIC
PULASKI COUNTY, ARKANSAS
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