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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

TRANSCRIPT OF PROCEEDINGS
12-12-2023

EVIDENTIARY HEARING

VOLUME II

On December 12, 2023 the above cause came on for
hearing before the HONORABLE RON PRIDGIN, Regulatory Law
Judge, and the Public Service Commission of the state of
Missouri.

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APPEARANCES

Regulatory Law Judge:

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STAFF'S EXHIBITS

Staff	Description	Offered	Received
No. 100	Mr. Van Eschen testimony	18	18

ARISTOTLE'S EXHIBITS

Aristotle	Description	Offered	Received
No. 200	Ms. Bowle's testimony	27	27
No. 200HC	Confidential	27	27

REPORTER'S NOTE: Exhibits retained by court reporter.

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Fund Phase II Auction)
)

TRANSCRIPT OF PROCEEDINGS
12-12-2023

THIS EVIDENTIARY HEARING
COMMENCED AT
9:00 a.m.

EVIDENTIARY HEARING

VOLUME 2

1
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3 THE COURT: Good morning. This is an evidentiary
4 hearing in the matter of the investigation of Aristotle Unified
5 Communications, LLC, related to the Connect America Fund phase
6 II Auction.

7 I am Ron Pridgin. I am the Regulatory Law Judge
8 assigned to preside over this hearing that is being held
9 December 12, 2023, at the Government Office Building in
10 Jefferson City, Missouri. The time is 9:00 a.m. I would
11 like to get entries of appearance from counsel beginning
12 with staff, please.

13 MS. SCURLOCK: Whitney Scurlock on behalf of the
14 Staff of the Missouri Public Service Commission.

15 THE COURT: Ms. Scurlock, thank you. On behalf of
16 Aristotle Unified Communications, please.

17 MR. HEINZ: Thank you, Judge. Appearing for
18 Aristotle, Carl Lumley of the Curtis, Heinz, Garrett & O'Keefe
19 law firm.

20 THE COURT: Mr. Lumley, thank you. I don't believe I
21 see any other counsel in the room for any other parties, but
22 let me double check.

23 Anyone else wishing to enter an appearance?

24 All right. Hearing none, we'd normally begin with
25 opening statements and I would like to begin with Staff.

1 Is there anything else from counsel or from the bench
2 before we proceed to opening statements?

3 MR. LUMLEY: No, Your Honor.

4 MS. SCURLOCK: No, Your Honor.

5 THE COURT: Ms. Scurlock, when you're ready.

6 [OPENING STATEMENT.]

7 MS. SCURLOCK: May I please the commission? This may
8 be the first time this particular issue has come before this
9 commission and certainly it is a bit unusual. Aristotle has
10 tried to boil this case down to only a question of whether or
11 not it is appropriate for this commission to certify Aristotle
12 under provision 54.314. It has also tried to justify the fact
13 that it has not made any contributions to Missouri Citizens by
14 saying that it was not awarded a large enough service area.
15 However, the fact is that Aristotle was awarded this service
16 area in 2018 and starting in July of 2019, began receiving
17 installments of that federal funding. It has received over
18 \$1.3 million today. If Aristotle knew that it could not
19 provide service to the 788 locations it was awarded, then it
20 should have taken action to transfer it's obligations
21 immediately. Instead we are now here in 2023 and Aristotle
22 still has not successfully transferred its interests.

23 The Connect America Fund Phase II Auction was
24 intended to award federal funding to companies that could
25 provide internet service to high-cost areas of the US.

1 High-cost areas are those for which it is more expensive
2 to build out broadband service when compared with the
3 average cost in unserved areas. It was a reverse auction
4 which means that lower bids were considered preferable to
5 provide the requested broadband services. There were also
6 tiers of service that were weighted along with the bids to
7 determine the winners. Ultimately 103 bidders won \$1.49
8 billion to be paid out over the course of 10 years to
9 provide fixed broadband and voice services to over 700,000
10 locations in 45 states. Winning bidders are required to
11 hit benchmarks over the course of six years in order to
12 continue receiving their funding.

13 By the end of this year, Aristotle is required to be
14 able to provide service to 60 percent or more of its
15 service areas. Aristotle reported to the Universal
16 Service Administrative Corporation that oversees the
17 funding that it hit the December 31, 2022, benchmark to
18 provide service to 40 percent of its service area. It
19 reported that it hit that benchmark on December 31, 2022.
20 Staff saw no evidence of the service prior to Aristotle's
21 report and the company did not update its website to say
22 that it was able to provide service until this summer of
23 2023. In fact, from Staff's investigation it is learned
24 that Aristotle's ability to provide service has no
25 association with Aristotle at all, but rather comes from

1 the use of existing service that's provided by two other
2 companies. If these other companies can provide service
3 to the areas, then what good is the \$1.3 million that was
4 given to Aristotle already?

5 The company has openly admitted that it is not
6 serving broadband to a single Missouri customer, nor has
7 it installed a single piece of equipment in the state of
8 Missouri. Additionally, Aristotle is not advertising to
9 Missouri's customers using any method other than relying
10 on customers in other states to tell Missouri citizens
11 about their services. But Aristotle did not provide
12 evidence that is even facilitating what it calls this
13 word-of-mouth advertising method.

14 Federal provision 54.314 asks State Commissions to
15 attest to the Federal Communications Commission that
16 eligible telecommunication's carriers used all federal
17 funding provided to them for the current year, and will
18 use the funding for the next year for the provision,
19 maintenance, and upgrading of facilities and services for
20 which the support is intended only.

21 Our own Court of Appeals in 2009 quoted a 10th
22 Circuit case stating that the state must certify that a
23 carrier is using the funding appropriately. Staff has
24 been formally investigating the company through this
25 docket since June and was observing the companies reports

1 regarding its CAF II benchmarks prior to that. Staff
2 cannot in good faith recommend recertification of
3 Aristotle to receive federal funding when Aristotle has
4 been unable to prove that the citizens of Missouri are
5 receiving any benefits from these funds.

6 I imagine that today Aristotle will tell you that
7 Missouri is missing out on funding if the company is not
8 recertified. It may also tell you that the funding will
9 be transferred to another company for use in Missouri.
10 Aristotle's funding will not be withheld until the new
11 year. That means that at any point in this year of 2023,
12 Aristotle could have transferred its interests while it
13 was still receiving its funding. However, it has not. If
14 the commission recertifies Aristotle, Staff has no
15 reassurance that Aristotle will successfully transfer its
16 interests or that the money will be used in any matter
17 that benefits the state of Missouri. None of the
18 equipment that Aristotle reports to have purchased is
19 located in our state presently, and no construction work
20 has been reported to be started by Aristotle today.

21 Please consider what Staff has reported to you up to
22 this point and do not hand waive this money based on empty
23 promises. I encourage you to ask our witness, John Van
24 Eschen, about his investigation and his site visits to the
25 service areas that Aristotle has reported. Thank you.

1 THE COURT: Ms. Scurlock, thank you. Let me see if
2 we have any bench questions.

3 Commissioner Coleman, any questions for Staff
4 counsel?

5 MS. COLEMAN: No questions. Thank you, Judge.

6 THE COURT: Thank you. Commissioner Holsman, any
7 questions?

8 MR. HOLSMAN: (No response.)

9 THE COURT: Hearing none --

10 MR. HOLSMAN: No questions, Judge. I'm sorry.

11 THE COURT: I'm sorry, commissioner, thank you.
12 Commissioner Hahn.

13 MS. HAHN: No questions.

14 THE COURT: All right. Thank you.

15 Ms. Scurlock, thank you so much. Mr. Lumley, opening
16 when you're ready.

17 MR. LUMLEY: Good morning. Again, Carl Lumley
18 representing Aristotle this morning. I've enjoyed listening to
19 your PSE history moments during your agenda meetings and
20 hearing about colleagues of mine, Bill Steinmeyer, Jim Fisher,
21 and others. And practicing before the commission has always
22 been a pleasure in my career, and it got me thinking. It got
23 me thinking all the way back to when I started in 1985. On my
24 first day of practice I was helping my partner Lee Curtis
25 represent MCI in the days of trying to create telephone

1 competition for the first time. And this is the first time I
2 can think of in all the cases I've handled where the commission
3 made an adverse decision against a utility before hearing from
4 the utility. And you know, one of the advantages of due
5 process is decisions can be fully informed because you've heard
6 from all sides. But the commission is hearing from the company
7 now and the evidence will show that the commission should
8 change course and certify Aristotle to receive these funds.

9 With late certification, funding has been lost. It's
10 a pro rata loss. Once you're late from the -- it's an
11 October 1st deadline. There's a grace period to October
12 5th, but once you miss the grace period, then the funds
13 are lost. But if we get certification as soon as
14 possible, there still will be funds for 2024. By now it
15 means that over \$50,000 have been lost, but we can
16 minimize this commission. As the commission stated in its
17 order of designating Aristotle as an ETC, the CAF II
18 program is part of the FCC's reformed and modernization of
19 its Universal Service Fund Support programs designed to
20 accelerate the expansion of broadband service to rural
21 areas. The evidence will show that Aristotle was awarded
22 the CAF II support funds for Howell, Ozark, and Oregon
23 Counties in Missouri along the Missouri-Arkansas border.

24 Aristotle's CEO, Elizabeth Bowles, has submitted
25 prefiled direct testimony and will be here today to

1 testify further. She's been involved in
2 telecommunications with Aristotle and its former parent
3 company since 2000, she's been a licensed attorney since
4 1993, she was first in her class in law school, she's a
5 law clerk for the Circuit Court of Appeals, and worked in
6 private practice at a firm in D.C. -- a telecommunications
7 law firm prior to becoming involved with Aristotle.

8 Elizabeth demonstrates that Aristotle has spent Missouri
9 CAF II support funds properly, and has in fact -- and will
10 spend its own funds on top of those funds. She'll provide
11 further testimony on that point today.

12 So it's not just even the matter of these support
13 funds. They don't -- they don't track with your
14 milestones. The companies are always going to be behind,
15 and they will never actually catch up. Companies have to
16 spend more than the supported funds. But it's the use of
17 the support funds that is the only issue in front of the
18 commission today for certification under rule 54.314.
19 Staff confirmed this recommendation report, and indeed the
20 issues list confirms this as well. Elizabeth testifies
21 that Aristotle has been recertified in its other states of
22 operation: Illinois, Arkansas, Oklahoma, and Mississippi,
23 4-20-24. Staff asserts that Aristotle is just collecting
24 these funds and sitting on them. That's not correct and
25 the evidence shows just the opposite is true and that

1 Aristotle should be certified to continue to receive
2 support -- support funds. Staff raises concerns about the
3 CAF II milestones, but the evidence will show that
4 Aristotle is meeting the milestones and further that FCC
5 and USAC are in charge of the milestones. And under the
6 FCC's rules if a company isn't missing the milestones,
7 they don't forfeit support funds. The FCC can withhold
8 portions of the support funds, not even 100 percent. They
9 withhold portions of it and then restore those funds when
10 the company rights course and meets milestones. So even
11 in a situation where a company is behind -- we assume that
12 is not the situation for Aristotle, but if it were, the
13 funds would still ultimately be received once the company
14 caught back up. So it's -- the punitive action is the
15 lack of certification and permanent loss of support
16 funding.

17 Staff asked USAC to audit Aristotle and that audit is
18 underway. And Aristotle doesn't expect any issues, but again
19 if there were, USAC has plenty of authority to reclaim funds or
20 do whatever it thinks is appropriate. It's again not an issue
21 in front of this commission and certainly not an issue in the
22 case today.

23 That evidence will show that because Aristotle won a
24 very small set of census blocks, it determined that it would be
25 more advantageous for Missourians and more efficient for

1 another company with larger award to ultimately take over these
2 areas, and that process has dragged on much longer than
3 Aristotle anticipated but it has changed its course to not
4 wastefully spend these support funds. You don't build a tower
5 that the other company isn't going to need. I mean these
6 towers are expensive. Evidence will show it's \$300,000 in
7 today's money. You don't just spend that out of these support
8 funds and then have a tower go to waste. So it tried to
9 reposition its strategy so that when the transfer goes through,
10 the money is continued to be spent in an appropriate way. And
11 one impact of this delay has been on marketing and you'll hear
12 that Aristotle has been changing its marketing as it founds to
13 drag on. But again, that's not an issue in front of the
14 commission today.

15 Aristotle still plans to submit this transfer request
16 as to do so in cooperation with the transferee, and expects to
17 do that. And once that application is filed, you'll hear that
18 it's standard practice for there to be an operating agreement
19 so while that application is pending, the transferee can be
20 conducting the business. Aristotle would receive the support
21 funds to be able to transfer them to the operating company
22 while we're waiting for FCC support. And in general they
23 approve these transfers -- of course you can never guarantee
24 anything. But even if these support funds resume during
25 transfer, which is absolutely uncertain, we still have these

1 loss of funds until certification occurs. And then the only
2 loser ultimately in that is -- is the residents of these rural
3 counties. And if the transfer weren't approved, which again we
4 don't expect, but if it weren't, Aristotle would never recover
5 these lost funds either. And it creates a question that
6 dependent on how much has been lost on whether they could even
7 go forward. I mean it's just day by day you're losing money,
8 you're losing the ability to serve another customer, and that's
9 the concern.

10 So to best preserve these resources for the folks of
11 these counties, Oregon, Howell -- those are -- we're asking
12 that the commission recertify Aristotle as soon as possible.
13 Thank you.

14 THE COURT: Mr. Lumley, thank you. If you could hold
15 just in case we have bench questions.

16 Commissioner Coleman, any questions for company
17 counsel?

18 MS. COLEMAN: No questions, Judge. Thank you.

19 THE COURT: Commissioner Holsman, any questions?

20 MR. HOLSMAN: No questions, Judge. Thank you.

21 THE COURT: Thank you. Commissioner Hahn.

22 MS. HAHN: (Nonverbal response.)

23 THE COURT: No questions. All right. Thank you,
24 thank you. Just one quick note before we move onto evidence.
25 I just want to remind everyone, I believe Ms. Bowles attached

1 the confidential Exhibit to her testimony. And so because we
2 have people listening not just in the room but online, if you
3 want to discuss the contents of that confidential Exhibit,
4 please give me a heads up so we can make sure we're out of the
5 hearing of the camera properly.

6 So anything else before we proceed to evidence?

7 MR. LUMLEY: No, Your Honor.

8 MS. SCURLOCK: No, Your Honor.

9 THE COURT: Ms. Scurlock, when you're ready.

10 MS. SCURLOCK: Staff would call its witness John Van
11 Eschen to the stand.

12 THE COURT: Mr. Van Eschen, if you'll come forward to
13 be sworn please, sir.

14 [Witness sworn in.]

15 [Direct examination.]

16 MS. SCURLOCK:

17 Q. Would you please state and spell your name for the
18 court reporter?

19 A. **John Van Eschen, J-O-H-N. Last name V-A-N space**
20 **E-S-C-H-E-N.**

21 Q. And Mr. Van Eschen, by whom are you employed and in
22 what capacity?

23 A. **I'm employed by the Missouri Public Service**
24 **Commission. I'm the manager of the telecommunications**
25 **department.**

1 Q. And are you the same John Van Eschen who prepared or
2 cause to be prepared direct testimony in this case in
3 contribute to the Staff report that was filed in this case?

4 **A. Yes.**

5 Q. And those have been marked as Exhibit No. 100 by
6 Staff if that's okay.

7 THE COURT: Thank you.

8 BY MS. SCURLOCK:

9 Q. Do you have any changes or corrections to make to
10 that testimony today?

11 **A. I do not.**

12 Q. And is it true and correct to the best of your
13 knowledge and belief?

14 **A. Yes.**

15 Q. If I were to ask you the same questions that are
16 contained in your testimony, would your answers be
17 substantially the same?

18 MS. SCURLOCK: At this time Staff offers Exhibit 100
19 which is the direct testimony John Van Eschen both public and
20 confidential into the record.

21 THE COURT: Any objections?

22 MR. LUMLEY: No objection.

23 THE COURT: All right. Exhibit 100 is admitted.

24 [Exhibit 100 admitted into evidence.]

25 THE COURT: Ms. Scurlock, when you're ready.

1 MS. SCURLOCK: I tender this witness for cross.

2 Thank you.

3 THE COURT: Thank you. Mr. Lumley, any questions?

4 MR. LUMLEY: I have no questions.

5 THE COURT: All right. Thank you. Let me see if we
6 have any bench questions.

7 Commissioner Coleman, any questions for Mr. Van
8 Eschen?

9 MS. COLEMAN: No questions, Judge.

10 THE COURT: Thank you. Commissioner Holsman.

11 MR. HOLSMAN: No questions, Judge.

12 THE COURT: Thank you. Commissioner Hahn.

13 MS. HAHN: Thank you. I have questions. Thank you,
14 Judge.

15 [Bench questions.]

16 BY MR. HOLSMAN:

17 Q. Good morning, Mr. Van Eschen.

18 **A. Good morning.**

19 Q. I do just have a few questions to help me better
20 understand some of the testimony and exhibits that have been
21 filed. So in reading the Staff report, I think it's Exhibit C.
22 It says at a particular point that Staff asked for a copy of
23 the signed agreement, the transfer agreement with the company,
24 and the company obliged but provided a copy solely signed by
25 Aristotle. And so I did review that an executed transfer

1 agreement and it does seem to have both the -- both companies'
2 signatures on it. Can you speak to that? Because if I'm
3 reviewing the correct document, I'm trying to figure out --

4 **A. In terms of transferring the obligations from**
5 **Aristotle to this other company.**

6 Q. Yes.

7 **A. Yeah. I haven't seen anything substantial that would**
8 **indicate that. This -- this is something that Aristotle and**
9 **the other company would need to file with the FCC, and the FCC**
10 **would have a process in which to entertain that -- that**
11 **petition for a Section 214 transfer.**

12 Q. Okay. Mr. Van Eschen, on the Connect America Funds
13 can you speak to if Aristotle does not receive the funds and
14 they're retained within the FCC, what happens to those funds?

15 **A. By not certifying Aristotle, their CAF II funding**
16 **will cease January 1st. And I have tried to get some**
17 **clarification from my contacts at the FCC in regards to what**
18 **might happen with that funding should Aristotle be successful**
19 **in a Section 214 transfer, and I was unable to get a clear**
20 **concise answer from the FCC.**

21 Q. Even if the transfer agreement is not executed and
22 the funds remain within the FCC, how are Connect America Funds
23 either retained within the FCC or redistributed?

24 **A. I can't attest to what happens with the funds. The**
25 **funding to Aristotle would cease January 1st until this**

1 **commission would decide to recertify Aristotle.**

2 Q. Okay. My understanding was that if funds were
3 recouped or not -- not distributed by the FCC in the Connect
4 America Fund auction, if they retained -- were remaining within
5 that -- that fund, they would be used the same way in the same
6 reverse auction process so that they may actually come to the
7 state, those funds, through another reverse auction process, or
8 they could go anywhere else in the United States.

9 A. They -- they may. It's -- it's unclear to me.
10 It's -- the situation that we're in is somewhat unusual and FCC
11 staff admits it's unusual, but they understand the situation.

12 Q. Okay. And if transfer agreement is not approved by
13 the FCC, who has the burden of recouping the funds that have
14 been expended or how does that process work?

15 A. I think Aristotle would -- is -- is telling this
16 commission that it plans to meet the milestones on its own.
17 And I think at this point Aristotle would need to convince the
18 commission that they are serious, they have definitive plans,
19 that -- on how they would use the fundings so that it would
20 benefit the consumers at these 788 targeted locations.

21 Q. Okay. My understanding is that Aristotle is
22 currently being audited and the -- the results of that audit
23 are not yet complete. Can you speak to that or give me any
24 timeline for when you think that audit may be complete?

25 A. I do not. You know, when we were investigating the

1 company and I had communicated with the FCC about the company
2 and asked for advice, they were the ones that suggested the
3 USAC audit and I reached out to USAC. They started the audit
4 immediately and USAC has not kept me in the loop in terms of
5 the status of their audit and what they're exactly looking at,
6 when they intend to complete the audit. I do not know.
7 Aristotle to their credit has provided responses that they have
8 given to USAC. Some of those responses have generated concerns
9 for me simply because it suggests the company is advertising in
10 Missouri, it's suggesting that perhaps the company is
11 installing facilities in Missouri and none of that is true.
12 But I'm -- I -- I -- I don't know what prompted the pictures,
13 the information that Aristotle provided. So I don't know. All
14 I see is how Aristotle has provided information to USAC.

15 Q. Okay. The next one you may not know but I'm going to
16 ask it anyway. Has Aristotle filed a transfer agreement with
17 the FCC for approval to your knowledge?

18 A. Not to my knowledge.

19 Q. Okay. If they did, what's the timeline for that
20 approval process?

21 A. I don't know. I think it depends on the situation.
22 I think in terms of these sort of transfers, it's smoother if
23 the company acquiring the broadband obligations is already an
24 established ETC, and that appears to be the situation here if
25 they intend to pursue the Section 214 transfer.

1 MS. HAHN: I'm going to ask the Judge a question.
2 The agreement that's filed on the mutual confidentiality
3 agreement, can we discuss that?

4 THE COURT: Is this from Ms. Bowles testimony? To be
5 safe -- I think we can, but to be safe let me double check with
6 counsel for Aristotle.

7 Mr. Lumley, could you approach? I want you to look
8 at this document. I don't think it's confidential, but I
9 just want to verify. Thank you.

10 [Bench conference.]

11 MR. LUMLEY: Let me just confer for second.

12 [End of bench conference.]

13 MR. LUMLEY: Judge, as long as the name of the party
14 is not discussed. The name would be confidential, but the
15 terms would not be.

16 THE COURT: Mr. Lumley, thank you. Commissioner,
17 when you're ready.

18 BY MS. HAHN:

19 Q. Mr. Van Eschen, I am looking at a document where
20 Aristotle is engaged in a mutual confidentiality agreement with
21 another internet service provider or ETC. And were you aware
22 of that confidentiality agreement?

23 **A. I'm not exactly sure the purpose of that agreement.**

24 Q. Okay. I'm wondering if this mutual confidentiality
25 agreement proceeds a transfer agreement. Do you have any

1 knowledge of the --

2 **A. I do not.**

3 MS. HAHN: Okay. Thank you.

4 THE COURT: Commissioner, thank you. Let me see if
5 we have any questions based on bench questions.

6 Mr. Lumley, any cross based on those bench questions?

7 MR. LUMLEY: No, sir.

8 THE COURT: All right. Thank you. Let me see if we
9 have any further bench questions.

10 Commissioner Coleman.

11 MS. COLEMAN: No, Judge.

12 THE COURT: Thank you, commissioner. Commissioner
13 Holsman.

14 MR. HOLSMAN: No. Thank you, Judge.

15 THE COURT: Thank you. Commissioner Hahn, any
16 further questions?

17 MS. HAHN: (Nonverbal response.)

18 THE COURT: Any redirect, Ms. Scurlock?

19 MS. SCURLOCK: No questions. Thank you, Judge.

20 THE COURT: All right. Thank you. May this witness
21 be excused?

22 MS. SCURLOCK: Yes.

23 THE COURT: All right. Mr. Van Eschen, thank you
24 very much. You may step down.

25 Ms. Scurlock, any further evidence?

1 MS. SCURLOCK: None from Staff. Thank you.

2 THE COURT: All right. Thank you.

3 Mr. Lumley, any evidence?

4 MR. LUMLEY: Yes, Judge. And preliminary question,
5 what Exhibit No. would you want to assign to our exhibits? Do
6 you want to start at 200 or --

7 THE COURT: I think so.

8 MR. LUMLEY: Okay.

9 THE COURT: Thank you, Mr. Lumley.

10 MR. LUMLEY: And then for the confidential portion,
11 just call that 200HC or C --

12 THE COURT: HC will be fine. Thank you.

13 MR. LUMLEY: Okay. Thank you, Judge. And then call
14 Elizabeth Bowles to the stand.

15 THE COURT: Elizabeth Bowles, if you'll come forward
16 to be sworn please.

17 [Witness sworn in.]

18 THE COURT: Thank you very much. You may have a
19 seat.

20 Mr. Lumley, when you're ready.

21 MR. LUMLEY: Thank you, Judge.

22 [Direct examination.]

23 BY MR. LUMLEY:

24 Q. Can you state your name, please?

25 A. **Elizabeth Bowles B-O-W-L-E-S.**

1 Q. And by whom are you employed?

2 **A. Aristotle Unified Communications.**

3 Q. And in what capacity?

4 **A. I'm the CEO.**

5 Q. Did you submit prefiled direct testimony on behalf of
6 Aristotle in this case?

7 **A. I did.**

8 Q. And you just heard me discussing that with the Judge.
9 Those exhibits would be marked Exhibit 200 and then the
10 confidential would be Exhibit 200HC. Is that -- do you
11 understand we're talking about the same thing?

12 **A. Yes.**

13 Q. And do you have that testimony in front of you?

14 **A. Yes, I do.**

15 Q. Do you have any corrections to your prefiled
16 testimony?

17 **A. I don't have any corrections, but I realized that in
18 my bio I left off that I had been appointed by Chairman Pai to
19 serve as the chair of the Broadband Deployment Advisory
20 Committee for the FCC in 2017, and I held that position for
21 four years. That's an advisory body that was tasked with
22 making policy recommendations to the FCC for eliminating the
23 digital divide. I left that out of my resume.**

24 Q. If I ask you the questions set forth in your prefiled
25 direct testimony, would your answers be the same today?

1 **A. They would be.**

2 Q. And just to provide a heads up to the commission, do
3 you anticipate Aristotle will be submitting a name change to
4 the commission in the near future?

5 **A. Yes. We have converted from an LLC to a C**
6 **corporation. So we will be changing our name from Aristotle**
7 **Unified Communications, LLC to Aristotle Unified Communications**
8 **Inc.**

9 Q. Does that have anything to do with the issues in this
10 case?

11 **A. No.**

12 MR. HEINZ: I move for the admissions of 200 and
13 200HC.

14 THE COURT: Any objections?

15 MS. SCURLOCK: None, Your Honor.

16 THE COURT: In hearing no objections, Exhibits 200
17 and 200HC are admitted.

18 [Exhibits 200 and 200HC admitted into evidence.]

19 MR. LUMLEY: Thank you.

20 BY MR. LUMLEY:

21 Q. And Elizabeth, do you have Mr. John Van Ezchen's
22 prefiled direct testimony --

23 **A. I do.**

24 Q. -- available to you?

25 **A. Yes.**

1 Q. And have you read that prior to today?

2 **A. I have.**

3 Q. I'll ask you to turn to page 2. On page 2, Mr. Van
4 Eschen states that Staff's position is that Aristotle is not
5 using CAF II funds -- or CAF II funds as intended. Has
6 Aristotle used any CAF II funds for improper purposes?

7 **A. We have not.**

8 Q. And are you relying solely on your own judgment in
9 that regard or on other resources?

10 **A. No. We have FCC counsel and we confirmed with him**
11 **that how we were using the funds qualifies. We also have a**
12 **slide deck from FCC counsel for regulatory compliance that**
13 **outlines proper use and improper use of funds and we have used**
14 **funds only for proper purposes.**

15 Q. I'll refer you to confidential Schedule 5 of your
16 testimony.

17 **A. Yes.**

18 Q. What is that schedule?

19 **A. That is a breakdown of where we have spent the**
20 **Missouri CAF II funds as of 10-31-2023.**

21 Q. And does it identify categories of expenditures?

22 **A. It does, yes.**

23 Q. Are the names of categories confidential?

24 **A. No, not the names.**

25 Q. So can you identify what the categories are?

1 **A. Sure. Long-Form Application for the state of**
2 **Missouri, which is engineering and prepping data application**
3 **for the FCC, the application to become an ETC in Missouri when**
4 **we first did that, ongoing compliance in Missouri, the Missouri**
5 **stand-by letter of credit fees and then network deployment.**

6 **Q. And network deployment consisted of what**
7 **subcategories?**

8 **A. Distribution equipment, backhaul equipment, customer**
9 **premises equipment, routers, cabinet and ground equipment, and**
10 **steel for tower construction.**

11 **Q. And also labor.**

12 **A. Yes, labor.**

13 **Q. At the bottom of the first page, Schedule 5, what are**
14 **the headings of the last three lines there?**

15 **A. Total spent, total Missouri CAF II funds received,**
16 **and net Missouri CAF II funds remaining deficit.**

17 **Q. Is the net a positive or negative number?**

18 **A. It's a negative number.**

19 **Q. And what does it mean that it's a negative number?**

20 **A. It means that we've spent more funds than we've**
21 **received.**

22 **Q. And as of what date?**

23 **A. This would be 10/31.**

24 **Q. Of this year.**

25 **A. Of this year, sorry.**

1 Q. And what's shown on the second page of Schedule 5?

2 **A. Anticipated expenditures through the end of the year.**

3 Q. And does that have a net figure as well?

4 **A. Yes. It is a negative number as well.**

5 Q. Is it -- is the negative net as of December 31st
6 larger or smaller than the negative net as of October 31st?

7 **A. It's substantially higher.**

8 Q. Your testimony was filed on November 17th and it's --

9 **A. Yes.**

10 Q. -- now December 12th. Are there projections on page
11 2 of Schedule 5 turning out to be accurate projections?

12 **A. They're going to be very close. Obviously these**
13 **projections did not take into account the cost of this**
14 **investigation, or the cost of the USAC audit. But other than**
15 **that, yes.**

16 Q. As of today do you still expect that Aristotle will
17 have spent more than just the CAF II funds it's received for
18 Missouri as of the end of the year?

19 **A. Yes, absolutely.**

20 Q. And do you expect that negative number to be larger
21 or smaller than what's shown as a projection on Schedule 5?

22 **A. Probably larger.**

23 Q. You explained in your direct testimony of page 6 that
24 because of commission missed the October deadline to certify
25 Aristotle under rule 54.314 that the support funds could be

1 paid in 2024 are being reduced as each day passes --

2 **A. Yes.**

3 Q. -- and you testified that the monthly installments of
4 the CAF funds have been 25,000. So how much has been lost --

5 **A. So --**

6 Q. -- as of right now --

7 **A. Well, rough numbers was 50,000 at the end of November
8 and it's \$833 a day going forward.**

9 Q. And does that \$833 translate to reality in the field?

10 **A. Yeah. To put it another way it costs roughly \$800 to
11 install a customer. So every \$833 lost is the equivalent of
12 losing one customer installation a day.**

13 Q. And can these lost funds be recovered to the best of
14 your knowledge?

15 **A. Not that I am aware of, no.**

16 Q. You were in the hearing room while Mr. Van Eschen was
17 testifying. Correct?

18 **A. Yes.**

19 Q. And you heard Commissioner Hahn's questions about
20 what happens to these funds.

21 **A. Yup.**

22 Q. Do you have knowledge about what happens to these
23 funds?

24 **A. I do actually. So when funds are taken by the FCC
25 for whatever reason either through company default or because**

1 of this where there's a delay in certification of a company,
2 those funds go back into the bucket and are redistributed in
3 whatever manner the FCC chooses at some later point. So they
4 may or may not as you pointed out come to the state of Missouri
5 because it will go into whatever their next reverse auction is.
6 So the funds that are lost for the late certification are
7 effectively lost to the state.

8 Q. With or without these lost funds will Aristotle
9 and/or a transferee of Aristotle of these Missouri census
10 blocks, and Howell, Oregon and Ozark counties ever catch up so
11 that the support funds equal the amount spent?

12 A. No. Even if 100 percent of the funds are received,
13 deployment is significantly more expensive than the amount of
14 funds received through the CAF II program. The funds from CAF
15 II are intended to serve as a subsidy of sort. They're not
16 actually a subsidy but they're intended to pay a portion of the
17 total deployment, not the entire amount.

18 Q. If the commission does not promptly certify Aristotle
19 under Rule 54.314, and all the remaining funds for 2024 and
20 presumably beyond are lost, how will that impact the delivery
21 of broadband to the people of these counties?

22 A. It would make it a lot more expensive and more
23 difficult to do. And I don't know if you've driven through the
24 counties, but they're extremely difficult demographically and
25 expensive to deploy. So loss of that funding would make it

1 very difficult for a company to deploy broadband successfully
2 into those areas.

3 Q. If Aristotle is successful in transferring the census
4 blocks to another provider and hopefully funding resumes later
5 in 2024 or 2025, how would the loss of funds impact the
6 provision of fixed warehouse broadband to the people in these
7 counties?

8 A. I assume it would be the same thing for a new
9 provider. I mean if the provider took over, they're not going
10 to receive these lost funds either for the delayed
11 certification. So they'd have to figure out whether they could
12 continue to meet all of the requirements without the money or
13 at least that portion of the money.

14 Q. On page 3 of his testimony, Mr. Van Eschen states
15 that the commission did not include Aristotle on its list of
16 certified companies under Rule 54.314 for 2024.

17 A. That's my understanding.

18 Q. Have you learned when the commission made that
19 decision?

20 A. I believe they made it on October 21st.

21 Q. October or September?

22 A. September, excuse me, wrong month. September 21st, I
23 didn't have my note in front of me. Yeah, September 21st.

24 Q. And was that before or after the due date for
25 Aristotle's response to Staff's negative recommendations?

1 **A. Before. I think our response was due on September**
2 **27th so about a week before.**

3 Q. Did Aristotle submit a timely response to Staff's
4 recommendations to your --

5 **A. We did.**

6 Q. -- understanding?

7 **A. Yes.**

8 Q. Did you know if commission -- if commission had left
9 Aristotle off the list when the response was filed?

10 **A. We did not know that, no.**

11 Q. Is that response Schedule 4 to to your testimony?

12 **A. Yes, it is.**

13 Q. And it was sworn before a notary.

14 **A. It was.**

15 Q. What's the subject of page 6 at the top of page 7 of
16 Schedule 4?

17 **A. Maintaining ETC status in Missouri. That -- oh Staff**
18 **argument that we did not adequately explain how our funding was**
19 **being used. Is that what you're asking?**

20 Q. Yes, thank you.

21 **A. Sorry I forgot the wrong header.**

22 Q. Have you watched the recording of the commission's
23 September 21st agenda session?

24 **A. Yes, I have since then.**

25 Q. Was Aristotle mentioned by name?

1 **A. We were not.**

2 Q. Was any company mentioned by name?

3 **A. Not that -- no.**

4 Q. Was there any mention of any unnamed company being
5 left off the certification?

6 **A. Yes.**

7 Q. What was the reason stated?

8 **A. That the company had failed to file reports.**

9 Q. Did Aristotle fail to file any required reports?

10 **A. No. And for that reason, we actually thought they**
11 **weren't talking about us.**

12 Q. On page 4 of his testimony, Mr. Van Eschen testifies
13 that Aristotle has not installed any equipment or facilities in
14 Missouri. Is that correct?

15 **A. That is correct.**

16 Q. And why is that the case?

17 **A. We have not installed equipment in Missouri because**
18 **we are looking at doing a transfer and upon communication with**
19 **that company, we elected to reverse our deployment. And we do**
20 **have equipment for installation in Missouri, however, we**
21 **elected to use the sublease spectrum option primarily and will**
22 **be deploying equipment when we have customers who are looking**
23 **to be installed.**

24 Q. Do those changes prevent Aristotle from providing a
25 service?

1 **A. They do not.**

2 Q. How could Aristotle provide service?

3 **A. We are subleasing spectrum from two separate**
4 **companies and we are utilizing that data service to deliver a**
5 **fixed wireless broadband service at the home. The customers**
6 **are ours and I think we'll get into that a little bit later how**
7 **we're doing that. But the answer is that it is permissible to**
8 **utilize data services through their company so long as we are**
9 **providing the service to the home which we are doing.**

10 Q. On page 9, Mr. Van Eschen expresses the opinion that
11 Aristotle service arrangements do not comply with FCC funding
12 requirements. Do you agree with that ?

13 **A. No. I do not.**

14 Q. Why not?

15 **A. Because FCC funding requirements specifically allow a**
16 **company to utilize a blend of self-provided, self-funded, and**
17 **third-party or leased facilities.**

18 Q. He kept -- he caveats his opinion by indicating the
19 FCC is better suited to make that decision. Do you agree with
20 that?

21 **A. Yes, absolutely.**

22 Q. Do you have any concern that the FCC wouldn't find
23 Aristotle service arrangement to be compliant?

24 **A. Not at all. It is compliant.**

25 Q. On page 6, Mr. Van Eschen states that Aristotle plans

1 to resell fixed wireless data service provided by others. Is
2 that accurate?

3 A. It's -- it is sort of accurate. We are not actually
4 reselling data services provided by another party. We are
5 utilizing (inaudible) third-party to provide data services
6 ourselves. So it's not technically a resale.

7 Q. He also testifies on page 6 that Aristotle would
8 install equipment at customer locations.

9 A. Correct. The -- that equipment enables us to
10 interconnect with the spectrum that we are using to deliver the
11 broadband service.

12 Q. And that would be equipment that Aristotle owns.

13 A. Yes, equipment we own and install.

14 Q. And then you'd use it in conjunction with that
15 spectrum you were just speaking of.

16 A. Yes.

17 Q. Can you describe that equipment?

18 A. Yes, actually I can. So the spectrum that we're
19 utilizing is an LTE spectrum in part and LTE can be used for
20 mobility which is how most people are familiar with it. And
21 that you obviously connect with a cell phone. But we're
22 actually using it to deliver fixed wireless service, which the
23 company that we're borrowing spectrum from or leasing spectrum
24 from is US Cellular. They don't offer a fixed wireless service
25 in these areas. So what we use is -- it's about -- a piece of

1 equipment it's about this big -- a foot and a half -- about a
2 foot and a half. And we actually have -- if you want to see
3 it, we have one over there -- and we attach that on a mount on
4 the roof or on a pole in their yard and so it enables us to
5 provide broadband services of actually 66 mbps down with using
6 the same spectrum even in areas where mobility service would
7 not be available.

8 Q. On page 5, Mr. Van Eschen discusses construction of
9 towers.

10 A. Yeah.

11 Q. Did Aristotle initially plan to install towers?

12 A. We did. Yes, actually.

13 Q. And did those plans change?

14 A. They did change.

15 Q. And why was that?

16 A. They changed for a few reasons. One is that we are
17 looking to do a transfer, and discussions about that transfer
18 actually began in late 2019, early 2020. So we've been having
19 discussions with this company about transferring these blocks
20 now for several years. We are only half of that equation and
21 that company has other things that have taken their attention.
22 And so the delays were actually not on our part, but there's
23 been an agreement that this transfer would be something that
24 the two companies would do at some point. So we were very
25 aware that we wanted to be efficient with the money and because

1 this company does have deployments in Howell County and it also
2 has deployments in other areas of Missouri, we did not want to
3 duplicate where they were already putting money by building a
4 \$300,000 tower. I mean one tower is 1/10 of the total amount
5 of money we receive from the state so we want to be very
6 prudent about how this money is spent for the best interest of
7 Missouri consumers. And he didn't want some of the towers
8 where we were putting them and he already had towers in some
9 locations where we were considering. So we took a step back
10 and looked at it. That's the first reason.

11 The second reason is that we did become aware that we
12 could utilize existing 700 MHz spectrum because the equipment
13 had changed between when we won the bid in 2018 and today to
14 make it possible for us to provide a fixed wireless service
15 over these LTE signals. And at the same time, COVID happened
16 in the middle of receiving our money in 2019 and 2022, causing
17 the cost of materials to go up because of the supply chain et
18 cetera, et cetera. And all of that caused the cost of a
19 tower -- and I know this is one of your questions later, I'll
20 just go ahead and answer it. It caused the cost of a tower to
21 go up from as low as \$50,000 to as high as 350 -- \$300- to
22 \$350,000 for the exact same tower. So it became not the best
23 choice to deploy those towers until we were perfectly clear on
24 what was going to happen with the transfer, whether that was
25 going to happen or not happen.

1 Q. Do you anticipate that Aristotle or a successor will
2 need to install some towers eventually to serve --

3 **A. Yeah.**

4 Q. -- in these three counties?

5 **A. Absolutely. There's no way to serve all 788**
6 **locations without installing something.**

7 Q. Does it matter whether the towers are installed at
8 the beginning or the end of the --

9 **A. No.**

10 Q. -- milestone schedule?

11 **A. Not at all.**

12 Q. If -- if Aristotle lost all the funds for 2024, how
13 much would that be?

14 **A. \$300,000.**

15 Q. So the cost of a tower.

16 **A. Pretty much, yeah.**

17 Q. On page 7, Mr. Van Eschen describes successful tests
18 of Aristotle's service --

19 **A. Yes.**

20 Q. -- at three locations in Missouri, one in each
21 county. Correct?

22 **A. Yes.**

23 Q. How did those tests come about?

24 **A. Mr. Van Eschen selected the locations. He informed**
25 **them when we would be going day. And actually the -- the**

1 individual who did the test with him, Rick is here. And we --
2 we send up two staff members, Rick and another technician met
3 Mr. Van Eschen in the field and went to the locations he had
4 selected.

5 Q. And the tests were successful.

6 A. All three of them were successful.

7 Q. And what does successful mean in that context?

8 A. It means service was capable of delivering speeds of
9 25 Mbps down, 3 Mbps up from the router -- from our router.

10 Q. Has Aristotle conducted other tests in the CAF II
11 Missouri census blocks?

12 A. Yes. So we have. We have actually had field staff
13 in Missouri over the last two -- two and a half weeks doing
14 network testing to determine where the holes in the network are
15 and where we might have to deploy additional facilities.

16 Q. Page 9 -- no, 11, Mr. Van Eschen stats that Aristotle
17 at one point provided Staff with speed test from Arkansas --

18 A. Yes.

19 Q. How do you respond to that?

20 A. Well, we thought we had made clear in our filing, but
21 maybe we didn't. Because we did not have Missouri customers,
22 and because this was the same equipment that we intended to put
23 on towers in Missouri, we provided the Arkansas test to
24 demonstrate that the equipment was capable of needing the
25 speeds we were supposed to meet. We certainly did not mean to

1 create the impression that those were somehow connected to
2 Missouri tests. It was literally just to show what the
3 equipment could do.

4 Q. Did you call out that they were Arkansas tests?

5 A. Yes, we did.

6 Q. On page 8, Mr. Van Eschen testifies about a software
7 program that evaluates service availability.

8 A. Yup.

9 Q. Can you provide some more detail about that?

10 A. Sure. So the software program we -- we put in the
11 tower height, the type of radio, the spectrum that is being
12 distributed over, and it creates what's called a propagation
13 map. And the propagation map has multiple colors going from
14 red, meaning really strong signal to purple, meaning no signal
15 at all. And we can put an address in this map and it locates
16 it within that propagation and it tells us pretty much down to
17 the rooftop level where we would need to put the antenna in
18 order to ensure that that customer can get a signal.

19 Q. Has the Aristotle bought equipment to use in
20 Missouri?

21 A. Yes, we have.

22 Q. And is that expenditure shown on Schedule 5 that we
23 were talking about earlier?

24 A. Yes, yes.

25 Q. On page 8, Mr. Van Eschen acknowledges that Aristotle

1 has told Staff that the equipment to be used in Missouri is
2 being stored in Arkansas.

3 **A. Yes.**

4 Q. He goes on to say that such equipment can be used in
5 other states. Is that accurate?

6 **A. No.**

7 Q. Why not?

8 **A. Well, for two reasons. One, equipment bought for**
9 **Missouri with CAF money from Missouri needs to be used in**
10 **Missouri. And second, there are certain frequencies that we're**
11 **using and equipment that we're using in Missouri that we're not**
12 **using in other states. So any equipment that we use for the**
13 **fixed LTE in Missouri can pretty much only be used in Missouri.**
14 **And we don't -- we don't use that spectrum in Arkansas, and the**
15 **only Tarana equipment -- which is a -- it's a radio**
16 **manufacturer is also in Missouri. We don't have that deployed**
17 **in any of the other states that we serve right now.**

18 Q. Can you spell the name of that company?

19 **A. T-A-R-A-N-A. Tarana, yes.**

20 Q. Are Howell, Ozark and Oregon counties adjacent to
21 Arkansas?

22 **A. They are.**

23 Q. Where is Aristotle's main office?

24 **A. It's in Little Rock downtown.**

25 Q. Where is its warehouses?

1 **A. In north Little Rock about 30 minutes closer to**
2 **Missouri.**

3 Q. Is the equipment bought for use in Missouri just
4 lumped in with other equipment in storage?

5 **A. No.**

6 Q. How is it segregated?

7 **A. We have -- we have a pretty robust inventory system**
8 **and we keep it segregated both from a software perspective and**
9 **on the shelf.**

10 Q. On page 7, Mr. Van Eschen says he does not know if
11 Aristotle can install equipment at customer premises in a
12 timely manner.

13 **A. We can.**

14 Q. Do you know whether Aristotle can do that?

15 **A. Yes, we can.**

16 Q. In Missouri.

17 **A. Yes, in Missouri. It -- can I address that a little**
18 **bit?**

19 Q. Yeah.

20 **A. Yeah. So it takes three hours to get from our office**
21 **in Little Rock -- our warehouse in Little Rock to Missouri. So**
22 **in a day, an installer could go from Little Rock to Missouri**
23 **and do the installation and technically come home that evening**
24 **if necessary. But in addition, the company that we're looking**
25 **at making the transfer to, we do have an agreement with them**

1 whereby they will install for us for a fee that we will -- that
2 is to be negotiated. He -- essentially, the way this company
3 operates is like well, we'll do that for you, we'll let you
4 know later how much we'll charge. So that's something that if
5 we needed it and we had enough installs to justify it. But
6 honestly right now if we have three or four installs, we would
7 schedule them all within a couple of days and send somebody up
8 from Little Rock and take care of it. We're obligated by the
9 FCC to install within ten days and we install generally within
10 five.

11 Q. That's --

12 A. --

13 Q. That's in all states.

14 A. **It's in every state, yeah.**

15 Q. On page 12, Mr. Van Eschen says Aristotle has avoided
16 installing equipment at customer premises. Is that accurate?

17 A. **No.**

18 Q. Is there any benefit to Aristotle to not install
19 equipment that it has the ordinance warehouse reserve for
20 Missouri use?

21 A. **None whatsoever.**

22 Q. Mr. Van Eschen goes on to describe a meeting he had
23 with the potential transferee of Aristotle's Missouri census
24 blocks.

25 A. **Yes.**

1 Q. It indicates that this company others have arranged
2 for transmitting signals for Aristotle customers. Is that
3 accurate?

4 A. It's a very 10,000 foot statement of what's
5 happening. What we're doing is they do have spectrum that they
6 are subleasing us and they will enable us to interconnect.
7 However, we're providing the equipment and the customer is
8 ours. So they are providing us band with pretty much the same
9 way if we bought an -- a direct internet access circuit from
10 AT&T and ran it to a tower for internet so that we could
11 distribute that signal. That's effectively what we're doing.
12 We're using WISPER's band with -- I'm sorry. That company's
13 band width to reach other areas.

14 Q. On page 9, Mr. Van Eschen expresses concern about
15 lack of written agreements between Aristotle and these other
16 companies. Is that concern well founded?

17 A. No.

18 Q. Why not?

19 A. Well, we -- we do have a written agreement with the
20 other company, we have the NDA, we also have a one page -- I
21 guess a memorandum of understanding would be the best way to
22 characterize it, which I believe that we did submit to Staff,
23 and we also have an agreement with US Cellular so. And it's
24 also not a concern because this other company and Aristotle
25 have been in communication for years. We've known -- our

1 companies have known each other since founding. Since 2010
2 we've been in business together and there is a lot of mutual
3 trust between the two companies and so there is not really any
4 concern on our part that they will not follow through with what
5 they commit to, and nor is there any concern on their part that
6 we will follow through.

7 Q. On page 4, Mr. Van Eschen identifies the milestones
8 that Aristotle is supposed to meet --

9 A. Yes.

10 Q. -- including 40 percent of targeted locations by
11 12-31-2022, and 60 percent of targeted locations by the end of
12 this year.

13 A. Yes.

14 Q. Now what is a targeted location?

15 A. So I believe that he means the 788 locations that the
16 FCC gave Aristotle CAF II money to serve. The FCC doesn't use
17 the term targeted locations, it just uses the term locations
18 but I'm assuming that's what he means.

19 Q. And is a location a specific customer?

20 A. It's not. It is either a residence or a business or
21 a -- what are they called? The hospital or a school, a
22 community.

23 Q. --

24 A. -- or an institution. So it's one of those thing.
25 And the obligation is the -- the FCC believes there are 788 and

1 it's our obligation to tell the FCC which locations in those
2 census blocks we cover.

3 Q. Did Aristotle meet its 2022 milestone?

4 A. We did.

5 Q. Do you believe Aristotle will meet its 2023
6 milestone?

7 A. We did.

8 Q. What are your current expectations about meeting
9 milestones beyond 2023?

10 A. So we're a little concerned about it, because without
11 CAF II funding we're not -- it's going to be very difficult for
12 us to build. We're not really sure of the impact on our
13 company's obligation by not being certified by the state of
14 Missouri. We don't know what impact that has in terms of
15 whether we are required to meet the next milestone if we are
16 not receiving CAF II funds because we are not any -- not
17 certified to do so in 2024.

18 And obviously the conversations with the other
19 company are impacted by this decision as well because the funds
20 that are lost are going to be lost to them or us regardless of
21 which of us is -- so I'm a little concerned. I mean obviously
22 if we need to meet them for the FCC, we will meet them. But
23 not being an ETC in Missouri is going to make that difficult.

24 Q. Do these milestones have anything to do with the
25 54.314 rule in Circuit Case due process?

1 **A. I do not believe so, no.**

2 Q. If Aristotle were to miss a milestone, would that
3 result in immediate termination of the support --

4 **A. No.**

5 Q. -- funding?

6 **A. No, no.**

7 Q. On page 6, Mr. Van Eschen states that rule 47 CFR
8 54.320 would apply in that circumstance. Are you familiar with
9 that rule?

10 **A. I am, yeah.**

11 Q. Do you agree that that's the rule that would apply if
12 a milestone were missed?

13 **A. Yes.**

14 Q. What's your understanding of what would happen if any
15 company missed its milestone? What -- what's the process?

16 **A. So if USAC determines that a company missed its**
17 **milestone, they'll determine by what percent the company missed**
18 **their milestone. So it could be -- it does happen that a**
19 **company will certify -- you know, 50 percent of their locations**
20 **and the USAC will eliminate 20 percent of those just because**
21 **they don't feel that they're actual locations or for other**
22 **reasons. So it happens regularly that companies miss**
23 **milestones for whatever reason. The USAC will determine at**
24 **that point whether they want to withhold a portion of funds and**
25 **how much is withheld or how much they can withhold temporarily**

1 is determined by what percentage the milestone is missed. So
2 if they -- they miss it by 10 percent, then there's a certain
3 percentage that can be withheld. The company is then given six
4 months to fix that problem, and then if they don't fix it
5 within six months, then there are additional steps that the
6 USAC can take. But then after -- then they get another six
7 months to finish it. And if after a year they solve the
8 problem, then the company gets not only reinstated to the full
9 amount going forward, they get 100 percent of the funds that
10 have been withheld going backwards.

11 Q. So unlike the loss of PSE certification under 54.314,
12 funds withheld for delays and milestones can be regained.

13 A. Yes. That's correct.

14 Q. On page 5, Mr. Van Eschen testifies that the FCC sent
15 a letter to Aristotle regarding deployments as of the end of
16 2021.

17 A. Yes.

18 Q. Was there a 2021 milestone?

19 A. No.

20 Q. Has the FCC sent any subsequent such letters to
21 Aristotle?

22 A. No.

23 Q. Mr. Van Eschen goes on to testify that Aristotle's
24 2022 milestone report states that services became available to
25 all involved locations on the same date being December 31,

1 2022. Did he interpret that report correctly?

2 A. No, he didn't. But I -- I know why he interpreted it
3 that way, but it's an incorrect interpretation.

4 Q. Why was the December 31, 2022, date used?

5 A. So it's not usually my practice to blame things on
6 our own staff, however, the person who was obligated to
7 certify -- their job was to certify into the hub, did not
8 understand that she was supposed to put date-of-service and
9 instead put date-of-filing. And she did wait until the last
10 minute to make the certification, and so she filed -- because
11 it was all waited until the last minute, she put in the date it
12 was due, December 31, 2022, as opposed to the date service was
13 available.

14 Q. Did you explain that to Staff over the course of this
15 proceeding?

16 A. We tried to.

17 Q. Mr. Van Eschen states that Aristotle was unable to
18 explain its progress and offering service to the locations. Do
19 you agree with that?

20 A. I don't.

21 Q. Why not?

22 A. Well, we tried to explain it, but honestly I think
23 that Staff may have a misunderstanding of how the CAF II
24 program works versus the way other federal programs work. And
25 I know we'll get into this in a minute, but I think that to

1 some extent we were not able to explain it in a manner that
2 made sense based on Staff's understanding of the program.

3 Q. Mr. Van Eschen states that Aristotle's website failed
4 to indicate service was available in Missouri until late
5 December of 2023.

6 A. That is correct.

7 Q. And is that accurate?

8 A. Yes, it is.

9 Q. Why did Aristotle wait until then?

10 A. Well, we were -- were -- in the last quarter of 2022,
11 the company -- the second company was moving forward and had
12 indicated that they would be moving forward with the transfer
13 and that we would be relatively quickly. We were expecting
14 agreements from them in November of 2022. We did not receive
15 those, but I did believe first of all, that the transfer would
16 take place relatively quickly. And second of all, that once
17 filed, it would be approved relatively quickly by the FCC. And
18 we were concerned that if we went to these people in Missouri
19 and said, listen here's Aristotle, we're going to give you this
20 broadband service. And then one month or two months later
21 we're like oh guess what, it's this other company. Now that
22 would create consumer confusion. And it was probably late
23 spring when we realized this isn't going to move as quickly as
24 we thought. And so we decided that we needed to be more
25 aggressive than actually trying to onboard customers in

1 Missouri, not because we hadn't been aggressive, but because we
2 really didn't want to create consumer confusion.

3 Q. On page 6, Mr. Van Eschen testifies that -- he
4 testifies about USAC audit of Aristotle.

5 A. Yes.

6 Q. Is it your understanding that such an audit is
7 underway?

8 A. Oh it is underway.

9 Q. And who is USAC?

10 A. It's the Universal Services Administrative
11 Corporative. It's a quasi-governmental quasi-private agency
12 that administers the location testing and funding for the FCC
13 for the CAF II and other high cost programs.

14 Q. Has that audit commenced?

15 A. Yes.

16 Q. Has Aristotle cooperated?

17 A. Yes.

18 Q. Has the audit been completed?

19 A. No.

20 Q. Has USAC provided Aristotle with any interim
21 information about the status of the audit?

22 A. No. In fact the -- the last round of information
23 they asked for was due yesterday. So we have not heard from
24 them since yesterday.

25 Q. And it was submitted --

1 **A. It was submitted, yes.**

2 Q. On page 7, Mr. Van Eschen testifies that Aristotle
3 does not have any fixed wireless broadband customers in
4 Missouri yet. Is that accurate?

5 **A. That is correct.**

6 Q. On page 11 he takes issue with Aristotle's lack of
7 advertising and goes on page 12 to state, and I quote "It's
8 doubtful anyone in Howell, Oregon or Ozark county has even
9 heard of Aristotle." Do you think that it's doubtful that
10 anyone has heard of Aristotle?

11 **A. No. I don't think it's doubtful that anyone has**
12 **heard of Aristotle.**

13 Q. Has Aristotle been contacted by people in these
14 counties?

15 **A. Yes, we have.**

16 Q. Were they in the awarded census blocks?

17 **A. No. They were not.**

18 Q. Have you been contacted by people in Missouri outside
19 of those (inaudible)?

20 **A. Yes.**

21 Q. Does advertising have anything to do with 54.314
22 certification?

23 **A. I don't believe so, no.**

24 Q. Describe Aristotle's marketing efforts in Missouri.

25 **A. So we do a number of different things in marketing**

1 and it's the same in every market. One of those things is the
2 website, one of those things is social media, one of those
3 things is Facebook Ads or other online ads, we use door hangers
4 and yard signs. One of -- one of the issues that we've run
5 into in -- first of all, and network-wide, 72 percent of our
6 leads come from word-of-mouth or social media. So that is
7 where a lot of our efforts go pretty much in every state we're
8 in. We did look at hanging door hangers in Missouri, but
9 there's only 788 locations. They are behind locked gates,
10 they're half a mile from the driveway, they have beware of dog
11 signs, and I know that Rick Hills and Mr. Van Eschen ran into a
12 resident who was very upset that we were running a test on her
13 property because she hadn't been told in advance. And so
14 because of how disperse these 788 locations are and because of
15 how difficult it is to actually go up to the door, it's really
16 -- it wasn't -- it's not conducive environment for door hangers
17 specifically, and so we are going to send mailers to those 788
18 locations. And if we -- if -- depending on what happens in
19 this hearing, if we start serving areas like West Plains that
20 are not in those locations but that are generally in the
21 counties, then absolutely we'll use door hangers. But for the
22 census blocks that we're required to serve, the on-the-field
23 marketing doesn't make a lot of sense from a safety perspective
24 for our staff. That said, when we've been out testing, we have
25 a branded truck, we have -- the guys handed out cards to

1 people, they've had a number of conversations. So they
2 should -- I do believe there are people in those counties that
3 are aware of our existence.

4 Q. On page 10, Mr. Van Eschen states that Aristotle is
5 just collecting and retaining CAF II funds. Is that true?

6 A. No. That's not true.

7 Q. And again that relates to your Schedule 5.

8 A. Yes.

9 Q. On page 13, Mr. Van Eschen testifies about
10 Aristotle's desire to transfer Missouri census blocks to
11 another area.

12 A. Yes.

13 Q. Why does Aristotle want to do that?

14 A. So we want 788 locations and the other carrier is a
15 very large service provider that covers a lot of the state of
16 Missouri including portions of Howell county. And when we
17 looked at the efficiency and the service level and what
18 consumers in Missouri would be best served by, it made sense to
19 both companies that that company take over our census blocks.
20 And I will say that the first expression of interest did come
21 from that company to us, and we agreed with them that that was
22 a more effective way and a better way to better to serve
23 Missouri consumers would be to transfer them to a Missouri
24 company.

25 Q. And has a transfer application been submitted to the

1 FCC?

2 A. No. The -- their FCC counsel recommended that we
3 start with an operating agreement, and that is what has been
4 underway since last year and we do have a draft of it now. And
5 then once the operating agreement is in place, we will move
6 onto the transfer agreement.

7 Q. Commissioner Hahn had some questions about a
8 nondisclosure agreement. Do you recall that?

9 A. I do.

10 Q. What's the purpose of that nondisclosure agreement?

11 A. To allow the companies to share what would otherwise
12 be proprietary information between the two companies.

13 Q. For what purpose?

14 A. To assess the engineering and to ensure that one,
15 that the transfer made sense for the other company; two, that
16 while we were putting -- considering putting our locations
17 would work with where they're serving already and where they
18 wanted to put new locations so that we could align the
19 engineering.

20 Q. And have both companies executed that agreement --
21 signed that agreement?

22 A. Oh the nondisclosure, yes.

23 Q. You also referred to a short memorandum of
24 understanding. Correct?

25 A. Yes.

1 Q. And what's the purpose of that document?

2 A. It was just to memorialize that we were in
3 conversations about an operating agreement and a possible
4 transfer and to put a stake in the ground that essentially said
5 that if needed, the other company would do installations for
6 Aristotle.

7 Q. And has that been signed by both companies?

8 A. It has been.

9 Q. Do you currently have an expectation as to when the
10 transfer application would be submitted to the FCC?

11 A. The transfer application should be submitted probably
12 at the first of the year. And I think that part of the delay
13 on it already being done is this hearing. I think that the
14 other company wants to know what is going to come out of this
15 so that they know what they're dealing with. There's a little
16 bit of uncertainty that's been introduced. So there's a --
17 there's -- and with the holidays. My anticipation would be
18 still assuming that they still want to go forward with it, it
19 being the beginning of next year.

20 Q. And if the transfer application is submitted, what
21 would you anticipate happening while it was pending?

22 A. Well, optimally we would have an operating agreement
23 with the other company and they would take over operations of
24 the Missouri network while the application is pending.

25 Q. And does the FCC allow that?

1 **A. Absolutely. We have a similar relationship with the**
2 **company in Illinois for our Illinois deployment.**

3 **Q. Does the FCC generally approve these kinds of**
4 **transfers?**

5 **A. You know, as far as Section 214 transfers, I think it**
6 **depends. And I think Mr. Van Eschen touched on this on who the**
7 **transferee is, but yes, they do. They do generally approve**
8 **them, but not always.**

9 **Q. Under the operating agreement that you were**
10 **discussing, would Aristotle provide the support funds it**
11 **receives to the operating company proposed transferee to be**
12 **using in Missouri?**

13 **A. Yes, we would.**

14 **Q. And is that allowed by the FCC?**

15 **A. It is.**

16 **Q. If Aristotle is not certified under rule 54.314 while**
17 **the transfer application is pending, will it continue to lose**
18 **\$25,000 a month --**

19 **A. Yes.**

20 **Q. -- in support funds?**

21 **A. I believe so. Well, yes, absolutely. If we're not**
22 **certified, we will not be receiving funds which would make it**
23 **very difficult for us to pay any third-party to operate the**
24 **network. So I imagine that would put a freeze on the operating**
25 **agreement, and I do not know what it would do with respect to**

1 **the ultimate transfer of the blocks.**

2 Q. And you're not aware of any opportunity to recover
3 the lost funds?

4 A. **Not from the -- not from the late certification, no.**
5 **I mean maybe they can apply for a waiver with DSCC, but I'm not**
6 **aware of any method to get those back.**

7 Q. At page 13, Mr. Van Eschen states resumption of CAF
8 II funds would likely make it easier for Aristotle to reach
9 terms for the transfer of the Missouri census blocks. Is that
10 accurate?

11 A. **Oh yeah, definitely.**

12 Q. Do you see anything wrong with that?

13 A. **No.**

14 Q. Would it help or hurt the spread of broadband in
15 these rural counties?

16 A. **It would help the spread of broadband in these**
17 **counties. Whether Aristotle is doing -- is doing deployment**
18 **and installation or the operating company is doing deployment**
19 **and installation, it will only benefit Missouri consumers.**

20 Q. Did you anticipate that this transfer process would
21 drag on as long as it has?

22 A. **No, not at all.**

23 Q. In hindsight, if you had known, would you have done
24 some things differently?

25 A. **Yes. I think I would have been -- I mean I -- I very**

1 much relied on the timing that I was being given by the other
2 company, and I think I would have been a lot more assertive in
3 some ways in getting things done differently, earlier, and I
4 definitely would have advertised earlier. But hindsight is
5 2020, and I didn't know that it was going to take this long.
6 And so we -- once we understood the delays were likely not only
7 to -- not only to pass the leads, but also that a Section 214
8 transfer can take six months to a year just to make its way
9 through the FCC. When we learned that at the beginning of the
10 year, we realized we're just going to have to operate this.
11 We're just not going to -- in order to operate the network,
12 we're going to have to assume that this transfer is not going
13 through and that was prior to being informed that we wouldn't
14 be certified as an ETC, which then threw another wrench into
15 it.

16 Q. Mr. Van Eschen ends his testimony with a
17 recommendation that the commission stand by his decision to not
18 certify Aristotle under 54.314, and have its CAF II funding
19 cease as of January 1st. Do you believe the commission should
20 do that?

21 A. No.

22 Q. What are you asking the commission to do instead?

23 A. Ideally it would be good for the commission to
24 recertify Aristotle or approve recertification of Aristotle
25 today. But if not today, then as soon as possible. Because as

1 we noted earlier, every day of delay is \$833 lost to the state
2 of Missouri.

3 MR. LUMLEY: I don't have any further questions, Your
4 Honor.

5 THE COURT: Mr. Lumley, thank you.

6 Ms. Scurlock, cross.

7 MS. SCURLOCK: Yes, thank you.

8 [CROSS-EXAMINATION]

9 BY MS. SCURLOCK:

10 Q. First of all, I would like to ask how many Missouri
11 customers does Aristotle have right now?

12 A. Two.

13 Q. Two customers across the -- the three counties.

14 A. No. Actually, they're not. They're e-mail customers
15 and so they're not in either of those counties. One of them is
16 in Kansas City and I don't remember where the other one is.

17 Q. Can you please clarify what an e-mail customer is?

18 A. Yes. They actually pay us a certain amount of money
19 a year for e-mail to keep -- to have an Aristotle e-mail
20 address and for filtering -- spam filtering and that sort of
21 thing.

22 Q. Okay. So they're not using any type of internet
23 service.

24 A. No.

25 Q. They're -- they're strictly -- they -- they -- they

1 have a --

2 **A. Yes.**

3 Q. -- Aristotle e-mail.

4 **A. Yeah. We do not have broadband customers in Missouri**
5 **at this time.**

6 Q. Okay. So you referenced \$833 a day and it takes
7 around 800 to install a customer --

8 **A. Yes.**

9 Q. -- but Aristotle has not installed any customers in
10 Missouri.

11 **A. No. We haven't, no.**

12 Q. Okay. You were talking about the -- the potential
13 transfer and apparently it's -- the discussion started in 2022.

14 **A. No. The discussion started -- the first conversation**
15 **with the other company took place in early -- well, late 2019.**

16 Q. Okay, in late 2019. So at that point Aristotle was
17 hoping to transfer its interests to another company.

18 **A. Yes.**

19 Q. And at --

20 **A. Yes.**

21 Q. And it's been the same company that you've been --

22 **A. Yes.**

23 Q. -- discussing transfer with.

24 **A. Correct.**

25 Q. Okay. And is this also the same company that

1 Aristotle has an agreement with right now to provide services?

2 **A. Yes.**

3 Q. Okay. And -- and you said that this is a company
4 that you have had interactions with for a long time and have
5 known them and trust them.

6 **A. Yes.**

7 Q. Okay. And you had hoped that the transfer would be
8 complete by the end of 2022 after discussion since 2019, but --
9 but it's drug on. You said you would do things differently.
10 Is that correct?

11 **A. I think that we would have -- well, I don't know**
12 **exactly what we could have done differently other than what we**
13 **did, but we would have potentially made different decisions**
14 **with respect to advertising our services and making a splash**
15 **about our company and these counties in Missouri. Had we**
16 **realized that the other company was not ready to move forward**
17 **in late 2022 or -- and/or had we realized that it takes six**
18 **months to do a Section 214 transfer.**

19 Q. Okay. And you are hopeful that this transfer would
20 occur by the start of this year.

21 **A. We are hopeful that the operating agreement will be**
22 **signed and that the transfer will be filed by the first of this**
23 **year. There is no way that the transfer would be completed by**
24 **the first of the year because we do not control that timing,**
25 **that is the FCC.**

1 Q. And the -- the -- so then the transfer would not
2 occur likely until maybe 2025 if it takes six to twelve months
3 --

4 A. Yeah.

5 Q. --

6 A. I think --

7 Q. --

8 A. Yeah, or worst case. I think best case it would be
9 mid-2024.

10 Q. And the -- the final benchmark at which point 100
11 percent of services should be provided is the December 31,
12 2024. Correct?

13 A. No.

14 Q. What is the final benchmark? Is that --

15 A. It's -- it's 60 percent this year, 80 percent in 2024
16 and 100 percent in December of 2025.

17 Q. Thank you. Can you tell me how many employees does
18 Aristotle have for -- you know, for -- for the whole company?

19 A. Thirty seven.

20 Q. And how many of those are Missouri employees?

21 A. None.

22 Q. Okay. After receiving the CAF II funding, how soon
23 did somebody from Aristotle visit Missouri, specifically the
24 target counties?

25 A. How soon after receiving the CAF II funding? Within

1 **six months.**

2 Q. Okay. I'm -- I'm sorry. And I -- I mean the award,
3 not necessarily the funding itself. What --

4 **A. Oh --**

5 Q. --

6 **A. -- the award. Oh so yeah. After we were -- so we**
7 **were awarded in November of 2018 --**

8 Q. Right.

9 **A. The long-form was due in February of 2019. We sent**
10 **people up to the counties in between those two periods to**
11 **finalize our long-form.**

12 Q. Okay. And were those officials? Were --

13 **A. --**

14 Q. -- those --

15 **A. Engineers.**

16 Q. Engineers, okay.

17 MR. LUMLEY: Judge, could I interject just for the
18 benefit of the court reporter? Both witness and lawyer are
19 starting to talk over each other, and --

20 **THE WITNESS: Sorry.**

21 MS. SCURLOCK: Thank you.

22 BY MS. SCURLOCK:

23 Q. Has Aristotle hired more employees since receiving
24 CAF II awards?

25 **A. Yes.**

1 Q. Okay. Has Aristotle hired any contractors for the
2 state of Missouri to perform any work?

3 A. We were working with the other company and that's
4 what the operating agreement would do. And we have been in
5 communication with subcontractors that would be primarily in
6 the satellite industry which is generally where you can find
7 subcontractors that can do installation work.

8 Q. And that would be specifically for Missouri.

9 A. Yes, in Missouri.

10 Q. Okay.

11 A. No -- yes. We obviously have those contractors
12 already in Arkansas.

13 Q. Okay. Thank you. And you said Aristotle would use
14 its own employees to install service at a customer's residence
15 if a customer asked for service. Correct?

16 A. Yes. I believe what I said is in the worst case,
17 even if we were the ones doing the installation, it could be
18 done quickly.

19 Q. And that's also how Aristotle would address any --
20 any service concerns?

21 A. Yes.

22 Q. Okay. Let me see. So Aristotle receives CAF II
23 awards in other states too. Is that correct?

24 A. Yes.

25 Q. Four other states.

1 **A. Yes.**

2 Q. Are the number of targeted areas in those other
3 states different from Missouri?

4 **A. Every state is different.**

5 Q. Okay. Are they more or less areas than Missouri?

6 **A. It depends on the state. I think that Oklahoma is
7 more, it's about -- I think 1,500. Arkansas is many more, it's
8 about 5,000 or so. Illinois is fewer --**

9 Q. Okay.

10 **A. -- like 300 or something. And I'm not actually sure
11 about Mississippi. I think it's right around the same amount.
12 It might be a little bit less or a little bit more.**

13 Q. Okay.

14 **A. But it's only one county.**

15 Q. But similar to Missouri.

16 **A. Similar to Missouri --**

17 Q. --

18 **A. -- but only one county.**

19 Q. Is Aristotle offering broadband services in -- in all
20 of those states --

21 **A. Yes.**

22 Q. -- it's offering -- oh okay. Are you offering
23 through Aristotle's own towers and equipment or do you have
24 agreements with other companies in those states?

25 **A. Both, it's a mix.**

1 Q. Okay. I know you mentioned in Illinois that you have
2 a similar agreement.

3 **A. Yes.**

4 Q. Is Aristotle offering any of its own independent
5 services or is it strictly by contracting with other companies
6 in Illinois?

7 **A. It's strictly by contracting with other companies in
8 Illinois.**

9 Q. Okay. And Arkansas has its own equipment I --

10 **A. Yes.**

11 Q. -- suppose. Okay. Thank you.

12 **A. And if I may, the reason that I know that the
13 operating agreements are acceptable and the way that we're
14 structuring it with the company in Missouri is acceptable, is
15 because that is the arrangement in Illinois which has been
16 filed by the FCC and was in 2019, and so therefore, it was
17 approved at the time.**

18 Q. For clarification, when you say it was filed by the
19 FCC --

20 **A. Filed with the FCC, not by, sorry.**

21 Q. Okay. So Aristotle has not filed the agreements in
22 Missouri with the FCC.

23 **A. We -- don't have an operating agreement yet.**

24 Q. Okay, okay. I'm sorry. I'm just trying to
25 understand the process --

1 A. There's an operating agreement in place in Illinois.

2 Q. Okay. Thank --

3 A. That operating agreement has been filed with the FCC
4 and approved. So therefore, I know that the arrangement that
5 we're trying to work through in Missouri is acceptable and
6 complies with CAF II requirements.

7 Q. And Aristotle hasn't transferred its interests in
8 Illinois. It's --

9 A. No.

10 Q. -- strictly offering through an operating agreement.

11 A. Correct.

12 Q. Thank you. Did Aristotle have to file a plan with
13 the FCC when it was bidding for the CAF II auction?

14 A. Can you define plan?

15 Q. A proposal for how it would offer services in a given
16 state.

17 A. So the reason I ask for you to define plan is because
18 that is -- yes, but it depends on what you mean by plan. So
19 what we filed with the FCC was not a full engineering model
20 that says we're going to build X number of towers in Y
21 locations and deliver this with this brand of radios. That is
22 not what we filed or were required to file. What we filed was
23 a long-form that stated, we will be using the following
24 spectrum, the following types of equipment to deliver a fixed
25 wireless broadband service that is capable of the speeds at

1 which we've been awarded. So to put it another way, the money
2 from the FCC was not awarded to build specific infrastructure.
3 It wasn't awarded to build a specific tower. It was awarded to
4 deliver broadband service to locations identified by the FCC.
5 So we didn't file a plan maybe in the sense that you're asking,
6 but we did file a statement of what we do to deliver service,
7 and that is what we're doing.

8 Q. Okay. Thank you. Has Aristotle entered any other
9 auctions or -- or any other programs with the FCC to receive
10 funding for expanding broadband service since the CAF II
11 auction?

12 A. Yes. We're an RDOF recipient -- Rural Development
13 Opportunity Fund.

14 Q. Okay. And that was shortly after the CAFF II
15 auction. Correct?

16 A. No. Well, yes. I guess it was, yes.

17 Q. It was about two years after the CAFF II --

18 A. Yeah.

19 Q. -- auction. Is Missouri unique in providing
20 broadband services from the other states that Aristotle offers
21 -- or receives CAF II awards for?

22 A. I'm not sure I understand the question.

23 Q. Is there something that presents a difficulty or a
24 challenge to providing broadband in Missouri.

25 A. Well, yes. I mean the typography is very

1 challenging. The -- the fact that the 788 locations are
2 scattered -- you know, maybe it's 30 minutes as the crow flies,
3 but it will take four hours to get there, and there's a lot
4 of -- I don't know -- trees and mountains in between. So it's
5 a challenging topography. I wouldn't say that it's unique. I
6 mean we have similar topography in Arkansas and it is unique
7 compared to Mississippi which is flat. But it's not unique in
8 terms of deployments we've done.

9 Q. Okay. So Aristotle has -- has deployed broadband in
10 similar --

11 A. Yes.

12 Q. -- areas. Okay. Thank you. I know you were talking
13 a little bit about the type of -- of marketing in that that you
14 do. So normally you said your marketing would be using
15 websites, social media, Facebook ads, maybe door hangers and
16 yard signs. You said you did not use door hangers in Missouri.
17 Did you use yard signs in Missouri?

18 A. Well, we'd have to have permission from the home
19 owner --

20 Q. Okay.

21 A. -- to put in a yard sign, and so not at this time.
22 But if we found appropriate locations -- I mean the guys, when
23 they're -- when they're in the field running tests, the guys
24 use -- they carry them in their truck. So if someone would
25 allow us to put one up, we would. But you know, we can't just

1 willy-nilly throw up a yard sign without permission.

2 Q. Right. And -- and just to clarify, so primarily the
3 marketing that would have been done in Missouri is through
4 your -- your website and then social media and then Facebook
5 Ads.

6 A. Yes. And I would like to note that we do have leads
7 in Missouri. I think we have about 150 something leads, they
8 just are not in the CAF II areas.

9 Q. Okay. So -- so the ads and that maybe aren't --
10 maybe aren't targeted the best to the -- the counties where you
11 have the CAF II awards, because by the nature of something
12 that's online, it -- it might be seen by anyone in the --

13 A. Yeah.

14 Q. -- state of Missouri or elsewhere.

15 A. I think that that's true and to some extent I think
16 that that could be true of any form of advertising. I mean
17 television commercials don't necessarily reach the audience
18 they're trying to reach. But the -- we have received requests
19 -- or at least one request from Ozark the town. So at least we
20 know that someone in Ozark the town picked up the ads. And
21 people in Ozark County were -- it's -- it's going to be a
22 challenge. These 788 locations, they may even see that we have
23 service in their area and think that it exempts them. But then
24 when Mr. Hales was up here over the last few weeks he talked to
25 several people and they were surprised I guess that there was a

1 provider willing to come in, and they have satellite or
2 whatever they had. And a lot of times we deal with a lot of
3 rural communities and that was really what I did when I was on
4 the --

5 Q. Okay. I think let's go ahead -- we're -- we're
6 getting off the path here. So when you say satellite, there is
7 service available in these -- people are finding a way to have
8 broadband --

9 A. It's not broadband. Satellite is not broadband.

10 Q. Okay. So what is satellite if you could clarify for
11 us?

12 A. Satellite is a dish. It's like Direct TV or actually
13 Hughesnet, and effectively the signal goes from the house to
14 space and back, and satellites have data caps because it's
15 going to space and back and they have limited capacity and so
16 the FCC does not consider satellite like Hughesnet to be
17 broadband and it is not capable of delivering speeds of 25/3
18 which are what we're required to do.

19 Q. Okay. So it's almost more like dial-up like the --

20 A. It -- it is the dial-up of today, yes.

21 Q. That's kind of -- okay. Thank you. And satellite is
22 traditionally what we think of when we think of like a cable
23 television. Right? Something more like those or --

24 A. Yeah. Like -- like Dish or Direct TV.

25 Q. Like -- okay.

1 **A. Yeah. They're not those companies, yeah.**

2 Q. So -- so there is some type of service. You also
3 mentioned Mr. Hales. And is that the gentleman that you were
4 referencing --

5 **A. Yes.**

6 Q. -- that was on the site visit with Mr. Van Eschen?

7 **A. Yes.**

8 MS. SCURLOCK: Just for clarification. I would like
9 to ask some questions about Schedule No. 5. I don't intend to
10 talk specifically about dollars, but I -- I think perhaps it's
11 safer if we don't in camera based on our discussion at the
12 beginning of this.

13 THE COURT: All right. Thank you. I'll ask counsel
14 to verify if people in the room are entitled to be in the room,
15 and I'll ask Brian if you can shut off the stream during the in
16 camera portion. And then Ms. Scurlock, I'll count on you to
17 let me know when you're done with that so we can go back in the
18 public forum.

19 MS. SCURLOCK: Absolutely.

20 THE COURT: Are we ready to think go in camera? All
21 right. Ms. Scurlock, when you're ready.

22 MS. SCURLOCK: Thank you.

23 BY MS. SCURLOCK:

24 Q. So Schedule No. 5 that was attached to your testimony
25 is an outline of how Aristotle has used the CAF II funding that

1 is received to date. Correct?

2 **A. Yes.**

3 Q. Okay. And it lists some equipment and materials that
4 were purchased. Is any of that equipment currently installed
5 in Missouri?

6 **A. No. It was purchased for towers and there are two
7 that we plan to install, and this is the equipment that would
8 go on top of them, or the actual steel for the towers
9 themselves.**

10 Q. Okay.

11 **A. Not the customer equipment. Obviously that's
12 customer equipment.**

13 Q. Right. We'll discuss that. Can you explain the
14 category that's known as the ongoing compliance cost --

15 **A. Yeah.**

16 Q. -- for the state of Missouri?

17 **A. Sure. So every year we are required to recertify as
18 an ETC. We have filings that have to be done in the state. We
19 have -- obviously from a data standpoint we have regulatory and
20 compliance for the FCC for the state of Missouri having to --
21 and that's what Gadberry is. It enables us to determine
22 what -- what locations are in a particular area. Because like
23 I said the FCC identifies the locations, but then we have to
24 tell them which locations we actually serve, and then they come
25 back and certify whether those locations or they feel those**

1 locations actually existed. So a bit of a back-and-forth. And
2 so there are softwares like Lexicon and Gadberry that does
3 that. We have --

4 Q. Can I --

5 A. -- obviously an audit --

6 Q. So Gadberry would be like a one-time expense --

7 A. No.

8 Q. Because you needed to -- why -- why would you need
9 to --

10 A. We have to do it annually so it's an annual license.
11 We have to do that annually. We have to certify locations or
12 identify locations annually, so it's an annual license. And
13 this is a portion of that software license allocable to
14 Missouri.

15 Q. Okay. So you are re-verifying the locations that you
16 are providing service to in Missouri annually?

17 A. Yes.

18 Q. Okay. Is that based on what areas you -- you can
19 provide service to or what areas that you are expected to
20 provide service to based on the CAF II awards?

21 A. Well, we use it for both but in the regulatory
22 context and the reason we have that software is for compliance
23 with the FCC. And the reason we do it annually is that the
24 number of locations changes and just because the FCC says
25 there's 788 doesn't mean that there are. So they said 788 in

1 2018, but in 2023 people may have moved out, people may have
2 passed away, somebody may have moved in, so the locations
3 change constantly. They're not a static number.

4 Q. Okay. Can you explain the -- the cost for financials
5 and audit?

6 A. (Nonverbal response.)

7 Q. And then you also have that listed under the
8 long-form application. How -- how is that different?

9 A. We had to retroactively audit 2017 and 2018 once we
10 were approved for CAF II. We were not audited prior to 2017.
11 So that first bunch would have been what was due between --
12 that first category of a long-form application would have been
13 the information due between getting the award and February of
14 2019 when the long-form was due. The second is we are required
15 to have an annual audit. So that is the Missouri portion of
16 the audit for 2019 and '20. And we're in -- we're undergoing
17 right now '21 and '22 so that would be for '19 and '20.

18 Q. Okay. Thank you. You said the Missouri portion. So
19 to be clear, all of the costs that are listed on here, are they
20 allocated -- is this specifically the Missouri cost?

21 A. Yes.

22 Q. Okay. Is Missouri ETC's application different than
23 the other state's that Missouri -- that Aristotle has applied
24 for ETC in?

25 A. It was, yes. Your -- yes. The Missouri

1 application -- it varied. I mean every state is different so
2 I'm not really sure how to answer that question. No state
3 has -- has some kind of form ETC application. They all do it
4 differently.

5 Q. Okay. But they are all required to pertain to
6 certain FCC rules. Correct?

7 A. Yes, yes. I'm assuming, yes.

8 Q. Okay. Now those would be pretty universal across
9 applications because the FCC requires it.

10 A. Presumably.

11 Q. Okay. Can you explain the additional labor expense
12 that's listed on the second page of Schedule 5?

13 A. When we stack a tower we usually have to bring in a
14 contractor and that would involve flattening the ground,
15 pouring the base, setting the tower, running the cables,
16 putting in the H-frame, (inaudible) cabinet, loading the
17 equipment in the cabinet, putting the (inaudible) at the top,
18 running the cables from the base to the top, grounding,
19 pathing, and electrical.

20 Q. Okay. When you say to sock a -- or stack a tower --

21 A. Stack a tower --

22 Q. -- that's -- would that be constructing a tower or
23 that's --

24 A. It's -- yes. Stacking is -- it's called stacking
25 because towers come in pieces, but it's literally erecting the

1 tower like you would with a lego or whatever. You're building
2 the tower from the ground. That's what stacking means.

3 Q. Okay.

4 A. So there was a separation between what is considered
5 ground work or civil and stacking. So usually that's two
6 different contractors. There'll be one contractor that comes
7 in for civil and another one that comes in to stack the tower.

8 Q. Okay. Thanks. But Aristotle hasn't built a tower in
9 Missouri. Correct?

10 A. Not yet, which is why these are projected expenses.

11 Q. Okay. So these are just the projected expenses. And
12 then you also referenced a C-O-W. Can you tell me what that
13 is?

14 A. That is a temporary tower.

15 Q. Okay. And does Aristotle --

16 A. It stands for cellular on wheels I think.

17 Q. Okay. And that's also a projections that --

18 A. Yes.

19 Q. -- Aristotle doesn't have any temporary towers in
20 Missouri.

21 A. Right. These are all projections.

22 MS. SCURLOCK: All right. I think that is all the
23 questions that I have as far as for the Schedule.

24 THE COURT: All right. We'll go back into public
25 forum then. And Brian, if you'll let me know when we're ready.

1 All right. Thank you, Ms. Scurlock.

2 MS. SCURLOCK: Thank you, Judge.

3 BY MS. SCURLOCK:

4 Q. Has Aristotle established any agreements to own land
5 in Missouri in the interest of building towers?

6 A. No. We don't generally purchase land.

7 Q. Okay. Have you entered into any lease agreements or
8 anything? Do you have any rights to land on which to build a
9 tower in Missouri?

10 A. We had gone through the process of side-acquisition
11 and had identified where we wanted to lease, and the at least
12 several of the locations that we had identified upon
13 conversations with the other company, were not locations that
14 they felt were optimal. And so therefore, we did not execute
15 any of those leases. Pending another discussion with them, we
16 are in the process of acquiring for the two towers that we are
17 building in Missouri because we are going to need those, and
18 the other company agrees that those are necessary.

19 Q. Okay. So all -- all plans for towers in that were
20 established in agreement -- or in -- in consultation with the
21 other company that you have been trying to negotiate a transfer
22 with.

23 A. In part, but not exclusively. We do our own
24 engineering. However, there was no sense in spending \$300,000
25 to build a tower in a location where they already had a tower

1 or a lease agreement for one.

2 Q. Okay. So at this stage you -- you did say though
3 that you were looking at building towers. Have you made --
4 are -- are you strictly relying on the transferee company --

5 A. No.

6 Q. -- to do that? Okay. So you've established where
7 you'd like to build towers, but you don't have any lease
8 agreements, any construction permits.

9 A. We are in the -- I'm not sure what construction
10 permits we need in those particular counties. Those are --
11 that's a -- I'm assuming we do, but no. We do not have the
12 construction permits. We have identified the land -- the
13 lease -- the landlords and the locations and we are determining
14 which of the options will be the best location to serve the
15 most -- which of the options before us will be the best place
16 to put the tower in order to reach the most locations. I'm
17 trying to avoid using the word location as a multiple context.

18 Q. I understand. And with the equipment that you have
19 already purchased, how many -- would you be able to build those
20 two towers?

21 A. Yes.

22 Q. Okay. Let's see. So currently you are working with
23 two other companies in an effort to provide service to the
24 40 percent of the 788 locations.

25 A. Yes. I take contention in an effort to. We are

1 **working with those companies in order to provide.**

2 Q. Right. But -- but there's no customers that are
3 currently receiving broadband from those --

4 **A. We --**

5 Q. -- services. Correct?

6 **A. Yes. We do not control what customers choose to buy.**

7 Q. I understand. I'm -- that -- I'm just clarifying
8 my -- my use of the term. And Aristotle intends to meet the 60
9 percent goal by --

10 **A. Yes.**

11 Q. -- the end of this year.

12 **A. Yes.**

13 Q. You said you intend to. So just to be clear, it's --

14 **A. Well, I should have said we will.**

15 Q. Okay.

16 **A. I mean we are going to. In fact we're in the process**
17 **right now of analyzing the locations that we already cover to**
18 **determine how close we are. We're -- we might actually be over**
19 **60 percent, but don't know.**

20 Q. Okay.

21 **A. So we're --**

22 Q. -- not clear at this point. But --

23 **A. Yeah, no. We'll hit the 60 percent. I'm not**
24 **concerned about that. This -- this not being certified for**
25 **2024 is going to impact the next milestone which is the 80**

1 percent milestone. It's not going to impact the 60 percent
2 milestone.

3 Q. Okay. And that 60 percent milestone is December 31st
4 of --

5 A. 2023, yes.

6 Q. Okay. Thank you. And -- let me see. Do you need an
7 agreement with the owner of a particular tower in order to
8 use -- or in order to place equipment on it?

9 A. Yes.

10 Q. You don't currently have equipment placed on a tower.
11 Right? You're --

12 A. No. But we have an agreement -- agreements with
13 tower owners that would enable us to do so if there were a
14 tower we wanted to use.

15 Q. Okay. And so currently the -- the equipment that
16 you're using that's on the tower is owned by one of the two
17 companies that you were working with.

18 A. Correct.

19 Q. Okay. But Aristotle doesn't own the tower or the
20 equipment that's currently being used to provide service or
21 meet the benchmarks.

22 A. No. And that's standard in the WISP industry. Very
23 few WISPS build towers from the ground if they can avoid it,
24 because it's extremely expensive and then there's taxes
25 involved. Most companies like ours, including the company

1 we're transferring to, do not own the towers that they are
2 located on. They lease space from a tower company like
3 American Tower or Crown or any of those companies.

4 Q. Okay. Thank you. When you say WISP, wireless
5 internet service provider?

6 A. Yes, sorry.

7 Q. No. We -- we use a lot of acronyms around here and I
8 try to get the court reporter as up to speed as I can. You
9 referenced the -- the software program that Aristotle uses. So
10 you have a software program that tells you what locations
11 you're able to provide service to.

12 A. Yes.

13 Q. Okay. And is that how you determined when you wanted
14 to contract with other companies to be able to provide service
15 in Missouri? You -- you located within the areas that might be
16 available, or?

17 A. I'm not sure I'm clear on the question, I'm going to
18 try to answer it this way; we identify the locations we needed
19 to serve. And we did internal engineering to determine what it
20 would -- what it would require to be done in order to reach
21 those locations, and then when we identified another company
22 that might have the ability to service those locations. We
23 checked whether using that bandwidth or leasing that spectrum
24 would be preferable to putting in our own tower. And then once
25 we entered into an agreement with that company or via this

1 other company -- an agreement with that company, we would then
2 put it into the system and determine propagation.

3 Engineering is an iterative process. You start with
4 this extremely high level, which is what we submitted to the
5 FCC, then you narrow it down, narrow it down, narrow it down.
6 And throughout that you change -- the engineering changes. You
7 may decide to put a tower here, you think it needs to be 200
8 feet, it turns out it needs to be 300 feet. It turns out it
9 that it doesn't serve the location that you want and you have
10 to move it entirely. That is what happens during the iterative
11 process of engineering so that is what we did. And the
12 software that you're referring to is actually the very last
13 piece of that. Once we know what the frequency is, where the
14 tower is, what height it's at, at that point we use that
15 software to determine whether we can go to that location and
16 where we need to install to ensure that they get the right
17 signal.

18 Q. Okay. Thank you. All right. And then just to sort
19 of clarify, because I know we've -- we've sort of bounced all
20 over and we've covered some of it. So Aristotle has -- is --
21 is working with two other companies.

22 A. (Nonverbal response.)

23 Q. US cellular and ETC No. 2 is how you refer to the
24 other one, and you have established a written agreement with US
25 Cellular.

1 **A. Yes.**

2 Q. Okay. And what kind?

3 **A. The agreement with US Cellular enables us to use the**
4 **spectrum off of any of their towers nationwide, and obviously**
5 **we're really only doing that in Missouri right now.**

6 Q. Okay.

7 **A. But we kind of have fairly robust footprint in**
8 **Illinois, but we're 80 percent certified in Illinois.**

9 Q. Okay. I -- I think that covers me for that. And
10 then there is a memorandum of understanding you called it
11 between Aristotle and ETC No. 2 to provide service.

12 **A. Yes.**

13 Q. And are there rates established in those two
14 documents?

15 **A. So at the time that document was executed, the**
16 **understanding between the companies was that we would enter**
17 **into an operating agreement that would set all of that out. So**
18 **what that agreement specifically says is that this is an**
19 **anticipation of Section 214 transfer, and -- and the execution**
20 **and operating agreement, and if those things don't happen, then**
21 **we will establish a rate.**

22 Q. Okay. So right now the memorandum of understanding
23 doesn't have a rate. Does the agreement with US Cellular have
24 a rate?

25 **A. Yes, it does.**

1 Q. Okay. Can you tell me when entered into each of
2 those? The agreement and the memorandum of understanding.

3 A. The agreement with -- the memorandum of understanding
4 was in 2022 --

5 Q. Okay.

6 A. -- late 2022. The US Cellular agreement was this
7 year.

8 Q. Okay.

9 A. And the reason it was this year instead of 2022 is
10 because ETC 2 has an agreement with US cellular and we were
11 anticipating being able to -- when they took over operations
12 being able to utilize their agreement. And because of the
13 delay -- this is one of the things -- you asked me what I would
14 have done differently, I would have signed the US Cellular
15 agreement back in '22 if I understood that this operating
16 agreement through ETC 2 was not going to happen --

17 Q. Okay.

18 A. -- as quickly as I thought. But we -- we didn't want
19 to sign it back then because it would have been duplicative.
20 It would have put an extra burden on the second company if they
21 had the agreement and we had the agreement, that's more expense
22 for them. But --

23 Q. Okay.

24 A. -- at this point.

25 Q. So is there an expiration date on that agreement with

1 US Cellular or --

2 **A. Five years.**

3 Q. Five years, okay. So that --

4 **A. But it's renewable. I don't think it's really -- it**
5 **doesn't really expire.**

6 Q. Just -- just for the sake of it, there is a term to
7 the agreement.

8 **A. Yes.**

9 Q. Okay.

10 **A. With extensions that would enable us to use it**
11 **through the entire term of our CAF II award which I think is**
12 **another six years.**

13 Q. Okay. Thank you.

14 **A. Five years.**

15 Q. The -- the -- so the memorandum of understanding does
16 not have -- I -- I would imagine since you said you intended
17 that to move into the full operating agreement, there --
18 there's not really a term on that one.

19 **A. There's no term on it.**

20 Q. Okay. If by chance the -- the other company, ETC No.
21 2 would decide to terminate that, can Aristotle still provide
22 service to the locations?

23 **A. Yes.**

24 Q. Okay. And how would -- does it do that?

25 **A. The way that agreement is structured is that if the**

1 operating agreement doesn't go through and the transfer doesn't
2 happen, we are still -- they will set a rate for subleasing
3 their spectrum and continue to lease it to us. It would turn
4 into a spectrum sublease rather than an operating agreement.
5 But the way that document is written would enable us to
6 continue to utilize their spectrum.

7 Q. Okay. And then you would enter into some sort of
8 purchase agreement, some sort of rate or that for the agreement
9 at that time.

10 A. (Nonverbal response.)

11 Q. You mentioned that ETC No. 2 could potentially do
12 installations for customers --

13 A. Yes.

14 Q. -- for Aristotle. What did -- has there been any
15 sort of rate established for that type of service or?

16 A. Not at this time. And again, that would be
17 established in the operating agreement, but we have had recent
18 conversations with them where I stated that it was necessary to
19 have an understanding of what they would charge if an
20 installation occurred. The only county that they would do that
21 for in the absence of an operating agreement would be probably
22 Howell County because that's the one they're closest located
23 to. Although, I have not discussed that with them in detail,
24 they will be setting a rate if we need them between now the
25 execution of the operating agreement.

1 Q. Okay. So out of curiosity, if for some reason the
2 transfer agreement did not go through, Aristotle still intends
3 to build a network in Missouri?

4 A. All things being equal, the answer is yes. If we are
5 not an ETC in this state, then I do not know how to answer that
6 question.

7 Q. To be clear, did the Staff of the commissions seek to
8 revoke the ETC status of Aristotle?

9 A. Not yet, but they have said they were going to look
10 at it.

11 Q. Okay. But currently Aristotle is an ETC.

12 A. It is our intention to continue to operate in this
13 state.

14 Q. Okay. Thank you.

15 A. It is our intention to finish the CAF build in this
16 state. That has been derailed by the fact that we were not
17 recertified in October.

18 Q. Okay. Thank you. Is there a date certain by which
19 Aristotle will either enter into a transfer agreement with the
20 other company or will decide that negotiations have gone on
21 long enough and move forward with building a network in
22 Missouri?

23 A. Our date would be by the end of the first quarter of
24 next year. We do not control the other company and do not have
25 any -- I presume something could occur with them that they

1 could explain to us that would make us change that date. But
2 as of right now we are proceeding as if none of this will be
3 going forward.

4 Q. Okay. Thank you. And finally I just want to get a
5 clarification that you -- you commented that companies miss
6 milestones for the CAFF II Auction all the time. Can you tell
7 me your -- your personal knowledge of companies missing
8 milestones?

9 A. Sure. So there was a company in Oklahoma that
10 certified exactly 40 percent and the USAC deemed ineligible
11 some number of their locations, and -- which caused them to
12 have funds withheld for a couple of months while they rectified
13 it. It's usually that. It's less common for company -- you
14 know, to abysmally default on it. But usually it's because
15 USAC will inevitably eliminate a certain number of locations as
16 being invalid through whatever process they use, and let me
17 explain why that might be the case just super briefly. If
18 there's a barn, it might look like a house, and if the company
19 certifies the barn and USAC realizes it's a barn and not a
20 house, that location will be eliminated. And so it does
21 happen. I shouldn't say all the time, but it happens regularly
22 that enough locations will be decertified by USAC if the
23 company would have missed the milestone.

24 Q. Okay. Thank you. I think that -- that clarifies.
25 And then finally, you -- you mentioned that you tried to talk

1 to Staff -- tried to explain to Staff. I -- I just want to
2 clarify, we did have conversations prior to this case.

3 **A. Yes.**

4 Q. Did you ever feel like you were cut off in one of
5 those conversations?

6 **A. I did not feel that we were cut off, no. I felt that**
7 **we were not heard --**

8 Q. Okay.

9 **A. -- and that there was a preconceived notion at play,**
10 **and that really not much we said made a difference to what**
11 **Staff had already concluded was the case.**

12 Q. --

13 **A. That's my personal feeling.**

14 Q. The company had the opportunity to make filings in
15 this docket at anytime. Correct?

16 **A. We did make filings in the docket, yeah.**

17 Q. And Staff -- did -- did Staff ever give you the
18 impression that we would not be open to a phone call or a
19 meeting to -- to further discuss anything?

20 **A. No.**

21 MS. SCURLOCK: Okay. That's all I have. Thank you.

22 THE COURT: All right. Ms. Scurlock, thank you.

23 This looks to be a good time to take a break. We've been going
24 for about a couple hours or so. I show that it's about 5 til'
25 11:00. Let's go off-the-record until 10 after 11:00.

1 Anything further from counsel or bench before we take
2 a break?

3 All right. Hearing nothing, we will be in recess
4 until 11:10. Thank you.

5 [Brief recess.]

6 THE COURT: We are back on-the-record. Ms. Bowles,
7 you are still under oath. I believe we will have some bench
8 question for you.

9 Commissioner Holsman, any questions for this witness?
10 I don't hear anything. Commissioner Kolkmeier, any
11 questions for this witness?

12 MR. KOLKMEYER: No, not at this time. Thank you,
13 Judge.

14 THE COURT: Thank you, commissioner.
15 Commissioner Han.

16 MS. HAHN: Thank you, Judge. I do have questions.

17 THE COURT: When you're ready.

18 [Bench questions.]

19 BY MS. HAHN:

20 Q. Good morning.

21 A. **Good morning.**

22 Q. I want to try to clarify this more for myself than
23 anything, so help me understand it better. I really want to
24 try to understand your milestones and customer connections. So
25 my understanding is that you provide the spectrum service and

1 you passed the test where the Staff came to assess whether or
2 not you were providing service, but you don't have any
3 customers currently receiving that service. Are you required
4 by this CAF Phase II to have Missouri customers to receive the
5 funds?

6 **A. No.**

7 Q. In other states in which you have received CAF II
8 funds, do you have customers?

9 **A. In some of them we do, and in some of them we do not.**

10 Q. And in the states in which you do not, are you
11 certified as a ETC from their commissions?

12 **A. Yes.**

13 Q. When under the CAF II program requirements, you're
14 only required to provide the service generally or how is --
15 what is the requirement? Help me understand that.

16 **A. We are required to provide or to make available the**
17 **service at a specific speed to a specific location. So that**
18 **location was one of the 788 locations given to us by the FCC.**
19 **We've committed to be able to deliver speeds of at least 25**
20 **Mbps 3 Mbps up to that location through a fixed wireless**
21 **service.**

22 Q. Okay. That's helpful. In states where you also
23 provide and fixed wireless service and have customers, about
24 how many customers in each -- how many customers do you have
25 that are not e-mail customers but are fixed wireless internet

1 customers?

2 **A. Fixed wireless internet customers in Arkansas around**
3 **1,700.**

4 Q. Okay.

5 **A. I think in Illinois it's 125, and then we have a**
6 **couple in Mississippi, and none in Oklahoma.**

7 Q. Okay. And in other states in which don't have
8 customers, do you contract with another ETC to provide the
9 fixed wireless service to customers directly or how does that
10 work?

11 **A. Only in Illinois.**

12 Q. Only in Illinois.

13 **A. Yeah.**

14 Q. Okay. If we as a commissions certify you and you
15 fail to meet the milestones as set out in the CAF II Auction by
16 2025, what happens?

17 **A. So the USAC would make that determination and then**
18 **they would basically issue a warning and then reduce the amount**
19 **of funds we receive and give us six months to fix it. If after**
20 **six months we didn't fix it, they put it into something -- I**
21 **think it's called a tier 3 or Schedule 3. I have it actually**
22 **here, but it's a specific designation which basically means you**
23 **are not meeting milestones. And then there's another six**
24 **months to fix it, and if at the end of the year we've met the**
25 **milestone, whichever one was missed, they will go back and give**

1 us all of the funds that were held back.

2 Q. If you were to never meet the milestones, say at the
3 end of '25, you go through the year of compliance with USAC,
4 you still don't meet them, then what happens? Is there ever a
5 time where the FCC requires you to repay the funds?

6 A. The FCC requires us to maintain the standby letter of
7 credit. And if the -- the milestones are -- and that letter of
8 credit goes up or down depending on how much of the -- so let's
9 say that we get through the 80 percent milestone but we never
10 hit the 100 percent milestone, then the FCC can call a portion
11 of that letter of credit and that reimburses the FCC for
12 whatever percentage of money. And presumably they would also
13 stop future funds, because one thing to remember is it's a ten
14 year program with a six year build. So we have six years to
15 build it and then there's four years of maintenance. So
16 presumably if that milestone was never met, the four years of
17 maintenance would be cut off, which would be in this case \$1.2
18 million. And then the -- they -- they could but don't have to
19 call the letter of credit. And I think what they do would
20 depend on how egregious it was. Having already made the 40
21 percent milestone we'll make the 60 percent milestone. I
22 don't -- it's very rare for -- they call that money when
23 there's a default before any deployment has begun.

24 Q. Okay. So ultimately the FCC is responsible for
25 ensuring that you're meeting the milestones with the funds

1 provided.

2 **A. Correct.**

3 Q. Okay. Have you ever been decertified in any other
4 state in which you're operating? I just want to clarify.

5 **A. No.**

6 Q. Okay. Staff does allege that you are not advertising
7 as required as part of receiving those funds. Are there
8 timelines and milestones you have to meet for advertising or
9 can you explain that?

10 **A. No. There are no timelines or milestones for**
11 **advertising, and there are no requirements for what has to be**
12 **done in terms of advertising and there's no prescription on you**
13 **have to run five TV ads and a newspaper article. It's very**
14 **much -- you just have to show as a company that you have made**
15 **consumers aware of the service is really what the FCC means by**
16 **advertising. They're not prescribing a specific methodology**
17 **for advertising or even amount.**

18 Q. Okay. You mentioned that you have a lease with
19 one -- sublease from one provider, US Cellular by name. You
20 have another provider that you're working with to effectuate
21 the operating agreement and the transfer agreement. You had
22 mentioned that this proceeding is giving them pause on
23 effectuating the operating and transfer agreement. Can you
24 talk a little bit more about that?

25 **A. Sure. So far they have not indicated that they won't**

1 go forward, but they ask us -- we have a weekly meeting with
2 them and they ask us at every weekly meeting, how do you feel
3 about this, do you think that your certification will be
4 renewed, do you think that this is going to be a problem. And
5 they are -- I don't actually know -- if we are not certified
6 and that money gets removed, I don't personally know that when
7 the transfer happens six months from now that they get that
8 money. Like I don't -- I don't know whether that money is lost
9 forever or if it goes into a holding bucket for Missouri
10 pending the transfer, but I know that as far as the late
11 certification, we're losing money every day and that money will
12 not be able to go to them either. And so depending on how long
13 this drags out, I could see them looking at that and saying,
14 well, it was -- you know, worth X million dollars -- this
15 award, but now it's not worth that much and so we need to
16 change our consideration. I don't -- I don't know. I just
17 know that very closely watching what's happening with his
18 hearing -- I mean with this proceeding, not this hearing.

19 Q. You mentioned your counsel asked you a question, and
20 it was in our agenda meeting, about a failed -- whenever we
21 considered -- the commission considered in our public agenda
22 meeting the order that provided a list of providers to the FCC
23 for certification and Aristotle was not on the list, my
24 impression at the time was that there was a failure to file
25 reports which is something I believe that had we rewatched the

1 proceedings or something, the chair had -- was also my
2 impression. Can you talk about that a little bit more? Had
3 there been other requests that you'd failed to meet, have
4 you -- talk about that for me.

5 A. Yeah, no. Not at all. We have never failed to file
6 a report. And in fact, I did not watch the hearing live, but
7 our counsel did and he said -- he had originally -- okay. He
8 had originally said that there was a line item and that the
9 case number was our case number. And I said, well, but we have
10 an opportunity to respond. And he said, yes. That's due on
11 the September 27th, and so he listened to the hearing and
12 after the hearing he called me and said they're certifying.
13 They didn't name any companies but they're certifying the
14 certain -- I think 64, and there's one company that they're not
15 certifying because of failure to file reports. And our
16 compliance officer was on the phone and she said, well, that's
17 not us then because we've filed reports. And so I assumed that
18 there was -- you know, our brief would go in and there would be
19 a hearing, and we'd go through this process, and so we went
20 ahead and filed our -- our response in a timely manner. And I
21 subsequently watched the hearing and I actually watched it
22 again right before this hearing to make sure that I had
23 remembered correctly. And that is what was represented was
24 that the ETC being left off the report -- left off the
25 certification was because of failure to file reports.

1 Q. Okay. Thank you. I'm just checking my notes really
2 quick. So as part of this hearing, really what's at the
3 commission's discretion is the certification and the CFR to go
4 along with that, so I want to go through the components briefly
5 of the certification rule, and so bear with me. There's in my
6 view three primary components. One is that your company must
7 file an annual certification with the administrator and the
8 FCC. Have you done that?

9 **A. Yes.**

10 Q. And does that certification say that the funds that
11 you used in the preceding year -- I'm assuming 2023. I'm not
12 exactly sure -- and will be used in the upcoming year 2024,
13 were only for the provision, maintenance and upgrading of
14 facilities and services for which the support is intended?

15 **A. Yes. I do think it's '22 and '23 --**

16 Q. Okay.

17 **A. -- but yes.**

18 Q. Can talk about how you -- with your providing the
19 service but not having customers meets that definition of
20 provision, maintenance and upgrading of facilities and
21 services?

22 **A. It meets that -- well, it's hard for us without**
23 **customers to obviously maintain a customer base, but it meets**
24 **that definition by one, we're able to deliver the service. So**
25 **that is provision. We do provide the service. We provide**

1 customer support and we provide technical support and we do
2 network mapping and other things to ensure that the service is
3 available. And once we have deployments in Missouri whether it
4 is a tower or a customer, we would then be responsible for
5 maintaining that customer and billing and making sure that they
6 were -- were covered. It's just not very many locations.

7 Q. Okay. I want to come back to that. And the third
8 component of certification is that the state has to file the
9 certification.

10 A. Yes.

11 Q. Okay. So one component you've already done, the
12 third component, we have not done, and the middle component is
13 really what's at question here, whether you're providing,
14 maintaining, upgrading those services as intended. So I want
15 to go back to if you're not -- if you don't have customers and
16 it's not your intention to have customers, the transfer
17 agreement are -- is an operating transfer agreement of -- are
18 you going to ask the company that's potentially engaging in
19 this with you to have Missouri customers?

20 A. So let me -- let me go back to that. The provision,
21 maintenance, and what was the third?

22 Q. Upgrading.

23 A. Upgrading. So that's not an "and" in every year.

24 Q. Okay.

25 A. So this year we are providing the service. And

1 subsequently years after the build is complete in year six,
2 there is a responsibility to maintain and upgrade and that's
3 why the money continues after the build is complete for another
4 four years. So that's not every single year you have to be
5 providing, maintaining and upgrading. That's you have to be
6 doing one of those three things because providing throughout
7 and then maintaining, and if there is an upgrade pathway,
8 upgrading. So we are meeting that requirement in that term.

9 And so far as not wanting customers in Missouri, we
10 do want customers in Missouri. If we believe that it was in
11 the best interest of Missouri consumers to -- for us to operate
12 in this state and to onboard customers, that's what we would be
13 doing. The network that that we won through CAF overlaps ETC
14 2's network, and so they are going to be deploying in those
15 areas. And that is a duplication of effort and it is a
16 duplication of -- it takes funds from one -- it -- it isn't an
17 efficient use of funds for both of us to be deploying in the
18 same area when there's so many unserved in those three
19 counties. That is the basis for why we entered into the
20 transfer agreement.

21 If the transfer agreement never happens, we fully
22 intend to operate in this state. This is not, we don't want to
23 work in Missouri and we don't want Missouri customers. This is
24 given that it was 788 locations and this company already has
25 thousands of customers in Missouri, it made a lot of sense.

1 **And as I said, they approached us. So it was not something**
2 **that we went into this idea of we're just not going to have**
3 **Missouri customers.**

4 Q. I appreciate the clarification on it's not an "and"
5 every year provision, maintenance and upgrading because that
6 might actually -- the first year you're awarded funds, you
7 might not actually be able to provide that year. So that's a
8 distinction with a difference, so thank you.

9 MS. HAHN: That's all the questions I have.

10 THE COURT: Commissioner, thank you. Let me see if
11 we have any cross based on bench questions.

12 Ms. Scurlock, any questions?

13 MS. SCURLOCK: Just one, Your Honor.

14 BY MS. SCURLOCK:

15 Q. The commissioner asked you several questions kind of
16 about how you're meeting the -- the elements of 54.314.
17 What -- what was the purpose of the CAF II auction? What did
18 the FCC convey? What was the intention of the auction?

19 **A. To provide service to unserved locations in rural**
20 **communities throughout the United States.**

21 Q. And by unserved, that means a lack of broadband
22 service.

23 **A. Yes. No broadband, no internet service of greater**
24 **than 10 Mbps.**

25 MS. SCURLOCK: Okay. Thank you. That's all I have.

1 THE COURT: Commissioner, I think she has more
2 questions. Go ahead.

3 MS. HAHN: I'm sorry, further questions.
4 [Bench questions.]

5 BY MS. HAHN:

6 Q. The CAF II auction, it is not just for unserved, it
7 is also for underserved. Is that correct?

8 A. Yes. So unserved would be no -- so at the time --
9 it's 2018 -- unserved would have been no internet at all and
10 underserved would have been internet at speeds of less than 10
11 Mbps. So it would have been both of those things.

12 Q. Correct. Okay. So it's not just unserved, it is
13 unserved and underserved?

14 A. Correct. I apologize. That's right.

15 Q. Okay. And the requirements for speeds of underserved
16 are space 10, 1, and you receive funding for unserved and
17 underserved so that they can get speeds of at least 25, 3.

18 A. Correct.

19 Q. And that 25, 3, is the FCC's definition of broadband
20 service currently. Is that correct or is it 10, 1?

21 A. It is 25, 3?

22 Q. --

23 A. -- currently.

24 Q. Okay.

25 A. Yeah.

1 Q. And the new standards for broadband service provision
2 under the new --

3 A. --

4 Q. I-H-A-A -- I can't remember because they run
5 together.

6 A. Yeah.

7 Q. What's the definition that they're requiring for
8 broadband service in that case?

9 A. For a location to be considered served, it has to
10 have 100 by 20.

11 Q. 100 by 20.

12 A. (Nonverbal response.)

13 Q. Yeah. Okay. Thank you. And so earlier you'd
14 mentioned -- I think the Staff counsel asked you is there
15 service in these areas, and you had responded that there is
16 satellite service.

17 A. (Nonverbal response.)

18 Q. Can you speak to the speeds of satellite service? Is
19 there a way to measure it comparable to broadband so we can
20 kind of have some idea of --

21 A. Yeah. So there's -- there's two pieces to it to --
22 for area to be served; one is the speed and the other is the
23 latency. The latency has to be less 100 milli-seconds. So in
24 so far as speed is concerned, a lot of times the satellite --
25 the download speed may be 50 Mbps, but oftentimes it's closer

1 to 5 Mbps. The problem with satellite is the upload speed
2 generally never goes above 2 Mbps because it's just -- the
3 devices on the home are not strong enough to send a signal back
4 to space which is part of the problem.

5 The bigger problem with latency and why it's not
6 broadband is because of the latency. When you send a signal
7 from earth to space and back, it introduces delay. So at the
8 satellite industry we'll say 90 percent of what you want to do
9 on the internet you can do with the satellite connection. But
10 what's in the 10 percent is voice over IP's, streaming video,
11 high-definition video, you know, videoconference. And so
12 satellite is -- and plus with the data caps when you lay your
13 data caps on there. That is why the FCC does not consider
14 satellite to be broadband is the high latency, low upload
15 speeds, sometimes low download speeds, and data caps.

16 MS. HAHN: Thank you. I appreciate the
17 clarification.

18 THE COURT: Commissioner, thank you. Any further
19 cross based on bench questions, Ms. Scurlock?

20 MS. SCURLOCK: No further questions. Thank you,
21 Judge.

22 THE COURT: Mr. Lumley, any redirect based on bench
23 questions?

24 MR. LUMLEY: No, Your Honor.

25 THE COURT: All right. Thank you. May this witness

1 be excused?

2 All right. Thank you.

3 **THE WITNESS: Thank you.**

4 **THE COURT:** Ms. Bowles, thank you. You may step
5 down. And I think the bench may have additional questions for
6 Mr. Van Eschen. And Mr. Van Eschen, you're still under oath,
7 if you'll retake the stand, please.

8 Commissioner, when you're ready.

9 [Bench questions.]

10 BY MS. HAHN:

11 Q. Thank you, Mr. Van Eschen. I'm just going to ask
12 some more general questions about telecommunications and
13 broadband funding in this type of work generally. So are you
14 aware of maybe how many companies received this type of funding
15 and Missouri?

16 A. I don't have the number in front of me, but there's
17 approximately about 65 that receive funding from the high-cost
18 program.

19 Q. Okay. Did Staff do 65 investigations?

20 A. Not to this extent. What we do is we look at the
21 annual filings that companies submit and we also require
22 companies to maintain information about their companies, and we
23 maintain it on what we refer to as an information sheet. And
24 that sheet provides information about how much funding they're
25 getting, what kind of high-cost support, if there's any

1 broadband deployment obligations, what those are, the timeline
2 for that, how they're using the funding, what their future
3 plans are. We keep a lot of other information about the
4 company history, where their headquarters, call centers, and so
5 forth. We do that for all the companies.

6 Q. Okay. How long would you say have you been keeping
7 those types of reports?

8 A. I'd say four years -- three or four years.

9 Q. So relatively recently.

10 A. We've maintained them for several years, yes.

11 Q. Okay was the CAF II Reverse Auction the first time
12 you kept those reports or were there times before that?

13 A. There were times before that.

14 Q. Okay. If the company had received federal funds or
15 other funds or what was the distinction?

16 A. It's -- it's solely federal funding from the Federal
17 University Service Funds High-Cost Program.

18 Q. Thank you. Has the staff ever recommended not
19 recertifying a carrier for this reason?

20 A. There have been some companies that had ETC status
21 and don't receive funding. They haven't submitted anything to
22 us, they don't respond and they're not recertified.

23 Q. So kind of defunct if the company is nonresponsive
24 but they don't receive funds.

25 A. Yeah. And there was another incident in --

1 approximately 20 years ago where a couple of companies were not
2 recertified. And that -- those reasons were not using the
3 funding appropriately and there was some criminal activity
4 associated with that.

5 Q. Okay. So generally I would say that based on your
6 testimony this is rare for a --

7 A. Oh yes, it is. It is.

8 Q. -- to get recertified.

9 A. It is.

10 Q. But also, the carrier that you mentioned 20 years
11 ago, what funds were they not using appropriately? I can't
12 imagine 20 years ago they were using for CAF II funds for
13 broadband. Maybe they were, I don't know.

14 A. That was a very unusual case. And there were legal
15 implications for the company officials, and they were basically
16 funneling the money in an inappropriate way. And it was
17 through the FBI that they -- the company was using the funds in
18 a totally inappropriate manner, and some of the officials did
19 spend time in jail as a result.

20 Q. Were they decertified after an investigation, after
21 audit from the FCC? I'm trying to figure out at what phase in
22 the process they were not certified.

23 A. There was an investigation with -- with the
24 commission and I'd say as a result of that investigation, they
25 were not recertified.

1 Q. Was there also an audit?

2 A. Yeah. Our accounting staff was also involved.

3 Q. Was there an FCC audit?

4 A. I do not recall the FCC's involvement in that.

5 Q. Okay. It seems like a slightly different set of
6 scenarios.

7 A. Perhaps. I think it gets -- it boils down to -- I
8 think the -- what we look at is this funding is to be used to
9 benefit the consumers that are targeted by the funding, and
10 whether the company is using the funds in a way that directly
11 benefits those consumers.

12 Q. Okay. I'm going to switch gears on you really quick.
13 I asked the company's witness if there's a requirement for the
14 company to have customers in order to meet the right -- the CAF
15 II grant criteria and she responded that the answer is no. Is
16 that your understanding as well?

17 A. Yeah. They just have to make broadband service
18 available. And -- and technically it's expected that the
19 company would use their own facilities or use their facilities
20 in combination with resale of another company's facilities.
21 But they just have to make it available.

22 Q. Okay. I also asked about advertising based upon your
23 position that they're -- they had not been advertising and
24 that's a requirement of the funding award. Her testimony was
25 that there's no specific milestones or criteria for advertising

1 and that they are currently advertising. Do you agree with
2 that testimony?

3 **A. I would say that they are not advertising. I will**
4 **agree that the criteria for determining what is appropriate**
5 **advertising is really not clearly defined. I think the FCC**
6 **rule that requires all ETC's to advertise is the expectation**
7 **that the company would use advertising using media of general**
8 **distribution, but I really haven't seen the company put forth**
9 **any advertising. And it was very unusual, at least to us, that**
10 **when we look at their website, it wouldn't even reflect that**
11 **service was available in Missouri months afterward.**

12 **Q. From your knowledge of how the funding works and**
13 **there's not a lot of criteria around advertising, if they were**
14 **to increase their advertising after it's significantly -- maybe**
15 **after they get a transfer agreement or operating agreement in**
16 **place, would that satisfy Staff's contention that they're not**
17 **advertising if they started advertising to customers?**

18 **A. Yeah. I think they definitely need to step up their**
19 **efforts to advertise in order to meet the requirement that all**
20 **ETC's must advertise.**

21 **Q. Thank you. I'm going to change gears again. I'm**
22 **going to go to certification. So I had asked the company's**
23 **witness about the rule on certification, and I kind of walked**
24 **through it -- at least in my mind I've compartmentalized it**
25 **into three buckets. In the first bucket was that under the**

1 rule that the company is required to file an annual
2 certification with the FCC. Is it your knowledge and
3 understanding that they have filed a document with the
4 administrator and FCC?

5 **A. Yes, they have.**

6 Q. And I think the second part of the certification is
7 really what's at issue here which is that the carriers within
8 the state have in the past year and in the upcoming year used
9 that funding only for the provision, maintenance and upgrading
10 of facilities in service for which the support is intended.
11 The witness talked about how they're providing the service even
12 though they don't have customers, and she talked about the
13 distinction between maintenance and upgrading of those
14 facilities and service though maybe not all at the same time or
15 the same years. Do you agree with her testimony that they're
16 providing, maintaining, upgrading those facilities maybe not in
17 the same year?

18 **A. The -- the rule that -- the FCC rule that I think**
19 **you're citing --**

20 Q. Yeah. Sorry I didn't get the number. I can give
21 that to you if you want, but --

22 **A. Well, and -- and -- and basically that rule is -- you**
23 **know, asking states to certify that the company is using the**
24 **funding for -- for providing, maintaining, and so forth as**
25 **intended by that funding. And again for me, and I think**

1 it's -- the funding is intended to benefit the consumers that
2 are targeted by the funding, and in this instance I don't see
3 anything that the company has done so far that benefits the
4 consumers in Missouri.

5 Q. Understood. The third part of that rule is basically
6 that the state has to file the certifications. So that's --
7 that part would not rest on them, that would rest on us.

8 A. That is correct.

9 MS. HAHN: Okay. I can't think of anymore, Mr. Van
10 Eschen. Thank you.

11 THE COURT: Commissioner, thank you. Let me see if
12 we have anymore bench questions.

13 Commissioner Holsman, any questions for Mr. Van
14 Eschen?

15 MR. HOLSMAN: No. Thank you, Judge.

16 THE COURT: Thank you. Commissioner Kolkmeier.

17 MR. KOLKMEYER: No. Thank you, Judge.

18 THE COURT: All right. Thank you. Any questions for
19 counsel based on bench questions -- cross based on those
20 questions, Mr. Lumley?

21 MR. LUMLEY: No, sir.

22 THE COURT: Thank you. And redirect based on bench
23 questions, Ms. Scurlock?

24 MS. SCURLOCK: Just a few.

25 [Redirect examination.]

1 BY MS. SCURLOCK:

2 Q. Mr. Van Eschen, the commissioner was asking you about
3 the other company that you were referencing that Staff did not
4 recommend recertification for. Do you recall why that company
5 was receiving government funding?

6 **A. You mean this year?**

7 Q. No. The -- the company that we did not recertify
8 twenty years ago.

9 **A. Yeah. There were a couple of companies, they were
10 related. But you're asking about the reason.**

11 Q. The funding. Why -- what program was that under?

12 **A. That was under the high-cost program.**

13 Q. Just the traditional high-cost program and that's to
14 provide telecommunication services to unserved or underserved
15 areas.

16 **A. In high-cost areas.**

17 Q. In high-cost areas, okay. The commissioner also
18 asked you about the Staff's investigation and specifically
19 looking into Aristotle. You stated that Staff does observe all
20 of the companies receiving funding under CAF II and other
21 federal programs in the state of Missouri.

22 **A. Yes. All the companies that receive federal US at
23 high-cost support we look at.**

24 Q. Okay. And I realize I've been using high-cost, but
25 that's areas that it would cost more than what might be

1 considered average to provide service.

2 A. Yes. It's specifically for high-cost areas that are
3 lack broadband that meets the 10, 1 Mbps.

4 Q. And that's the current definition. Historically
5 high-cost was for telecommunication services as well. Correct?

6 A. Yes, it was for telecom service. And when the FCC
7 came out with our national broadband plan, they expanded the
8 fund to provide funding for broadband. And over the years the
9 high-cost program has primarily been a program that supports
10 broadband service.

11 Q. Thank you. And then back to Staff's investigation,
12 did Staff observe Aristotle prior to asking to open the
13 investigative docket that we are currently here today because
14 of? Was Staff investigating Aristotle prior to the opening of
15 this docket?

16 A. We had flagged the company like we do other companies
17 that we feel -- well, we had observed at least for Aristotle is
18 no broadband deployments had been -- were made since they
19 started to receive funding, and they were basically within a
20 year of meeting the first milestone where they would need to
21 meet the milestone of deploying to 40 percent of the locations.
22 And so were watching them as well as some other companies that
23 met that criteria.

24 Q. And that's the reason why Staff opened an
25 investigative docket for Aristotle.

1 A. I think -- I think we opened the investigation of
2 Aristotle because based on the information that we had gathered
3 and how they presented their ETC application to the commission
4 is that they would build their network in Missouri, and when we
5 started asking some questions about well, how did you deploy
6 broadband service to these locations, we were unable to get an
7 answer. That coupled with the fact that we thought it was very
8 unusual that the company didn't indicate on their website that
9 service was available in Missouri, and that is somewhat unique.
10 But through those factors we decided, hey we need to take a
11 closer look.

12 Q. And finally, the commissioner asked you about whether
13 there was a need to have customers pursuant to the requirements
14 of the CAF II program. Is it your understanding that the
15 intent of the program would be that customers would be served
16 by these -- the provision of broadband services?

17 A. A company doesn't need to necessarily have broadband
18 subscribers. This funding is designed to benefit those
19 consumers and at least make the service available to them so
20 they -- if they want to subscribe to it, they have that
21 ability.

22 MS. SCURLOCK: Okay. Thank you. No further for
23 questions.

24 THE COURT: Ms. Scurlock, thank you.

25 Mr. Van Eschen -- oh more questions. When you're

1 ready.

2 [Bench questions.]

3 BY MS. HAHN:

4 Q. I think the question that Staff counsel just asked
5 had -- you know, talked about the intent of the program and the
6 intent of the Universal Service Fund CAF program, and if the
7 company were to better make available to service directly to
8 customers now on their website so that customers could sign up
9 directly and they could start enrolling customers here, and
10 then if they effectuated the operating and transfer agreement,
11 they could just transfer those assets to the new company, would
12 that generally try to satisfy Staff's contention about the
13 customer aspect?

14 A. I think that's a step in the right direction.
15 Although, you know it gets back to -- you know, certification
16 and is the company using the funding appropriately, and you
17 know, I think the commission needs to take a look at are the
18 consumers that are targeted by this funding, are they
19 benefiting from it.

20 THE COURT: All right. Commissioner, thank you. Any
21 cross based on those bench questions, Mr. Lumley?

22 MR. LUMLEY: No, sir.

23 THE COURT: Redirect based on bench?

24 MR. LUMLEY: No. Thank you, Judge.

25 THE COURT: Thank you. If there's nothing further --

1 all right. Mr. Van Eschen, thank you very much. And I believe
2 those are all the witness we scheduled.

3 MS. SCURLOCK: Judge, can I ask that Ms. Bowles
4 returns to just address that one point that Commissioner Hahn
5 was asking about?

6 THE COURT: If there's no objection.

7 MR. LUMLEY: Okay.

8 MS. SCURLOCK: I would object. I think that Ms.
9 Bowles had an opportunity on the stand to answer commissioner
10 questions, but I don't want to deny Commissioner Hahn if she
11 would like to put her back on the stand.

12 MR. LUMLEY: This is to the question about the
13 ability of customers today to sign up.

14 THE COURT: Okay. I'll let her retake the stand.
15 Ms. Bowles, you're still under oath. And Mr. Lumley, when
16 you're ready.

17 MR. LUMLEY: Thank you, Judge.

18 BY MR. LUMLEY:

19 Q. Could you just address the commissioner's question
20 about the current ability of customers to sign up for service?

21 **A. Yes. Customers have been able to sign up for service**
22 **on our website since earlier this year, and they do so by going**
23 **to the website and filling out an online form which goes**
24 **directly to our customer support. That's how we have 151 leads**
25 **in Missouri is they are coming primarily through the website.**

1 **So that's already in place.**

2 Q. And to clarify, those leads -- none of them have
3 been --

4 **A. No.**

5 Q. -- blocks.

6 **A. No.**

7 MR. LUMLEY: That's all I have unless the
8 commissioner has follow-up.

9 THE COURT: Mr. Lumley, thank you. I'm going to see
10 if we have any bench questions.

11 Commissioner Holsman, any questions?

12 MR. HOLSMAN: No. Thank you, Judge.

13 THE COURT: Thank you. Commissioner Kolkmeier.

14 MR. KOLKMEYER: (No response.)

15 THE COURT: Commissioner Hahn, any questions?

16 MS. HAHN: (Nonverbal response.)

17 THE COURT: All right. Thank you.

18 All right. Ms. Bowles, thank you.

19 All right. I believe we may have reached the end of
20 the evidence, but is there anything further from counsel
21 before we conclude the hearing?

22 MR. LUMLEY: Were we going to have closing arguments?
23 I would like to brief closing argument.

24 THE COURT: I'll -- I'll be happy to reach briefs.

25 MR. LUMLEY: That's the point though is that the

1 briefs are going to add another month to this loss of funds.

2 Well, let me just say that I would ask the commission to
3 consider directing Staff to prepare a letter that the
4 commission could look at its next agenda session.

5 THE COURT: I mean you're free to file. You know, if
6 you want some sort of relief, I mean you're free to file some
7 sort of request in this docket, and then Staff can respond and
8 we'll go from here. And again, I'll look forward to the
9 briefs, but I don't intend to hear closing.

10 MR. LUMLEY: Thank you.

11 THE COURT: Anything further from counsel or from the
12 bench before we conclude the hearing?

13 All right. By hearing nothing, that will conclude
14 today's evidentiary hearing in file No TO-2023-0436.
15 Thank you very much. We are off-the-record.

16 [Hearing concluded.]

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CERTIFICATE OF REPORTER

I, Candice K. Perez, a Certified Court Reporter for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto nor financially or otherwise interested in the outcome of the action.



Candice K. Perez
Missouri Supreme Court
Certified Court Reporter

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