

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 23rd day of January, 2019.

In the Matter of the Application of Air Link)
Rural Broadband, LLC for Designation as) **File No. DA-2019-0102**
Eligible Telecommunications Carrier)
In the State of Missouri)

**ORDER GRANTING DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER**

Issue Date: January 23, 2019

Effective Date: February 22, 2019

On October 12, 2018, Air Link Rural Broadband, LLC, (the “Company”) filed its application with the Missouri Public Service Commission (“Commission”) seeking designation as an eligible telecommunications carrier (“ETC”) in the state of Missouri. On November 26, 2018, the Commission issued its *Order Granting Application of Conexon, LLC, to Intervene*.¹ On January 16, 2019, the Staff of the Missouri Public Service Commission (“Staff”) filed its *Recommendation*.²

The Commission finds that the Company was a successful participant in a Connect America Fund II (“CAF II”) reverse auction held by the Federal Communications Commission (“FCC”). 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

¹ EFIS Item No. 4.

² EFIS Item No. 12.

capable to support at least 10/1 Mbps of fixed broadband services. The FCC requires a winning company to obtain ETC designation from its respective public utilities commission prior to receiving the allocated funds.³

Commission Rule 4 CSR 240-31.130 governed the specific eligible telecommunications carrier requirements that each applicant had to meet when this application was filed. Missouri's ETC application requirements were contained in 4 CSR 240-31.130(1). This rule was rescinded on December 30, 2018. ETC application requirements are now contained in 4 CSR 240-31.016.⁴

Conexon, LLC ("Conexon") has raised the concern that the Company's technology might be incapable of meeting the speed and/or latency requirements required of the Company's auction commitments. It has also raised a concern about the Company's assumed subscription rate for voice and broadband services.⁵ Conexon asks the Commission to allow additional time for discovery and to hold a hearing regarding the Company's capabilities before ruling on the Company's Application.⁶ Thus, Conexon asks the Commission to treat the Company's application in the manner of a "contested case".

A "contested case" means "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 536.010 (4), RSMO. The "law" referred to in this definition includes any ordinance, statute, or constitutional provision that mandates a hearing.⁷ The Commission finds that

³ Per FCC rules, the Company must receive ETC designation within 180 days of a company's being announced as a winning bidder. Staff has ascertained that the deadline is February 25, 2019. EFIS Item No. 12.

⁴ Applications must also comply with 4 CSR 240-2.060.

⁵ EFIS Items No. 3 and 10.

⁶ EFIS Item No. 10.

⁷ *State ex rel. Yarber v. McHenry*, 915 S.W.2d 325, 328 (Mo. banc 1995); *McCoy v. Caldwell County*, 145 S.W.3d 427 (Mo. 2004).

no law “requires” that there be a hearing on the Company’s application. The Commission also finds with respect to Conexon’s stated concerns that the ETC application process is simply not designed to assess a company’s technology broadband speed and latency capabilities. The Commission further finds that, in any event, the FCC will separately evaluate a winning bidder’s technology before releasing any funding. In that regard, mechanisms are in place during the FCC’s funding process to test and verify whether a company is meeting service obligations. 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. This plan includes detailed information about the technology that the Company intends to deploy, including a requirement for a professional engineer to certify that the Company’s technology can meet the speed and latency provided for in the Company’s bid.⁸ Because this is not a “contested case” and so Conexon is not entitled to a hearing; because the ETC review process is not, in any event, designed to assess a company’s technology broadband speed and latency capabilities; and because the FCC will, in any event, monitor the Company’s technical capabilities, the Commission will deny Conexon’s request for discovery time and for a hearing.

After its own independent review of the filings of the Company, Conexon, and Staff,⁹ the Commission finds that the Company has satisfied the requirements both of rescinded rule 4 CSR 240-31.130 and new rule 4 CSR 240-31.016. The Application satisfies all of the requirements identified in 4 CSR 240-2.060 as required in 4 CSR 240-31.016(2)(A) in that has been verified by oath as to its truthfulness. The Application identifies all persons and entities, provides all information, and makes all statements and

⁸ *Staff Recommendation*, F.N. 7, EFIS Item No. 12.

⁹ EFIS Items No. 1, 3, 7, 10, 11, and 12.

declarations as required in 4 CSR 240-31.016 (B). The Commission will grant the Company's Application.

THE COMMISSION ORDERS THAT:

1. The requests of Conexon, LLC, for discovery time and for a hearing are denied.
2. The application of Air Link Rural Broadband LLC¹⁰ (the "Company") for designation as an eligible telecommunications carrier ("ETC") is granted.
3. The ETC designation shall be limited to the areas identified by census block in the Company's initial application.¹¹
4. This order shall be effective on February 22, 2019.
5. This file shall be closed on February 23, 2019.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Graham, Regulatory Law Judge

¹⁰ EFIS Item No. 1.

¹¹ EFIS Item No. 1, Exhibit 1 (all within Howard County, Missouri).

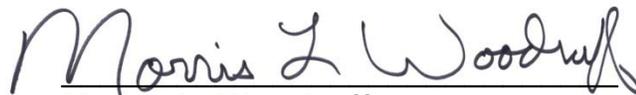
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 23rd day of January 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 23, 2019

File/Case No. DA-2019-0102

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Commission**
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.