

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Investigation of )  
Aristotle Unified Communications, LLC )  
Related to the Connect America Fund ) File No. TO-2023-0436  
Phase II Auction )

**ARISTOTLE’S REPLY BRIEF**

Aristotle Unified Communications LLC (Aristotle), pursuant to Commission order, for its Reply Brief states as follows:

**Introduction**

As demonstrated in Aristotle’s Initial Brief, the Commission should certify it as an ETC for 2024 under 47 CFR 54.314 as soon as possible. It has properly used CAF II funds to make service available in the awarded census blocks and has continued to meet the FCC’s service availability milestones. Recertification will support ongoing deployment of service and benefit the people in the census blocks.

In its Brief, Staff did not provide any legitimate reason for the Commission to delay certification any further. Staff apparently made up their mind months ago that it would never support recertification of Aristotle under any circumstances. Staff’s negative recommendation led the Commission into leaving Aristotle off the September certification list before Aristotle could even file its response to the recommendation. Staff declined to provide rebuttal testimony at the hearing, and cross-examination of Aristotle’s witness did not yield any contradiction of the witness’ pre-filed direct and live rebuttal. But instead of conceding the validity of Aristotle’s expenditures of awarded CAF II funds, Staff seeks to impose inapplicable standards based on mischaracterized evidence and extra-record citations.

Despite Staff's intractability, the record shows that the Commission should recertify Aristotle under rule 54.314, because it has in fact been "actively benefiting the citizens of Missouri" as Staff demands on page 2 of its Brief.

Aristotle has been pursuing dual paths. The first, spend awarded CAF II funds to meet service availability milestones because at present it is and will be the service provider. Second, try to facilitate transfer of the awarded census blocks (along with all purchased equipment and future support funds, etc.) to a company that already has thousands of Missouri customers to allow for more efficiency.<sup>1</sup>

Regardless of whether Aristotle remains the provider or the census blocks are transferred with FCC approval, loss of CAF II support funds due to lack of 54.314 certification only serves to harm Missourians in the census blocks. It is unfounded and misguided punitive action that will significantly impede broadband service deployment in these areas regardless of which company ultimately has the obligation to complete deployment.

For the convenience of the Commission, Aristotle replies using the section headings of Staff's Brief.

### **Service**

Mr. Van Eschen admitted at the conclusion of the hearing that Aristotle is not required to have customers in the awarded census blocks, but rather is only required to make service available.

**A.** A company doesn't need to necessarily have broadband subscribers. This funding is designed to benefit those consumers and at least make the service available to them so they – if they want to subscribe to it, they have that ability.<sup>2</sup>

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<sup>1</sup> Bowles Live Testimony, Tr p. 102, line 25 – p. 104 line 3.

<sup>2</sup> Van Eschen Live Testimony Tr. 117 lines 17 – 21.

Yet despite this admission that number of customers is not an applicable criterion, Staff attempts to hold Aristotle to an unfounded requirement that it must have subscribers “right now, no matter what,” in what is still the early stage of service deployment, in order to continue to receive funds designed to support ongoing deployment.

Rule 54.314 does not call for an examination of subscriber counts; it only asks for certification about use of funds. As discussed in Aristotle’s Initial Brief and in the next section of this Reply Brief, the evidence shows that Aristotle is spending the CAF II support funds properly, it is meeting the applicable milestones for deployment of service availability, and it is actively seeking customers.

Staff also admit that field service availability tests were successful. (Staff Brief at 4). But Staff is not satisfied by the fact that Aristotle voluntarily subjected itself to random service tests conducted in accordance with Staff instructions.<sup>3</sup> In Staff’s view, “it is impossible to know for certain” whether other tests would be successful. (Staff Brief at 5). Again, Staff sets an inapplicable standard for certification under 54.314.

Staff improperly references a post-hearing telephone call on page 5 of its Brief. Aristotle has moved to strike that reference, and in the alternative has proffered an affidavit (Ex 201) which refutes Staff’s extra-record assertions and shows that the caller was only told Aristotle did not have service available in the caller’s location, which was outside of the awarded census blocks.

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<sup>3</sup> Ex 200 Bowles Direct p. 8, lines 8 – 14; Bowles Live Testimony, Tr. p. 40 line 17 – p. 41 line 15.

Staff improperly references extra-record documents produced in discovery and speculates about purported deficiencies in Aristotle’s milestone reports to the FCC, but again the record shows that Aristotle has met and will meet the milestones properly using a combination of leased spectrum and purchased subscriber equipment (and newly constructed towers in the future).<sup>4</sup> The FCC is indisputably in charge of the milestones, and the FCC indisputably does not irreversibly deny access to CAF II support funds just because a milestone is missed. Yet, Staff asks the Commission to permanently deny Aristotle access to CAF II support funds based on Staff’s inapplicable standards and speculations.

Further, despite the fact that the evidence shows that Aristotle plans to meet future milestones even if its “Plan A” transfer of the census blocks does not happen (discussed below)<sup>5</sup>, Staff argues that the Commission should permanently deny Aristotle access to CAF II support funds because the transfer might not happen. Yet another inapplicable standard.

### **Costs**

The evidence shows that not only has Aristotle properly spent all the CAF II funds received for Missouri, but that it has also spent its own funds on top of awarded funds in order to meet the milestones. This evidence shows that Staff’s allegations that Aristotle had not spent any of the CAF II funds and instead was sitting on them were totally unfounded. In its Brief at 7-8, Staff completely misconstrues the evidence regarding expenditures as if Aristotle were complaining that it does not have enough funds and is not financially qualified, when it was

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<sup>4</sup> Aristotle has moved to strike Staff’s footnote references to discovery responses and documents that are not in the record. Had Staff chosen to put the additional information into the record at the hearing, Aristotle could have provided additional explanation. While there was testimony about these agreements and how they would apply at present, there was no inquiry at the hearing about prior service methods and Staff is just speculating. And despite the pejorative intent, there is nothing improper about “piggybacking” on existing facilities to be cost-effective. Bowles Live Testimony Tr p. 36 lines 15-17.

<sup>5</sup> Ex 200 Bowles Direct p. 11 lines 1-4.

simply explaining the facts regarding its expenditures. Additionally, pursuant to FCC guidelines, if a company has retained money in a bank account rather than expending it, the retained money is deemed to be used.<sup>6</sup> Therefore, even if Aristotle had retained a portion of the CAF Phase II Auction proceeds, that use of funds is permissible as well.

The evidence shows Aristotle has met and will continue to meet the milestones. There is no contrary evidence.<sup>7</sup>

The evidence shows Aristotle has spent and will spend CAF II funds properly to meet milestones. There is no contrary evidence.<sup>8</sup>

The evidence shows Aristotle also has spent and will spend its own funds to meet the milestones. There is no contrary evidence.<sup>9</sup>

The evidence shows that Aristotle never had any expectation that CAF II funds alone would be sufficient. There is no contrary evidence.<sup>10</sup>

Staff concedes the purpose of CAF II funds is to support provision of service in high cost areas, and yet takes the inconsistent position that it will be better to take away those funds and require Aristotle or a successor to try to proceed in high cost areas without such support funds. (Staff Brief, p. 8, 13).

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<sup>6</sup> See FCC Report and Order and Further Notice of Proposed Rulemaking, May 26, 2016, In the Matter of Connect America Fund, WC Docket No. 10-90, para. 185 – 187 (permissible use of funds includes setting funds aside for future use).

<sup>7</sup> Ex 200 Bowles Direct at p. 8 line 15 -p. 9, line 3; Bowles Live Testimony, Tr. p. 47 line 7 – p. 48 line 7; p. 83 line 7 – p. 84 line 5.

<sup>8</sup> Ex 200, Bowles Direct p. 7 lines 14-23; p. 9 lines 14-16; p 11 lines 5-10; Ex 200 HC Sched 5; Bowles Live Testimony. p 28 line 3 -p. 30 line 22; p. 32 lines 8-17; p. 35 lines 17-23; p. 42 line 6 -p. 44 line 9; p. 56 lines 9- 24; p. 75 line 24 -p. 80, line 21; p. 102 line 25 – p 104 line 3.

<sup>9</sup> Id.

<sup>10</sup> Bowles Live Testimony Tr. p 32 lines 8-17.

There is no basis for Staff's new post-hearing "concern" that Aristotle is financially unqualified. Nor is this "concern" relevant to the single issue in this case.

Moreover, the FCC has secured against failure by requiring a standby letter of credit, so there is absolutely no cause for PSC concern.<sup>11</sup>

### **Advertising**

Staff admits that advertising is not a criterion at issue in this proceeding. (Staff Brief at 9). But Staff still keeps talking about it and does so inaccurately.

Aristotle has been advertising. It had developed 151 leads in the three counties as of the hearing date, service can be ordered online, and Aristotle is ready to promptly install equipment which is already in stock so that service can start.<sup>12</sup> Although these leads were outside the census blocks, they show the advertising is working.

Aristotle has been successfully promoting its services in other states using similar marketing approaches. Just because a potential customer does not have broadband service at their home does not mean that they do not have access to the internet and online advertising at work and other locations. There is nothing contradictory about using methods that work in other states. Ms. Bowles explained the difficulty of establishing direct contact with potential customers in these areas.<sup>13</sup>

Staff improperly references a post-hearing internet search on pages 9-10 of its Brief. Aristotle has moved to strike that reference, and in the alternative has proffered an affidavit (Ex

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<sup>11</sup> Bowles Live Testimony Tr. p 97, lines 2 – p 98 line 2.

<sup>12</sup> Bowles Live Testimony, Tr p. 35 line 16 – p. 38, line 7; p. 42 lines 10- 21; p. 44 line 10 - p. 45 line, 21; p. 119 line 19 -p. 120 line 1.

<sup>13</sup> Bowles Live Testimony, Tr p.54 line 24 – p 56 line 3.

202) which refutes Staff's extra-record assertions and shows that someone outside the target areas does not have access to the advertising that it has been conducting.

### **Equipment**

The evidence shows that Aristotle has spent 80% of CAF II funds received to purchase equipment for use in Missouri. There is no contrary evidence.<sup>14</sup>

Staff's response is that it cannot "state with certainty that any equipment has actually been purchased for Missouri." (Staff Brief p. 10). That response translates to "Staff has no contrary evidence."<sup>15</sup>

The evidence shows that Aristotle is well aware that it can only use equipment purchased with CAF II funds designated for Missouri for serving the awarded census blocks. Further, the evidence shows that Aristotle uses a "robust inventory system" to segregate equipment bought for Missouri from other equipment.<sup>16</sup>

All such equipment is ready for prompt use within the awarded census blocks.<sup>17</sup>

Staff's response is that these are only statements of "intent" and it "does not feel" reassured. (Staff Brief, p. 10-11). But these are not statements of intent, they are Aristotle's acknowledgment of the FCC's state-specific legal restriction on use of CAF II funds.

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<sup>14</sup> Ex 200HC Bowles Direct Schedule 5.

<sup>15</sup> Staff improperly refers to a data request response that is not in the record, but nonetheless the response confirms segregation of equipment.

<sup>16</sup> Bowles Live Testimony Tr p 43 line 4 – p 44 line 9.

<sup>17</sup> Bowles Live Testimony p. 44 line 10 – p. 45 line 10.

The evidence shows that Aristotle has been audited for periods 2017-2020 and is under audit for 2021 and 2022, just as a matter of course as a CAF II award recipient.<sup>18</sup> Further, at Staff's request USAC is auditing Aristotle, and Aristotle's commitments are backed up by the letter of credit to the FCC.<sup>19</sup> So, once again there is no credible basis for concern.

### **Legal Fees and Fund Administration Costs**

The evidence shows that 9% of CAF II funds have been spent on the required letter of credit as applicable to the Missouri census blocks.<sup>20</sup>

The evidence shows that another 9% of CAF II funds have been spent on applications and ongoing satisfaction of eligibility requirements.<sup>21</sup>

Staff cites no authority or evidence to contradict Ms. Bowles testimony that such expenditures were solely for Missouri and were proper.<sup>22</sup>

Staff contends on page 11 of its Brief that Ms. Bowles provided "vague" testimony about differences between operations in Missouri versus other states but cites to specific testimony about numbers of customers and contracts at Tr 96, lines 5-16. It is unclear why Staff is even making this contention in a section about Missouri specific costs. Again, Ms. Bowles was quite direct and specific:

**Q.** All the costs that are listed on here (HC Schedule 5), are they allocated – is this specifically the Missouri cost?

**A.** Yes.<sup>23</sup>

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<sup>18</sup> Bowles Live Testimony Tr. p 78 lines 4 – 21.

<sup>19</sup> Ex 200 Bowles Direct p. 9, lines 4-9; Bowles Live Testimony, p.53 line 3 – p. 54 line 1; p 97, lines 2 – p 98 line 2.

<sup>20</sup> Ex 200HC, Bowles Direct Schedule 5.

<sup>21</sup> Id.

<sup>22</sup> See supra note \_\_ (costs); Bowles Live Testimony Tr p. 78 lines 18 - 21

<sup>23</sup> Bowles Live Testimony Tr p 78, lines 18 – 21.



Staff cites no authority for its “belief” that these expenditures are ineligible “startup costs”. Aristotle provided evidence that they are eligible and consistent with advice from legal counsel.<sup>24</sup>

**Q.** And are you relying solely on your own judgment in that regard [propriety of expenditures, see prior question] or on other resources?

**A.** No. We have FCC counsel and we confirmed with him that how we are using the funds qualifies.<sup>25</sup>

And again, the evidence shows that Aristotle has been audited for periods 2017-2020 and is under audit for 2021 and 2022, just as a matter of course as a CAF II award recipient.<sup>26</sup> And, at Staff’s request, USAC is auditing Aristotle’s deployment in Missouri, and Aristotle’s commitments are backed up by the letter of credit to the FCC.<sup>27</sup> So, again, there is no credible basis for concern.

### **Transfer**

Staff takes issue with Aristotle’s plan to transfer the awarded Missouri census blocks to another company with operations in the area upon receipt of FCC approval. (Staff Brief at 11-13). Notably, however, Staff did not provide any evidence that contradicted Aristotle’s conclusion that such transfer would be beneficial, including in terms of overall efficiency of operations.<sup>28</sup>

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<sup>24</sup> See supra note \_\_\_ (costs),

<sup>25</sup> Bowles Live Testimony Tr p. 28 lines 8 – 11.

<sup>26</sup> Bowles Live Testimony Tr. p 78 lines 4 – 21.

<sup>27</sup> Ex 200 Bowles Direct p. 9, lines 4-9; Bowles Live Testimony, p.53 line 3 – p. 54 line 1; p 97, lines 2 – p 98 line 2.

<sup>28</sup> Ex 200 Bowles Direct p. 9 line 21 – p. 10 line 11.

Staff falsely claims that there is no backup plan in place if the proposed transfer falls through. (Staff Brief at 12). To the contrary, Ms. Bowles unequivocally testified that as long as Aristotle is recertified to receive the CAF II funds awarded to serve the high cost census blocks, it will continue to meet milestones itself if the transfer were not to occur.<sup>29</sup>

Staff discusses delays in the transfer process, but these delays have not impeded Aristotle's success in meeting the applicable milestones, which is the only pertinent measuring stick.<sup>30</sup>

Without any basis, Staff describes recertification of Aristotle prior to a transfer of the census blocks as "gambling with federal funding." (Staff Brief at 13). It is not a gamble to allow Aristotle to continue to receive funds so it can continue to use the funds to keep on meeting milestones. And the letter of credit provides complete assurance that there is absolutely no risk.

The census blocks are unlikely to be served without CAF II funds. The funds exist because these are high cost areas.

### **Conclusion**

Aristotle requests that the Commission certify it as an ETC for 2024 under 47 CFR 54.314 as soon as possible. The evidence shows that Aristotle has met the requirements and further delay in certification only serves to hurt the people of Missouri.

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<sup>29</sup> Ex 200 Bowles Direct p. 11 lines 1-4.

<sup>30</sup> Ex 200 Bowles Direct p. 8, lines 8 – 14; Bowles Live Testimony, Tr. p. 36 line 25 – p. 41 line 15; p. 46 lines 4 – 13; p. 70 line 17 – p. 71 line 7; p. 95, lines 13- 21.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via email this 3d day of January, 2024 on all counsel of record.

/s/ Carl J. Lumley

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