

BEFORE THE MISSOURI 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 ) File No. TO-2023-0436  
Phase II Auction )

**ARISTOTLE’S MOTION TO STRIKE**  
**OR IN THE ALTERNATIVE TO ADMIT LATE EXHIBITS**

Aristotle Unified Communications LLC (Aristotle) pursuant to 20 CSR 4240-2.130 and other applicable law moves to strike portions of Staff’s Brief which refer to matters not in evidence, or in the alternative moves for the admission of late exhibits responsive to those matters, as follows:

1. Aristotle objects to and moves to strike the reference to a post-hearing telephone call by an unidentified staff member in the first two full sentences on page 5 of Staff’s Brief and the reference to a post-hearing online advertising search by an unidentified staff member in the last full sentence on page 9 and the sentence that carries over from page 9 to page 10. The alleged information is not part of the record and does not come from sworn testimony that could have been the subject of cross examination. Commission decisions must be based on evidence of record. See, e.g., Section 386.510 RSMo.; *Matter of Verified Application and Petition of Laclede Gas Company*, 504 SW3d 852, 857 (Mo App 2016)(orders must be supported by substantial, competent evidence on the whole record). See also 20 CSR 4240-2.130(19)(all testimony to be under oath); *State ex rel. Utility Consumers Council v. PSC*, 562 SW 2d 688 (Mo App 1978)(party entitled to cross-examine witnesses).

2. In the alternative, pursuant to 20 CSR 4240-2.130(16) Aristotle moves for post-hearing admission of Exhibit 201 Affidavit of Carl Hardwick and Exhibit 202 Affidavit of James

Norris, submitted herewith, which provide sworn responses to the aforesaid extra-evidentiary references made by Staff in its Brief.

3. Aristotle also moves to strike footnotes 22, 25-29, and 48-49 and the references to Staff DRs that are not in evidence. Staff chose not to provide live rebuttal testimony. While there was testimony about these documents, the documents are not part of the record. For the same reasons stated in paragraph 1, these footnotes should be stricken.

WHEREFORE, Aristotle requests that the Commission strike the extra-record references from Staff's Brief identified herein or in the alternative that the Commission admit Exhibits 201 and 202 into the record.

CURTIS, HEINZ,  
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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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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