

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of February, 2019.

In the Matter of the Application for Designation)
as an Eligible Telecommunications Carrier for)
Purposes of Receiving Federal Universal) **File No. CA-2019-0196**
Service Support from the FCC Connect)
America Fund - Phase II)

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

Issue Date: February 14, 2019

Effective Date: February 24, 2019

On December 21, 2018, Wisper ISP Inc. (“Wisper”) filed an application with the Missouri Public Service Commission (“Commission”) seeking designation as an eligible telecommunications carrier (“ETC”) in the state of Missouri. On January 28, 2019, the Commission issued an order permitting Callabyte Technology, LLC; Conexon, LLC; and GoSEMO, LLC (“Intervenors”) to intervene.

On January 31, 2019, the Staff of the Missouri Public Service Commission (“Staff”) filed a recommendation regarding Wisper’s application. Staff believes Wisper has met the requirements of 4 CSR 240-31-016 and 4 CSR 240-31.130 and should receive ETC designation. Staff recommends that Wisper’s ETC designation be limited to the area identified by census blocks in Wisper’s initial application.

Wisper 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 capable of supporting 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. Wisper is required to obtain ETC designation in all relevant states by February 25, 2019.

Commission Rule 4 CSR 240-31.130 governed the eligible telecommunications carrier application requirements at the time the application was filed. This rule was rescinded on December 30, 2018. ETC application requirements are now contained in 4 CSR 240-31.016.

On February 8, 2019, the Intervenors filed their *Preliminary Response to Staff Recommendation and Motion for Additional Time to Respond*. Intervenors state that many of their concerns are contained in their application to intervene and data requests. Intervenors believe that Wisper's technology might be incapable of meeting the performance requirements of its auction commitments. Intervenors state in part:

"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 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)."

Also on February 8, 2019, Wisper filed a response to Staff's recommendation and Intervenors' preliminary response. Wisper states that it provided adequate information in

application exhibits H (public) and I (confidential) to sufficiently detail Wisper's technical plans; the Commission agrees. Further, Wisper states that the Intervenors were also competitors in the CAF II bidding process and are seeking to sabotage Wisper's application for their benefit.

On February 11, 2019, Intervenors filed a motion to shorten the time for responses to data requests. Wisper filed a response opposing the motion to shorten time. Wisper's response states that the Intervenors seek Wisper's confidential information regarding: financial statements, network design exhibits filed at the FCC, business assumptions and technical detail for the network deployment schedule, and customer data for Wisper's highest speed packages. The Intervenors have not filed a motion to compel or otherwise attempted to compel responses to data requests.

It is clear that Intervenors are treating Wisper's application as 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. The Commission finds that no law "requires" that there be a hearing on the Company's application.

The Commission also finds with respect to Intervenors' stated concerns, that the ETC application process is not designed to assess a company's technology or broadband speed and latency capabilities. The Commission further finds that 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.

Wisper's 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. Because this is not a contested case and the ETC review process is not designed to assess a company's technology broadband speed and latency capabilities, the Commission will deny Intervenors' request for additional time.

In their *Joint Motion to Shorten Time* the Intervenors ask the Commission to shorten the time for data request responses from 20 to 15 days, making data request responses due by February 22, 2019. However, the Commission is issuing this order regarding Wisper's application prior to February 22, 2019; therefore, the Intervenors' motion to shorten time will be denied.

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

The Commission finds good cause exists to shorten the time for this order to become effective to less than 30 days because of the February 25, 2019, federal deadline for Wisper to obtain ETC designation in all relevant states.

THE COMMISSION ORDERS THAT:

1. The Intervenors' request for additional time is denied.
2. The Intervenors' request to shorten the time for data request responses is denied.
3. Wisper ISP Inc.'s application for designation as an eligible telecommunications carrier is granted as to the area identified by census blocks in Wisper's initial application.
4. The ETC designation shall be limited to the areas identified by census block in the Wisper ISP Inc.'s application.
5. This order shall be effective on February 24, 2019.
6. This file shall be closed on February 25, 2019.

BY THE COMMISSION



Morris L Woodruff

Morris L. Woodruff
Secretary

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

Clark, Regulatory Law Judge

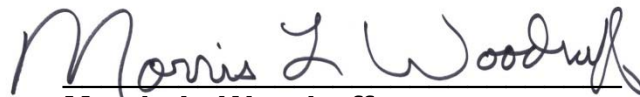
STATE OF MISSOURI

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 14th day of February 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

February 14, 2019

File/Case No. CA-2019-0196

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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.