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

In the Matter of the Investigation of
Aristotle Unified Communications, LLC
Related to the Connect America Fund
Phase II Auction

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File No. TO-2023-0436

STAFF'S INITIAL BRIEF

Respectfully submitted,

/s/ Whitney Scurlock
Chief Deputy Counsel
Missouri Bar No. 64078

Attorney for the Staff of the
Missouri Public Service Commission

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STAFF’S INITIAL BRIEF

Introduction

The Connect America Phase II Auction (“CAF II”) was intended by the Federal Communications Commission (“FCC”) to benefit certain unserved high cost areas of Missouri by encouraging companies to extend broadband services to those areas with federal subsidies and provide universal availability of modern networks capable of providing advanced mobile voice and broadband service.¹ The people of Missouri in those high cost areas won by Aristotle have been placed at a disadvantage because Aristotle has accepted its federal subsidies for over 4 years without placing a single piece of equipment within Missouri’s borders. It has not advertised to Missouri’s customers or made any attempts to offer a unique service in the state of Missouri. Rather, when pressed to meet its benchmark to provide service to at least 40% of its service area by the end of 2022, Aristotle made arrangements with other companies to piggyback off the resources that those companies were already providing to make a claim that it could provide service to 40% of its service areas. As the evidence presented at trial supports, the Commission should not recertify Aristotle to receive federal CAF II funding.

¹ *Connect America Fund & Intercarrier Compensation Reform Order and FNPRM Executive Summary*, Federal Communications Commission. <https://docs.fcc.gov/public/attachments/DOC-310692A1.pdf>

I. Should the Commission certify Aristotle under rule 47 CFR 54.314 to receive federal Connect America Fund Phase II funding for 2024?

No, the Commission should not certify Aristotle under rule 47 CFR 54.314 to resume receipt of federal Connect America Fund Phase II funding in 2024 or going forward unless the Company can provide evidence that it is actively benefitting the citizens of Missouri. This decision should be based on the provisions of 54.314, specifically the question of whether the federal funding Aristotle has received to date has been used for the provision, maintenance and upgrading of facilities and services for which the CAF II funding is intended.² The FCC is tasked with overseeing carriers' compliance with the Program generally, and the annual certification is one of the agency's "critical" means for fulfilling this mandate.³

a. Is Aristotle using federal Connect American Fund Phase II support for the provision, maintenance, and upgrading of facilities and services for which the support is intended?

At the evidentiary hearing, Commissioner Hahn established a three-prong test for whether a provider would be considered to have met the requirements of 47 CFR 54.314 such that it should receive federal funding. Those are: that a provider which is receiving federal high cost support for broadband obligations submit a report regarding its broadband deployment progress to the universal service administrative company (USAC) accepting on behalf of the FCC. That the provider states in a report to the Missouri Public Service Commission ("PSC") the funding it was provided in the year prior was utilized and that the funding for the next year will be utilized only for the provision, maintenance and upgrading of facilities and services for which the support is intended pursuant to 54.314

² 47 CFR § 54.314.

³ See § 54.314; *Review Order*, 31 FCC Rcd. at 12013. Consol. Commc'ns of California Co. v. Fed. Commc'ns Comm'n, 715 F. App'x 13, 15 (D.C. Cir. 2018).

and Commission rule 20 CSR 4240-31.015(3). Finally, the third prong would be that the state commission, in this case the Missouri Public Service Commission, certify to the USAC and FCC that the provider has utilized its funding only for those purposes intended.⁴

Staff agrees that the federal provision requires multiple parts to be satisfied, and points out that all eligible telecommunications carriers (ETC) receiving high cost funding file a report with our Commission annually under these obligations. That said, a company receiving CAF II funding is also required to report to USAC regarding the benchmarks set forth by the auction requirements and . Staff agrees that Aristotle has reported to USAC regarding its broadband deployment and that Aristotle alleges in its report to have utilized the funding and only used it for the purposes intended by the federal law thereby meeting two prongs of the three-pronged test.⁵ It is the validity of Aristotle's use of the funds which Staff raises concern about in this docket.

However, the responsibility ultimately falls to the state commissions, such as our PSC, to certify that the funding is properly used for the provision, maintenance and upgrading of facilities and services for which the support is intended.⁶ In a 2009 case, the Missouri Court of Appeals said, "When a carrier seeks ETC status for an area within a state, the state public utility commission is responsible for the ETC designation. In order to be eligible, the carrier is required to offer universal service support services throughout the designated area and to advertise the services and charges.⁷ The FCC further mandates that universal service support is to be used only "for the provision,

⁴ Tr. 101:1-8.

⁵ *Direct Testimony of Elizabeth Bowles on Behalf of Aristotle, LLC*, P.7:8-11.

⁶ 47 CFR § 54.314.

⁷ 47 U.S.C. § 214(e).

maintenance, and upgrading of facilities and services for which the support is intended” and under FCC Rules, states are required to annually re-certify this use of the funds.⁸ In other words, “[t]he state must certify that a carrier is using the funding appropriately.”⁹

For that reason, Staff opened this investigatory docket when Aristotle was unable to explain what the company had done to make broadband service available in Missouri.¹⁰ In the sections that follow, I will outline the reasons why Staff continues to recommend that Aristotle has not properly used the funding for the intended purposes and why this Commission should not grant recertification to the Company at this time.

Service

Aristotle has reported to USAC that it can provide service to 40% of its awarded census blocks¹¹ and in 12 days it will need to provide assurance that it can provide service to 60% of that area.¹² Staff witness John Van Eschen visited three locations within the census blocks that Aristotle purportedly could provide service to and reported successfully getting service.¹³ In order to get that service, Aristotle set up a tripod with a receiver and router, like those that would be installed at a customer’s residence, in the bed of a pickup truck. This arrangement enabled Aristotle to use a frequency signal generated by other parties’ equipment and establish an internet service connection for Mr. Van Eschen.¹⁴ Aristotle alleges that it could use this same methodology to install equipment on a customer’s house and provide broadband service.¹⁵ However, it is

⁸ 47 U.S.C. § 254(e); 47 C.F.R. § 54.314 (2008).

⁹ *Citing Qwest Corp.*, 258 F.3d at 1198. *State ex rel BPS Tel. Co. v. Missouri Pub. Serv. Comm'n*, 285 S.W.3d 395, 399 (Mo. Ct. App. 2009).

¹⁰ *Direct Testimony of John Van Eschen*, Schedule JVE-d2, P.5.

¹¹ *Direct Testimony of John Van Eschen*, P.5:9-12.

¹² *Direct Testimony of John Van Eschen*, P.4:4.

¹³ *Direct Testimony of John Van Eschen*, P.7:13-21.

¹⁴ *Id.*

¹⁵ Tr. 35:12-23.

impossible to know for certain whether any of this is accurate as Aristotle does not have a single customer to which it is providing broadband service in Missouri.¹⁶ Additionally, Staff called Aristotle on December 18, 2023, and asked about establishing service at their Missouri residence. The Aristotle representative stated that the company did not service Missouri at this time, but maybe in the next few months. At the evidentiary hearing, Aristotle's witness, CEO Elizabeth Bowles, stated that it has two Missouri e-mail customers, which she defined as customers who pay Aristotle to have an email address from its domain.¹⁷ Neither of these customers is in the census blocks for which Aristotle receives CAF II funding by its own admission.¹⁸

At the evidentiary hearing, Staff asked witness Bowles if Aristotle had contracts with either US Cellular or ETC Number 2 to provide the broadband services necessary to serve its census blocks.¹⁹ Bowles stated that there was an agreement with US Cellular and a "Memorandum of Understanding" with ETC No. 2.²⁰ Bowles states that the US Cellular agreement has been in place since 2022 and that an Operating Agreement with ETC No. 2 should be in place soon.²¹ Staff is aware of only two agreements between Aristotle and ETC No. 2: a Mutual Confidentiality Agreement and a Temporary Usage Agreement.²² Staff assumes Ms. Bowles' reference to a Memorandum of Understanding is to the Mutual Confidentiality Agreement. Staff received a copy of the Mutual Confidentiality Agreement signed by both parties on

¹⁶ Tr. 62:10-16 to 63:1-5.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Tr. 86:18-25.

²⁰ Tr. 86:23 to 87:1-12.

²¹ Tr. 87:13-25. Staff's understanding of an Operating Agreement is solely based on Bowles' testimony at the evidentiary hearing that it will embody an agreement between the companies for ETC No. 2 to provide service on behalf of Aristotle and will be used in a Section 214 transfer process.

²² Responses to Staff DRs 28 and 42.

September 27, 2023.²³ This document essentially addresses the sharing of confidential information between Aristotle and ETC No. 2.²⁴ The Temporary Usage Agreement permits Aristotle to use the facilities that ETC No. 2 owns.²⁵ The Temporary Usage Agreement lacks specific compensatory rates.²⁶ It is not clear when the Temporary Usage Agreement was fully executed with ETC No. 2 because the document does not identify the date it was signed by either party.²⁷ The agreement with US Cellular was signed October 12, 2023.²⁸ Aristotle's agreement with US Cellular is a Reseller Agreement enabling Aristotle to resell the data service provided by US Cellular.²⁹ Both the Temporary Usage Agreement with ETC No. 2 and the Reseller Agreement with US Cellular should have been in place by December 31, 2022, in accordance with Aristotle's claim to USAC that broadband service was available on December 31, 2022. Certainly it seems improper that Aristotle did not have the final contracts in place with either US Cellular or ETC No. 2 prior to certifying to USAC that 40% of its census blocks could receive broadband service.

Witness Bowles testified that Aristotle had a strong working relationship with ETC No. 2 and that the two companies went back to their founding in their relationships.³⁰ While this is certainly a positive factor, Staff would note that witness

²³ EFIS Item No. 7. This agreement was initially provided to Staff on September 6, 2023 in the company's response to DR 28; however, the copy was solely signed by Aristotle. Aristotle later provided a copy signed by both parties in its response filed into the case file on September 27, 2023.

²⁴ *Id.*

²⁵ Response to Staff DR 42.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Response to Staff DR 32. The agreement is entitled "Reseller Agreement IoT Data Services". The "IoT" within this title refers to Internet of Things. Officials with US Cellular and Aristotle signed the agreement on page 20 of this agreement.

²⁹ *Id.*

³⁰ Tr. 46:25 to 47:1.

Bowles also expressed frustration that the transfer of Aristotle's CAF II award to ETC No. 2 had taken longer than expected.³¹ Specifically, since the latter part of 2019.³² Staff cannot from either the information provided in its investigation, nor in the testimony that witness Bowles gave at the hearing, garner a feeling of assurance from the Memorandum of Understanding on which Aristotle bases at least some portion of its ability to provide service in Missouri. In its experience, Staff would expect to see a formal agreement to provide service on behalf of another company as an obvious requirement of doing business with any other company; no matter the relationship that the leadership of those companies might have established. The fact that these two companies are alleged to have been in unsuccessful negotiations to transfer interest for 4 years now adds an extra facet to Staff's concern that at any time the understanding established between Aristotle and ETC No. 2 could be terminated and Aristotle would have no contract to enforce to continue offering services in Missouri.³³ Staff in light of this lack of formal agreement further feels a concern that Aristotle should not be recertified to receive federal funding.

Costs

At the evidentiary hearing, Aristotle witness Bowles stated that the CAF II funding Aristotle received was insufficient to cover the full cost of providing service to the census blocks which Aristotle was awarded.³⁴ Staff acknowledges that costs have risen and may affect the costs to construct or purchase materials. However, pursuant to 47 CFR 54.310, a company that bid to receive CAF II funding is required to certify that it is financially and

³¹ Tr. 15:1-3.

³² Tr. 38:17-18.

³³ *Id.*

³⁴ Tr. 29:18-21.

technically qualified to provide the services supported by CAF II in order to receive the funding.³⁵ Staff is concerned that Aristotle would certify that it is financially qualified to provide the necessary services to USAC and the FCC, but then tell this Commission that the CAF II funding does not cover the costs to provide service.³⁶ Staff would propose that if at some stage a company is unable to provide the service it certified it would provide using the federal funding expected then that company should convey that information to USAC and the FCC. Further, the CAF II funding is intended to be a supplement to the standard costs to extend broadband to a given area.³⁷ The census blocks which were awarded in the auction were “high-cost” areas, which means it is more expensive than the average census block to provide service to that area.³⁸ The CAF II funding is intended to make equal the cost to provide broadband services to one census block as they would be for the average census block. However, the program was designed to pay out over 10 years and any business knows that the market can fluctuate widely in that time period.³⁹ Aristotle would or should have known that the CAF II funding may not ultimately cover the full cost of the bill when it made its bid. Staff finds this point in Aristotle’s argument to be unfounded by the full weight of the evidence.

³⁵ 47 CFR §54.314

³⁶ Tr. 29:18-21.

³⁷ “Through CAF Phase II, the FCC provides funding to service providers to **subsidize** [emphasis added] the cost of building new network infrastructure or performing network upgrades to provide voice and broadband service in areas where it is lacking.” [Connect America Fund Phase II FAQs](#) [Connect America Fund Phase II FAQs | Federal Communications Commission \(fcc.gov\)](#)

³⁸ *High Cost*, Universal Service Administrative Company, [High Cost - Universal Service Administrative Company \(usac.org\)](#)

³⁹ *Connect America Fund Phase II Auction (Auction 903)*, Federal Communications Commission, <https://www.fcc.gov/auction/903>.

Advertising

On the stand, witness Bowles stated that Aristotle is not required to advertise its services under the CAF II program requirements.⁴⁰ She is correct, Aristotle is not required to advertise as part of the requirements specific to receiving CAF II funding.⁴¹ The Company is however, required to advertise as part of its designation as an eligible telecommunications carrier (ETC).⁴² Staff would suggest beyond the requirements of being an ETC that as a matter of public policy, the intent of the CAF Phase II auction is to “expand access to voice and broadband services for areas where they are unavailable.”⁴³ If a company is not advertising its services, such that customers are aware of the benefits the company may provide them, then what good is the extension of the services to unserved areas? Further, Aristotle witness Bowles stated that the methods of advertising that the Company has employed specific to the provision of broadband to its awarded census blocks are through the Company’s website, online sources and Facebook advertisements.⁴⁴ Staff is not naïve enough to assume that customers in the awarded census blocks are entirely cut off from the internet, but would point out that using only online advertising methods to promote internet services to customers who have limited or no access to the internet appears highly contradictory. Furthermore, Staff can find no evidence of the online advertising, through Facebook or otherwise, that witness Bowles pointed to in her testimony at the hearing. Aristotle’s Facebook page does not

⁴⁰ Tr. 98:10-13.

⁴¹ 47 CFR §54.314.

⁴² 47 CFR 54.201(d)(2) - A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and, except as described in [paragraph \(d\)\(3\)](#) of this section, shall throughout the service area for which the designation is received: Advertise the availability of such services and the charges therefore using media of general distribution.

⁴³ [Connect America Fund Phase II FAQs](#) [Connect America Fund Phase II FAQs | Federal Communications Commission \(fcc.gov\)](#)

⁴⁴ Tr. 55:1-4.

state that the Company provides any services in Missouri and as previously reported, Aristotle's website was only updated to include a listing for services in Missouri in 2023.⁴⁵ Staff also proposes that the nature of business generally expects companies to want customers. To have a company like Aristotle protesting that it is not required to advertise its services makes little sense. All ETCs are required to advertise service availability.⁴⁶

Equipment

Aristotle alleges that it has used the bulk of its CAF II funds to purchase equipment for use in Missouri.⁴⁷ Staff cannot state with certainty that any equipment has actually been purchased for Missouri as the evidence Aristotle provided to support its claim is a spreadsheet it produced and a photo of equipment in a warehouse.⁴⁸ The photo provided to Staff is of boxes wrapped in cellophane with no Missouri-specific labels or other identifying qualities.⁴⁹ On the stand, witness Bowles stated that the equipment could only be used for Missouri operations, however, this equipment is all presently stored in a warehouse in Arkansas approximately 2.5 hours' drive away.⁵⁰ Further, much of the material listed on the spreadsheet seems to be standard construction material that is not specific to a certain type of broadband frequency or service.⁵¹ Aristotle also openly admitted on the stand that it has not installed any equipment in Missouri.⁵² Without any reassurance other than statements that the intent is for the equipment to end up being

⁴⁵ *Direct Testimony of John Van Eschen*, P.5:17-19.

⁴⁶ §54.202(d)(2).

⁴⁷ *Direct Testimony of Elizabeth Bowles on Behalf of Aristotle, LLC*, Confidential Schedule 5.

⁴⁸ Response to Staff DR 34.

⁴⁹ *Id.*

⁵⁰ From Ms. Bowles' testimony on the stand it is unclear whether the 3 hours' drive to Missouri referenced and the 30 minutes closer status of the warehouse meant the distance to the Missouri border or the distance to the counties for which Aristotle is receiving funding to provide broadband service.

⁵¹ *Direct Testimony of Elizabeth Bowles on Behalf of Aristotle, LLC*, Confidential Schedule 5.

⁵² Tr. 76:3-9.

used in Missouri eventually, Staff does not feel that Aristotle has carried its burden of certifying that the funding has been used for the provision of services.

Legal Fees and Fund Administration Costs

Beyond the equipment Aristotle also attributes the remainder of its costs, to legal fees and fund administration costs.⁵³ Witness Bowles was vague in responding to Staff's questions about the process of operating in Missouri compared to other states in which Aristotle was awarded CAF II funding.⁵⁴ Missouri's requirements for its applications are primarily those required by federal law, which would be consistent across the five states for which Aristotle receives CAF II funding.⁵⁵ Staff believes that the federal funding is intended solely for the benefit of Missouri's citizens and would attribute costs related to Aristotle's bid with the FCC and becoming properly certified in Missouri to startup costs that a company would spend outside of its CAF II funding allowance. Considering again, that Aristotle has not installed equipment in this state, nor established a single Missouri broadband customer it is questionable whether any of the funding can actually be attributed to these efforts.

Transfer

Aristotle has justified its actions primarily by stating that it intends to transfer its federally awarded interests to another company.⁵⁶ Aristotle identifies this entity as ETC No. 2 for confidentiality purposes. To be clear, this ETC No. 2 is the same company with which Aristotle has a Temporary Usage Agreement to offer services to Missouri customers currently, but for which there are no dates certain and for which

⁵³ *Direct Testimony of Elizabeth Bowles on Behalf of Aristotle, LLC*, Confidential Schedule 5.

⁵⁴ Tr. 96:5-16.

⁵⁵ Tr. 78:22 to 79:4.

⁵⁶ Tr. 87:15-21.

Aristotle provides no compensation to ETC No. 2.⁵⁷ Witness Bowles on the stand said that Aristotle is close with ETC No. 2 and that their relationship goes back to the founding of the respective companies.⁵⁸ She also stated that Aristotle is not at all concerned with the idea of ETC No. 2 changing its mind about allowing Aristotle to use its equipment in Missouri to offer broadband services to its census blocks.⁵⁹ Witness Bowles did not seem to have any backup plan in place for Aristotle to provide its broadband services in Missouri if ETC No. 2 did change its mind and cease its informal agreement with Aristotle.⁶⁰

However, this ETC No. 2 is the same company which witness Bowles identified as having transfer discussions with Aristotle in the latter part of 2019.⁶¹ She stated that the transfer had drug on quite a bit and certainly longer than she had anticipated.⁶² When Staff asked witness Bowles about the delay in the transfer she said she would have “done things differently” had she realized that the transfer would take so long.⁶³ Bowles also stated that she believed the Commission not recommending recertification for Aristotle had delayed the transfer process between Aristotle and ETC No. 2.⁶⁴ If the transfer has been in progress from the end of 2019 until October 2023 and the process was slowed down by the recertification process that only accounts for the past two months. There is no explanation for why a transfer would take 3.5 years unless there is some other problem holding up the transaction. Witness Bowles expressed her hope that the transaction will be complete in the early part of 2024.⁶⁵ She did not clarify what is

⁵⁷ *Id.*

⁵⁸ Tr. 46:25 to 47:1.

⁵⁹ Tr. 89:15-19.

⁶⁰ Tr. 81:25 to 82:6.

⁶¹ Tr. 38:16-18.

⁶² Tr. 60:20-22.

⁶³ Tr. 60:23 to 61-4.

⁶⁴ Tr. 33:8-11.

⁶⁵ Tr. 65:8-9.

different about the current environment that has not been present the past 3.5 years other than that we are post-pandemic. Staff has not seen any evidence to support an acceleration in the transfer process and Bowles admitted that the operation agreement and the transfer agreement are not final.⁶⁶ Bowles also admitted that the transfer process will take at least six months once it has begun.⁶⁷ Which means if the Commission recertifies Aristotle, it will receive funding for at least six months before a transfer is complete. Staff does not think that gambling with federal funding based on nothing more than the hope of Aristotle's CEO is a prudent decision.

Conclusion

As stated, Aristotle should not be recertified under federal provision 47 CFR 54.314. There is no reliable evidence that the funds paid out to Aristotle since 2019 have been used for the provision, maintenance and upgrading of facilities and services for which the CAF II funding is intended. Based on the inability to determine whether past funding has been used appropriately, Staff cannot with any certainty recommend that future funding would be used for lawful purposes either. The Company has done nothing to benefit the citizens of Missouri and if anything has caused a detriment by taking funding away from our citizens meant to improve its high cost areas. Aristotle has not lived up to the intent of the Connect American Fund Phase II Auction and should not be permitted to receive further funding. The people of Missouri deserve better and unless and until a new company commits to taking action on the promises that Aristotle made and then failed to deliver, no additional funding should be paid out.

⁶⁶ Tr. 64:21-25.

⁶⁷ Tr. 64:11-18.

Respectfully submitted,

/s/ Whitney Scurlock

Whitney Scurlock
Chief Deputy Counsel
Missouri Bar No. 64078
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7434 (Telephone)
(573) 751-9285 (Fax)
whitney.scurlock@psc.mo.gov

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 26th day of December, 2023, to all counsel of record.

/s/ Whitney Scurlock