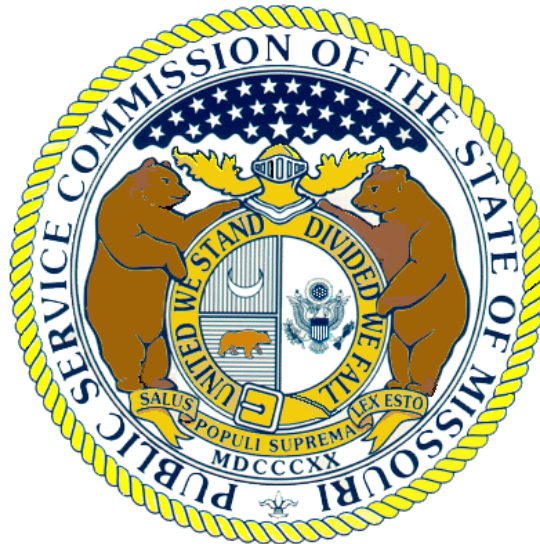


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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

File No. TO-2023-0436

REPORT AND ORDER

Issue Date: January 24, 2024

Effective Date: February 3, 2024

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

File No. TO-2023-0436

APPEARANCES

ARISTOTLE UNIFIED COMMUNICATIONS, LLC:

Carl J. Lumley, 130 S. Bemiston, Suite 200, St. Louis, MO 63105.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Whitney Scurlock, Chief Deputy Staff Counsel, Post Office Box 360, Governor
Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Ronald D. Pridgin, Deputy Chief

REPORT AND ORDER

I. Procedural History

On June 22, 2023, the Staff of the Commission (Staff) filed a Motion to Open an Investigative Docket and Staff Memorandum. Staff asserted that Aristotle Unified Communications, LLC (Aristotle) has not met its build-out milestones required by 47 C.F.R. § 54.320(d)(1) to continue to receive Connect America Fund II (CAF II) funding. Staff also asserted that Aristotle has repeatedly failed to accurately explain tower progress, Aristotle is unable to adequately explain how its funding is being used, Aristotle has failed to disclose lobbying efforts for broadband deployment relief, and Aristotle is not complying with the eligible telecommunications carrier (ETC) requirement to advertise its services.

The Commission convened an evidentiary hearing on December 12, 2023.¹ During that hearing, the Commission admitted the testimony of two witnesses, and received two exhibits into evidence. Post-hearing briefs were filed on December 26, 2023 and January 3, 2024, and the case was deemed submitted for the Commission's decision on that date.²

The parties have identified the issue as follows:

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

¹ Transcript Volume 2.

² "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

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

II. Findings of Fact

In making its Findings of Fact, the Commission finds that any given witness' qualifications and overall credibility are not dispositive as to each and every portion of that witness' testimony. The Commission gives each item or portion of a witness' testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.³ Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.⁴

1. Aristotle is a privately held company headquartered in Little Rock, Arkansas.⁵

³ Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

⁴ An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

⁵ Tr. **Vol. 2**, p 43.

2. Aristotle is a broadband internet service provider that offers broadband over a hybrid fiber/fixed wireless network. It also offers email, hosting, and Voice over Internet Protocol (VoIP) communications services.⁶

3. The Commission granted Aristotle ETC status on February 2, 2019.⁷

4. Designation as an ETC enabled Aristotle to receive federal universal support funds, including CAF II funding.⁸

5. The Federal Communications Commission (FCC) awarded Aristotle CAF II funding in September 2018 for certain census blocks in Howell, Oregon, and Ozark Counties, Missouri.⁹

6. A total of \$3,001,550.90 of CAF II funding was allocated to Aristotle. Those funds are to be disbursed monthly over 120 months, from July 2019 to July 2029, provided Aristotle receives annual ETC certification from the Commission.¹⁰

7. The Commission certified Aristotle to the FCC as eligible to receive CAF II funding from 2019 to 2023.¹¹

8. The Universal Service Administrative Co. (USAC) administers the Universal Service Fund for the FCC. The USAC database shows the Commission did not certify Aristotle to receive CAF II funds for 2024.¹²

9. Aristotle loses approximately \$833 per day of CAF II funding for every day it is not certified to receive it.¹³

⁶ Ex. 200, p. 3.

⁷ File No. TA-2019-0147; *see also* Ex. 200, p. 3.

⁸ Ex. 200, p. 3.

⁹ Ex. 100, p. 3; Ex. 200, p. 4.

¹⁰ Ex. 200, p. 4.

¹¹ Ex. 200, p. 5.

¹² Ex. 200, pp. 5-6; Tr. p. 53.

¹³ Tr. **Vol. 2**, pp. 31, 62-63.

10. Aristotle also conducts business in Illinois, Arkansas, Oklahoma, and Mississippi. Aristotle has been certified to receive CAF II funds for 2024 in those states.¹⁴

11. USAC is auditing Aristotle.¹⁵

12. Aristotle is required to make broadband available to a certain portion of its Missouri census blocks by the following milestones: 40% of the targeted locations by December 31, 2022, 60% of the targeted locations by December 31, 2023, 80% of the targeted locations by December 31, 2024, and 100% of the targeted locations by December 31, 2025.¹⁶

13. If Aristotle has failed to meet its milestones under the CAF II grant, then USAC is responsible for monitoring Aristotle's progress, or lack thereof.¹⁷

14. Aristotle is able to serve Missouri customers by subleasing spectrum from two companies. Aristotle can use that data service to deliver a fixed wireless broadband service.¹⁸

15. Aristotle has met its milestones thus far, and is on track to meet its 2023 milestones.¹⁹

16. Aristotle is able to serve Missouri customers by subleasing spectrum from two companies. Aristotle is using that data service to deliver a fixed wireless broadband service.²⁰

¹⁴ Ex. 200, pp. 3, 7.

¹⁵ Ex. 200, p. 9.

¹⁶ Ex. 100, 4; Ex. 200, p. 8.

¹⁷ Ex. 200, pp. 8-9.

¹⁸ Tr. **Vol 2**, p. 36, 39, 46.

¹⁹ Ex. 200, pp. 8-9.

²⁰ Tr. **Vol. 2**, p. 36, 39, 46.

17. Aristotle is in negotiations with another carrier to take over the Missouri census blocks for which Aristotle received CAF II funding.²¹

18. Aristotle initially planned to install its own towers. However, Aristotle has not installed towers because it plans to transfer its census blocks to another carrier.²²

19. Aristotle is using other carriers' towers to be able to serve Missouri customers.²³

20. Aristotle has been in negotiations with another carrier to take its Missouri census blocks since 2019.²⁴

21. Aristotle has not installed any equipment in Missouri. It plans to transfer its Missouri census blocks to another carrier. Aristotle did not want to invest money in constructing a tower if the other carrier already had a tower to serve those census blocks.²⁵

22. Aristotle currently has contracts with other carriers to allow Aristotle to provide service in Missouri.²⁶

23. Aristotle has spent CAF II funds on distribution equipment, backhaul equipment, customer premises equipment, routers, cabinet and ground equipment, and steel for tower construction for Missouri.²⁷

²¹ Ex. 200, pp. 9-10.

²² Tr. **Vol. 2**, p. 38.

²³ Tr. **Vol 2**, p. 46.

²⁴ Tr. **Vol 2**, p. 38.

²⁵ Tr. **Vol 2**, p. 35, 38-39, 81, 84-85, 87.

²⁶ Tr. **Vol 2**, p. 85.

²⁷ Tr. **Vol. 2**, p. 29.

24. Aristotle has purchased equipment to be used solely in Missouri. This equipment is segregated from non-Missouri equipment, and the equipment used for fixed Long-Term Evolution (LTE) in Missouri can only be used in Missouri.²⁸

25. Aristotle has not advertised in Missouri.²⁹

26. Aristotle has explained its lack of advertising due to the expectation that another carrier would soon be serving Aristotle's Missouri census blocks.³⁰

III. Conclusions of Law

47 C.F.R. § 54.314(a) states:

(a) Certification. States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the (FCC) stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

The Commission is charged with certifying that a carrier is using the CAF II funding appropriately.³¹

²⁸ Tr. **Vol. 2**, pp. 42-43.

²⁹ Tr. **Vol 2**, p. 22, 64, 112.

³⁰ Ex. 100, Sch. JVE d2, p. 6.

³¹ *State ex rel. BPS Telephone Co. v. Missouri P.S.C.*, 285 S.W.3d 395, 399 (Mo.App. W.D. 2009).

IV. Decision

The CAF II fund is meant to financially assist carriers to provide broadband service in high-cost areas. The Commission believes that this funding is important to provide broadband service in high-cost areas such as Aristotle's Missouri census blocks. The Commission expects carriers to use these funds appropriately, and that advertising should be used to educate customers about broadband expansion in their area.

Aristotle has spent CAF II funds on telecommunications equipment dedicated for use solely in Missouri. In fact, due to the fixed LTE Aristotle is using only in Missouri, this equipment cannot be used elsewhere. Thus, the Commission concludes Aristotle has used the CAF II funding for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

While Aristotle has used the CAF II funds as authorized, the Commission notes that without advertising the availability of broadband services, the customers intended to receive the services may be unaware of them. The Commission encourages Aristotle to be more aggressive in advertising to potential customers.

The Commission notes that at Staff's request, USAC is currently auditing Aristotle. If USAC believes Aristotle is not using CAF II funds properly, then USAC can choose to withhold further funding. The Commission anticipates that Staff will continue to monitor the audit of Aristotle and its use of CAF II funds, and update the Commission as necessary. The Commission will certify Aristotle as eligible to continue to receive CAF II funding.

In making this decision, as described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of

evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the material was not dispositive of this decision.

The Commission further notes that on January 22, 2024, Staff filed a Motion to File USAC Audit Results. In that motion, Staff asks that the Commission order Aristotle to file the results of the current USAC audit. Aristotle responded on January 23, 2024, stating it does not object. Thus, the Commission will grant Staff's motion.

In addition, the Commission notes that Aristotle is losing about \$833 in CAF II funding each day the Commission does not certify Aristotle as eligible to receive that funding.³² Due to this loss of funding, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Pursuant to 47 C.F.R. § 54.314, Aristotle is certified to continue to receive CAF II funding.
2. Staff shall notify the FCC of Aristotle's certification.
3. Aristotle shall file the results of the USAC audit of Aristotle within 30 days of receipt of those results.
4. All other requests for relief are denied.

³² Tr. **Vol. 2**, pp. 31, 62-63.

5. This Report and Order shall become effective on February 3, 2024.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Pridgin, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 24th day of January 2024.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 24, 2024

File/Case No. TO-2023-0436

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.