

FILED  
January 25, 2024  
Data Center  
Missouri Public  
Service Commission

# Exhibit No. 200

Aristotle Communications – Exhibit 200  
Elizabeth Bowles  
Direct  
File No. TO-2023-0436

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

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3  
4 Aristotle Unified Communications LLC, )  
5 )  
6 Complainant, )  
7 )  
8 v. ) **File No. TO-2023-0436**  
9 )  
10 )  
11 )  
12 )  
13 Respondent. )  
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19 **DIRECT TESTIMONY OF**  
20  
21 **ELIZABETH BOWLES ON BEHALF OF**  
22  
23 **ARISTOTLE, LLC**  
24  
25  
26  
27  
28  
29

30 Carl J. Lumley, #32869  
31 CURTIS, HEINZ, GARRETT & O'KEEFE, P.C.  
32 130 S. Bemiston, Suite 200  
33 Clayton, Missouri 63105  
34 (314) 725-8788  
35 (314) 725-8789 (Fax)  
36 clumley@chgolaw.com  
37

38 **ATTORNEY FOR ARISTOTLE UNIFIED COMMUNICATIONS, LLC**  
39

STATE OF ARKANSAS        )  
  )  
COUNTY OF PULASKI        )     SS.

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Investigation of        )  
Aristotle Unified Communications, LLC     )     TO-2023-0436  
Related to the Connect America Fund        )  
Phase II Auction.                                )

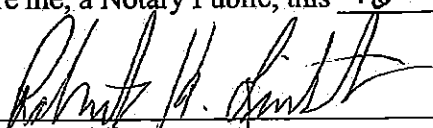
**AFFIDAVIT OF ELIZABETH BOWLES**

COMES NOW L. Elizabeth Bowles, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is Elizabeth Bowles. I am CEO of Aristotle Unified Communications, LLC.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony in the above-referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
L. Elizabeth Bowles

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 16<sup>th</sup> day of November, 2023.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 9-27-2025

ROBERT H. LINDSTROM  
NOTARY PUBLIC  
PULASKI COUNTY, ARKANSAS  
COMM. EXP. 09-27-2025  
COMMISSION NO. 12692190

**DIRECT TESTIMONY OF**

**ELIZABETH BOWLES ON BEHALF OF  
ARISTOTLE UNIFIED COMMUNICATIONS, LLC**

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**Q. Please state your name and address.**

A. Elizabeth Bowles.

**Q. By whom are you employed?**

A. Aristotle Unified Communications, LLC (herein "Aristotle").

**Q. In what capacity?**

A. CEO.

**Q. How long have you held that position?**

A. Since 2018.

**Q. Please briefly describe your prior employment history and your educational background.**

A. Prior to my current position, I was President of Aristotle Inc., the former parent of my current company, a position I took in February of 2000. Before that, I was an associate at the law firm of Arnold & Porter in Washington D.C. from 1994-2000. I clerked for the Honorable Richard S. Arnold, then Chief Judge of the Eighth Circuit from 1993-1994. I graduated *summa cum laude* (1<sup>st</sup> in my class) from the University of Arkansas at Little Rock with a B.A. in International Studies in 1989 and from Vanderbilt Law School in 1993, where I was the Founders Medalist (1<sup>st</sup> in my class) and Order of the Coif. I passed the Arkansas Bar in 1993 and am licensed as an attorney in Arkansas, the District of Columbia, and to practice in front of the U.S. Supreme Court and several U.S. Courts of Appeal.

1 **Q. What is the purpose of your testimony?**

2 A. To demonstrate that the Commission should certify Aristotle under rule 47 CFR 54.314 as  
3 soon as possible to preserve federal funding for the benefit of Aristotle, its potential  
4 successor, and the State of Missouri.

5 **Q. What business does Aristotle conduct?**

6 A. Aristotle is a broadband internet service provider that offers broadband connectivity over  
7 a hybrid fiber/fixed wireless network. In addition, Aristotle offers email, hosting, and voice  
8 over IP communications services.

9 **Q. What are your responsibilities as CEO of Aristotle?**

10 A. I am responsible for the strategic direction of the company, including public-private  
11 partnerships, expansion, and funding, both private and public.

12 **Q. Where does Aristotle conduct business?**

13 A. We are conducting business in five states from our headquarters in Little Rock, Arkansas.  
14 Those states are Missouri, Illinois, Arkansas, Oklahoma, and Mississippi.

15 **Q. Has Aristotle received authorizations from the Missouri Public Service Commission?**

16 A. Yes, we have been a registered Interconnected Voice Over Internet Protocol provider in  
17 Missouri since December 2018 (MoPSC Case DA-2019-0159) and we were designated as  
18 an Eligible Telecommunications Carrier ("ETC") by the Commission on January 3, 2019  
19 (MoPSC Case TA-2019-0147).

20 **Q. What was the purpose of obtaining the ETC designation from the Commission?**

21 A. As stated in the Commission's order (copy attached as Schedule 1), the designation  
22 enabled Aristotle to be a recipient of federal universal support funds including high-cost  
23 support from the Connect America Fund.

1 **Q. Where is Aristotle's service area in Missouri relative to its ETC designation?**

2 A. Aristotle was a reverse auction winner and allocated Connect America Fund Phase II  
3 support by the Federal Communications Commission in September 2018 for the census  
4 blocks identified in Schedule 2 attached hereto, which are in Howell, Oregon, and Ozark  
5 Counties in Missouri. Schedule 2 is the service area referenced in the Missouri  
6 Commission's ETC Designation order (Schedule 1).

7 **Q. Does Aristotle have authority to provide service outside those census blocks?**

8 A. Yes. Aristotle's VOIP registration authorizes statewide voice service, and no authorization  
9 is required for broadband, email, and hosting services in general.

10 **Q. Does Aristotle have Missouri customers?**

11 A. Only 2 email hosting customers so far.

12 **Q. What amount of CAF II funds were allocated to Aristotle relative to Missouri?**

13 A. Aristotle won a total of \$3,001,550.90 for the specific census blocks in the three Missouri  
14 counties in the CAF II Reverse Auction. These funds are to be disbursed monthly over  
15 120 months. The monthly payments started in July of 2019 and continue through July of  
16 2029, provided Aristotle receives the annual certification from this Commission which is  
17 the subject of this proceeding.

18 **Q. Has Aristotle received some of these funds?**

19 A. Yes, we have been receiving monthly installments of \$25,012.87 since July of 2019, for a  
20 total received of \$1,295,021.17 to date. As explained below, as of December of 2022,  
21 Aristotle had received \$1,050,540.54, or 35%, of the total awarded funds.

22 **Q. Did Aristotle receive ETC designations and CAF II allocations in the other four states**  
23 **in which it conducts business?**

1 A. Yes. As of the end of October 2023, we have received 52-months' worth, or roughly 43%,  
2 of the total awarded amount in each of these states. This is the same percentage of funds  
3 we have received in Missouri.

4 **Q. Are you familiar with the FCC's rule regarding annual certification of support for**  
5 **ETCs, set forth at 47 CFR 54.314 (copy attached hereto as Schedule 3)?**

6 A. Yes, I am.

7 **Q. Must Aristotle be certified each year to continue to receive CAF II funds?**

8 A. Yes, that is what rule 54.314 says.

9 **Q. Does the Missouri PSC allow carriers to self-certify under that FCC rule?**

10 A. No. Missouri Commission rule 20 CSR 4240-31.015(1)(E) does not allow self-  
11 certification.

12 **Q. For funding years through 2023, has the Missouri Commission certified Aristotle as**  
13 **eligible under 47 CFR 54.314 to the FCC?**

14 A. Yes.

15 **Q. Has the Missouri Commission certified Aristotle under rule 54.314 for funding year**  
16 **2024?**

17 A. Not yet.

18 **Q. Has the Missouri Commission certified other companies under rule 54.314 for**  
19 **funding year 2024?**

20 A. The Universal Service Administrative Co. ("USAC") certification database indicates that  
21 the Missouri Commission certified many companies on September 21, 2023. USAC  
22 administers the Universal Service Fund for the FCC.

1 **Q. What is your understanding of why the Missouri Commission did not include**  
2 **Aristotle in that September 2023 certification?**

3 A. Staff recommended that the Commission leave Aristotle off the certification list.

4 **Q. Did the Commission allow Aristotle to respond to Staff's recommendation before**  
5 **sending in its list of certified ETCs?**

6 A. No. We filed a timely response under the Commission's rules to Staff's recommendation  
7 on September 27, 2023 in this case (copy attached as Schedule 4). We subsequently  
8 learned that the Commission had left us out pursuant to Staff's recommendation, approving  
9 a letter to USAC prior to the due date of our response. We had not been asked to meet an  
10 accelerated time frame for our response.

11 **Q. Did the Commission provide notice and an opportunity to be heard prior to leaving**  
12 **Aristotle off the certification list?**

13 A. No.

14 **Q. Can the Commission still certify Aristotle under rule 54.314 for funding year 2024?**

15 A. Yes, but the certification will be late.

16 **Q. What are the consequences of a late certification?**

17 A. As set forth in rule 54.314, if a certification is not submitted by October 5, the company's  
18 support for the next year will be reduced pro rata on a daily basis for every day the filing  
19 is late after October 1.

20 **Q. Does Aristotle still want the Commission to certify it for funding year 2024?**

21 A. Yes.

22 **Q. Will there be any way to recover the amounts lost due to the certification being late?**

23 A. Not that we are aware of.



1 **Q. Has Aristotle been certified under rule 54.314 in the other states in which it conducts**  
2 **business for CAF II funds each year including for funding year 2024?**

3 A. Yes.

4 **Q. Did Aristotle self-certify for any of those states?**

5 A. No.

6 **Q. Should the Missouri Commission certify Aristotle under rule 54.314 for funding year**  
7 **2024?**

8 A. Yes. The Missouri Commission should certify Aristotle because all federal high-cost  
9 support provided to Aristotle was used in the preceding calendar year and will be used in  
10 the coming calendar year only for the provision, maintenance and upgrading of facilities  
11 for which the support is intended. That is the only criteria for certification under rule  
12 54.314. Staff confirmed that point in its Report, stating “the only issue for the Missouri  
13 Commission to decide is whether to include Aristotle in its upcoming 54.314 certification”.

14 **Q. What is Confidential Schedule 5 attached hereto?**

15 A. It is a spreadsheet showing how Aristotle has expended CAF II funds received through  
16 October of 2023 in Missouri. We explained the entries further in our Response (Schedule  
17 4).

18 **Q. Are all of the expenditures shown on Confidential Schedule 5 proper uses of CAF II**  
19 **funds?**

20 A. Yes.

21 **Q. Is there any basis for the Commission to believe that Aristotle would not use future**  
22 **CAF II funds for proper purposes?**

23 A. No.

1 **Q. Do you understand why Staff recommended against the Commission certifying**  
2 **Aristotle under rule 54.314?**

3 A. It is my understanding from their recommendation that the Staff does not believe Aristotle  
4 is meeting the milestones established under the CAF II grant and that they believe Aristotle  
5 has been misleading.

6 **Q. Has Aristotle misled Staff?**

7 A. No. We addressed Staff's concerns in our Response (Schedule 4).

8 **Q. Has Aristotle cooperated with Staff?**

9 A. Yes. We have responded to informal Staff questions, Commission questions, and formal  
10 Staff data requests. We also voluntarily facilitated field tests of the speed of our services  
11 as requested by Staff by sending personnel from Little Rock to the three Missouri Counties.  
12 Staff told us they selected specific locations where they believed Aristotle would not be  
13 able to provide service; however, the tests proved Aristotle can provide fixed wireless  
14 broadband at above the required speed of 25download/3upload Mbps in every case.

15 **Q. What are the milestones for Aristotle in Missouri?**

16 A. A total of 788 locations targeted for fixed wireless broadband with a speed of 25/3 Mbps,  
17 with milestones of 40% by the end of 2022, 60% by the end of 2023, 80% by the end of  
18 2024, and 100% by the end of 2025.

19 **Q. Has Aristotle met its milestones so far?**

20 A. Yes.

21 **Q. Is Aristotle on track to meet the end of 2023 milestone?**

22 A. Yes.

23 **Q. Who is responsible for monitoring Aristotle's progress towards the milestones?**

- 1 A. USAC.
- 2 **Q. Do the milestones have anything to do with rule 54.314?**
- 3 A. No.
- 4 **Q. Is USAC currently auditing Aristotle?**
- 5 A. Yes.
- 6 **Q. Do you know why?**
- 7 A. Missouri Commission Staff prompted the audit.
- 8 **Q. Do USAC and the FCC have authority to address the results of an ETC audit?**
- 9 A. Yes, as Staff conceded in its Report.
- 10 **Q. If Aristotle did not meet a milestone, would that result in termination of its CAF II**  
11 **grant?**
- 12 A. No. Aristotle would be given a period of time to cure, and USAC and the FCC would work  
13 with us to ensure we get back on track.
- 14 **Q. Has Aristotle solely relied on CAF II funds in Missouri relative to its efforts to meet**  
15 **the milestones?**
- 16 A. No. We have expended our own funds in excess of the CAF II funds received to date.
- 17 **Q. Have Aristotle's efforts to meet the milestones in Missouri been different than its**  
18 **efforts in the other states?**
- 19 A. Yes, to some degree.
- 20 **Q. Why?**
- 21 A. Aristotle only won a small number of census blocks in Missouri (see Schedule 2), and we  
22 determined that it would be more efficient for another carrier who was awarded a larger  
23 area to handle our census blocks. Accordingly, we have been negotiating with another

1 carrier to take them on and intend to file a transfer application with the FCC to accomplish  
2 that end. Meanwhile, we have tried to avoid spending CAF II funds in ways that would  
3 result in waste after the transfer. Unfortunately, it has taken much longer than originally  
4 anticipated to complete the negotiations and be in a position to file the transfer application.  
5 We also plan to enter into an operating agreement with the proposed transferee while the  
6 transfer application is pending to expedite its involvement, which the FCC allows;  
7 however, the other company has not yet provided us with their draft of the operating  
8 agreement. It is our understanding that that agreement is currently with their legal counsel.  
9 Once we receive that draft, we anticipate executing the Operating Agreement in short order.  
10 In the meantime, we have an understanding with that company with respect to use of their  
11 facilities and, to the extent necessary, to pay them to perform installations for us.

12 **Q. Is Aristotle pursuing such a transfer in the other four states?**

13 A. No.

14 **Q. If the FCC approves a transfer, will the transferee be eligible to receive future CAF**  
15 **II funds that were allocated to Aristotle for Missouri?**

16 A. Yes. Further, the transferee would be able to use such funds under Aristotle's supervision  
17 through the interim operating agreement, assuming the Missouri Commission certifies  
18 Aristotle under rule 54.314.

19 **Q. Will the transferee be able to recover the monies reduced from the grant for funding**  
20 **year 2024 due to a late Missouri Commission certification under rule 54.314?**

21 A. No. Those funds have been lost, and Missouri consumers will not be able to benefit from  
22 them.

1 **Q. If the FCC does not approve the transfer, will Aristotle continue to work to meet the**  
2 **milestones?**

3 A. Yes, assuming we are recertified under rule 54.314. If we are not recertified, we will not  
4 have future CAF II funds with which to meet milestones.

5 **Q. Whether it is Aristotle or the transferee, does the CAF II fund cash flow match the**  
6 **expenditures needed to meet the milestones?**

7 A. No. Deployment must be 100% complete by the end of 2025, whereas CAF II funding will  
8 not be 100% until 2029. And as indicated, the cost of deployment exceeds the funded  
9 amount. Moreover, recent steep inflation has increased the gap between necessary  
10 expenditures and allocated CAF II funds.

11 **Q. How do the milestones relate to rule 54.314 certification?**

12 A. They don't. As I stated above, the only question before the Missouri Commission is  
13 whether Aristotle has been using CAF II funds received to date for proper purposes. The  
14 answer to that question is yes, and the Commission should certify Aristotle under rule  
15 54.314 as soon as possible to mitigate the loss of CAF II funds arising from the late  
16 certification.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 3<sup>rd</sup> day of  
January, 2019.

In the Matter of the Application of Aristotle )  
Unified Communications LLC for )  
Designation as an Eligible ) **File No. TA-2019-0147**  
Telecommunications Carrier for Purposes )  
of Receiving Support from the FCC )  
Connect America Fund – Phase II )

**ORDER GRANTING APPLICATION FOR DESIGNATION  
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Issue Date: January 3, 2019

Effective Date: February 2, 2019

On November 19, 2018, Aristotle Unified Communications LLC ("Aristotle") requested designation by the Missouri Public Service Commission ("Commission") as an Eligible Telecommunications Carrier ("ETC") for the purpose of receiving federal universal service support funds under the Lifeline program and high-cost support under the Connect America Fund. Aristotle's proposed service area is all areas where it has been allocated Connect America Fund Phase II support as an auction winner. Aristotle filed this application due to a recent award in a reverse auction for the Connect America Fund II ("CAF II") held by the Federal Communications Commission ("FCC").

The CAF II program is part of the FCC's reform and modernization of its universal service fund support programs designed to accelerate the expansion of broadband services to rural areas, and to any areas which presently lack the infrastructure capable to support at least 10/1 Mbps of fixed broadband services. The FCC held an auction to

allocate funds to various companies which could further the goals of the CAF II program. The FCC requires each winning company to obtain ETC designation from its respective public utilities commission prior to receiving the allocated funds.

The Commission issued notice and set a deadline for intervention. No person or entity sought intervention in this matter, and no party has requested a hearing. On December 19, the Commission's Staff filed their *Staff Recommendation*, which recommends that the Commission grant Aristotle's application.

The application is within the Commission's jurisdiction to decide.<sup>1</sup> Since no law requires a hearing, this is a non-contested case.<sup>2</sup> Non-contested cases do not require formal proceedings or hearings before the Commission, and as such, there is no evidentiary record.<sup>3</sup> Consequently, the Commission bases its decision on the verified filings.

The federal Universal Service Fund was established in the Telecommunications Act of 1996 ("Act"). The stated purpose of the fund is to ensure that telephone customers in rural and high cost areas, as well as low-income customers, have access to quality telecommunications services at reasonable and affordable rates.<sup>4</sup> To meet that goal, the Universal Service Fund redistributes money paid into the fund by telecommunications customers to telecommunications service providers who serve low-income customers or rural and high cost areas.

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<sup>1</sup> 47 U.S.C. § 214(e)(2).

<sup>2</sup> Section 536.010(4), RSMo, defines a "contested case" as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing."

<sup>3</sup> *Sapp v. City of St. Louis*, 320 S.W.3d 159, 163 (Mo. App. 2010).

<sup>4</sup> 47 U.S.C. 254(b).

Before a telecommunications service provider is eligible to receive funding from the Universal Service Fund, it must be designated as an Eligible Telecommunications Company ("ETC"). Section 214(e)(6) of the Act provides, in pertinent part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law.

Aristotle is authorized to do business in Missouri as a telecommunications provider, and is duly registered with the Commission. It is current with all Commission reporting or assessment requirements.

The Commission finds the assertions in the application and the *Staff Recommendation* to be true. The Commission must grant Aristotle eligible telecommunications carrier designation if it satisfies all federal and state requirements.<sup>5</sup> Based upon its independent and impartial review of the verified application and staff recommendation, the Commission finds that Aristotle has met all federal and state requirements and that it is in the public interest to grant the ETC application. Therefore, the Commission will designate Aristotle as an eligible telecommunications carrier solely for the purpose of receiving federal universal service support funds under the Lifeline program and high-cost support under the Connect America Fund.

**THE COMMISSION ORDERS THAT:**

1. Aristotle Unified Communications LLC is designated as an eligible telecommunications carrier to receive federal universal service support funds under the

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<sup>5</sup> 47 U.S.C. § 214(e)(1),(2) and (6).



Lifeline program and high-cost and low-income support under the Connect America Fund, for the service area identified in Exhibit F of its initial application.

2. This order shall become effective on February 2, 2019.
3. This case shall be closed on February 3, 2019.

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall,  
Rupp, and Coleman, CC, concur.

Hatcher, Regulatory Law Judge

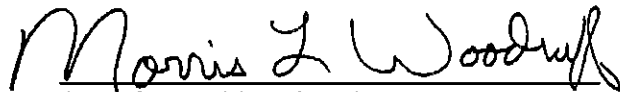
**STATE OF MISSOURI**

**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 3<sup>rd</sup> day of January 2019.



  
Morris L. Woodruff  
Secretary

**MISSOURI PUBLIC SERVICE COMMISSION**

**January 3, 2019**

**File/Case No. TA-2019-0147**

**Missouri Public Service  
Commission**  
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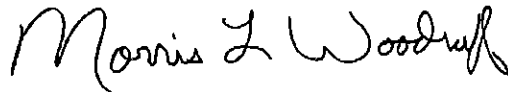
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**Missouri Public Service  
Commission**  
Whitney Payne  
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P.O. Box 360  
Jefferson City, MO 65102  
whitney.payne@psc.mo.gov

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

*Sincerely,*



**Morris L. Woodruff  
Secretary**

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

Exhibit F

State	County	Block Group	Locations	Assigned Support
MO	Howell	290910901002	1	\$ 547.11
MO	Howell	290910901003	2	\$ 911.56
MO	Howell	290910903001	5	\$ 2,735.87
MO	Howell	290910903002	2	\$ 646.99
MO	Howell	290910903003	6	\$ 2,494.93
MO	Howell	290910904001	6	\$ 1,444.40
MO	Howell	290910904002	11	\$ 1,189.59
MO	Howell	290910904003	3	\$ 1,337.66
MO	Howell	290910904004	23	\$ 4,817.74
MO	Howell	290910906001	1	\$ 64.70
MO	Howell	290910906002	26	\$ 8,229.78
MO	Howell	290910906003	48	\$ 16,261.97
MO	Howell	290910906004	4	\$ 457.34
MO	Oregon	291494801002	66	\$ 34,827.55
MO	Oregon	291494801003	14	\$ 2,351.99
MO	Oregon	291494801004	11	\$ 6,018.85
MO	Oregon	291494802001	21	\$ 10,986.23
MO	Oregon	291494803001	65	\$ 27,746.00
MO	Oregon	291494803002	4	\$ 1,783.65
MO	Oregon	291494803003	32	\$ 8,836.18
MO	Ozark	291534701001	44	\$ 24,076.00
MO	Ozark	291534701002	38	\$ 19,832.00
MO	Ozark	291534701003	49	\$ 16,865.00
MO	Ozark	291534701004	2	\$ 912.00
MO	Ozark	291534702001	95	\$ 35,752.00
MO	Ozark	291534702002	94	\$ 37,263.00
MO	Ozark	291534702003	78	\$ 25,430.00
MO	Ozark	291534702004	31	\$ 4,757.00
MO	Ozark	291534702005	6	\$ 1,578.00
			788	\$ 300,155.09

§ 54.314 Certification of support for eligible telecommunications..., 47 C.F.R. § 54.314

Code of Federal Regulations  
Title 47. Telecommunication  
Chapter I. Federal Communications Commission (Refs & Annos)  
Subchapter B. Common Carrier Services  
Part 54. Universal Service (Refs & Annos)  
Subpart D. Universal Service Support for High Cost Areas

47 C.F.R. § 54.314

§ 54.314 Certification of support for eligible telecommunications carriers.

Effective: February 26, 2015

Currentness

(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 Commission 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.

(b) **Carriers not subject to State jurisdiction.** An eligible telecommunications carrier not subject to the jurisdiction of a State that desires to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carrier 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. Support provided pursuant to the high-cost program shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section.

(c) **Certification format.**

(1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14-58, and with the Administrator of the high-cost support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14-58, and with the Administrator of the high-cost universal service support mechanism, on or before the

deadlines set forth in paragraph (d) of this section. All affidavits filed pursuant to this section shall become part of the public record maintained by the Commission.

(d) Filing deadlines.

(1) In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the eligible telecommunications carrier, if not subject to the jurisdiction of a state, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If a state or eligible telecommunications carrier files the annual certification after the October 1 deadline, the carrier subject to the certification shall receive a reduction in its support pursuant to the following schedule:

(i) An eligible telecommunications carrier subject to certifications filed after the October 1 deadline, but by October 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(2) Grace period. If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) have not missed the October 1 deadline in any prior year.

**Credits**

[66 FR 30088, June 5, 2001; 66 FR 34581, June 29, 2001; 70 FR 29979, May 25, 2005; 71 FR 30298, May 26, 2006; 76 FR 73875, Nov. 29, 2011; 77 FR 26987, May 8, 2012; 79 FR 39189, July 9, 2014; 80 FR 4478, Jan. 27, 2015]

SOURCE: 62 FR 32948, June 17, 1997; 72 FR 46920, Aug. 22, 2007; 76 FR 73869, Nov. 29, 2011; 77 FR 71712, Dec. 4, 2012; 78 FR 38232, June 26, 2013; 78 FR 48624, Aug. 9, 2013; ; 80 FR 4476, Jan. 27, 2015; 80 FR 40935, July 14, 2015; 81 FR 24337, April 25, 2016; 84 FR 19876, May 7, 2019; 85 FR 249, Jan. 3, 2020; 86 FR 2946, Jan. 13, 2021; 87 FR 8373, Feb. 14, 2022, unless otherwise noted.

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

Current through Oct. 4, 2023, 88 FR 68499. Some sections may be more current. See credits for details.



**RESPONSE TO STAFF REPORT AND RECOMMENDATION**

**COMES NOW** Aristotle Unified Communications L.L.C. ("Aristotle"), and for its Response to the Public Service Commission of Missouri's *Report and Recommendation*, states herein as follows:

For the reasons stated herein, Aristotle asks that the Commission include it in the upcoming 47 CFR § 54.314 certification, notwithstanding Staff's negative recommendation.

Missouri PSC staff's memorandum dated September 15, 2023, provides four justifications for Staff's recommendation that Aristotle's ETC status in Missouri not be renewed.

Aristotle believes that Staff's frustration with what they misperceive to be prevarication or dishonesty has colored their understanding of the circumstances, and that the recommendation to remove Aristotle's ETC status is not in the best interest of Missouri consumers. By the same token, Aristotle objects to transmitting Staff's recommendation to the FCC.

A central point is that Aristotle has been forthcoming to PSC staff and at no point has misrepresented our service area or intent. Aristotle has had to make day-to-day business decisions in light of an anticipated transfer of its limited Missouri service area to another, Missouri-based, company (the "acquiring company"), and consummation of that transaction has dragged out far beyond original expectations.

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For the reasons we explain below, Aristotle objects to Staff's recommendation to omit Aristotle from the list of certified ETCs to be sent to the FCC.

**Staff Argument: Aristotle Has Not Accurately Explained Tower Progress**

Staff acknowledges that what Aristotle told Missouri PSC staff and what was reported to the FCC in May of 2022 were consistent. What was reported was also true. Aristotle had engaged in several months of site acquisition work, and by May of 2022 was in the process of negotiating land leases with several cattle farmers and other landowners in the three CAF II counties. In addition, Aristotle had begun the process of adding co-location towers pursuant to our Master Service Agreements with Tilman Infrastructure and American Tower Corporation. Shortly thereafter, discussions with the acquiring company made clear that most of the tower locations we had identified were either unnecessary (in the acquiring company's opinion) or were duplicative of towers that company already had access to, including U.S. Cellular locations.

Because of the change in circumstance, Aristotle rethought our engineering and, believing that it was in the best interest of Missouri consumers, chose to pivot our strategy so that we did not spend money unnecessarily building vertical assets that would not ultimately be used by the acquiring company. Given that the 40% milestone could be met utilizing existing U.S. Cellular towers, Aristotle saw no need to construct additional towers at great expense and chose instead to retain those funds for future use in Missouri rather than expend them. This decision was made for two reasons: First, not expending the funds would allow the acquiring



company to use them later to deploy to the locations in a manner they felt was preferable. And second, if the Section 214 transfer did not go through or, if the operating agreement between the acquiring company and Aristotle fell apart, the towers could be constructed in later phases of project development. Therefore, Aristotle elected to reverse the order of network development in Missouri to utilize existing infrastructure and spectrum assets in the first instance and to construct towers later as needed.

Staff is correct that Aristotle does not have a co-location agreement with U.S. Cellular. This is because Aristotle has not co-located equipment on the U.S. Cellular towers. Originally Aristotle planned to use collocations as reported to the FCC, but for now Aristotle will rely primarily on pre-existing equipment on U.S. Cellular towers and lease circuits to be able to reach consumers. Regardless of utilizing these spectrum assets, Aristotle remains 100% responsible for the consumer end-user experience, including sales, installation, and technical support and will deploy Aristotle equipment, routers, and infrastructure at the consumer's location. The acquiring company has a similar arrangement with U.S. Cellular, and by utilizing this arrangement, Aristotle is able both to serve the number of locations required with minimum speeds of 25/3 (up to 300 megs) and also ensure that there is no wasteful expenditure of CAF II funds building towers in locations that are undesirable to the acquiring company. Put another way, Aristotle deferred the construction of the towers we had sited in May of 2022 to enable the Section 214 transfer of CAF II blocks to the acquiring company time to go through, thereby preserving the bulk of CAF II funds for the use of the company that ultimately will bear the deployment obligation. However, because the work on site acquisition

has already been done, should the Section 214 transfer go sideways, Aristotle is prepared to move expeditiously with the build-out.

On the other hand, if the Section 214 transfer falls through but Aristotle is no longer an ETC in Missouri, Aristotle will lose access to the remaining CAF II funds. This means that Missouri also will lose these funds, which will return to the FCC for redeployment elsewhere.

Aristotle is fully aware of our obligations to the State of Missouri under CAF II and has at no time anticipated not meeting those obligations. The fact that Aristotle's business strategy, engineering, and timing of construction changed between May and December of 2022 is not evidence of a lack of deployment, and Staff's conclusion to the contrary is based on a fundamental misunderstanding of what Aristotle has told them on the phone and in our responses to their inquiries.

Staff makes a point of noting that the information provided in the August 1 response was in error, and they imply that Aristotle was somehow caught out by this fact. PSC staff is ascribing a nefarious motive to a simple mistake. Aristotle did attach the incorrect spreadsheet to the August 1 response, which mistake we realized as soon as PSC staff asked follow-up questions related to tower counts, etc. The replacement spreadsheet provided was, in fact, accurate, including information regarding back-up tower locations that would only be used if the primary locations were unable to serve the necessary number of CAF II locations. The correct spreadsheet is quite clear as to what assets have and have not been built. Aristotle provided further detail in response to Staff DR 5. Telecom construction plans constantly change to meet the needs of the moment, and this fact should not be misconstrued as trying to hide

the ball. That said, there still seems to be some confusion regarding the total number of towers deployed. In our initial engineering, Aristotle anticipated needing 14 towers; however, upon reviewing the location of U.S. Cellular towers, we determined that there are 15 usable towers and, in addition, that Aristotle can serve customers from a Tilman-owned tower. This is total of 16 deployed towers as reflected on the corrected spreadsheet.

Finally, PSC staff seems to think that because Aristotle listed the date of deployment of the 16 towers as December 31, 2022, this is somehow evidence of prevarication. Aristotle used this date for no other reason than because it was the date of reporting. All of the U.S. Cellular towers and the Tilman tower were pre-existing, and each has a different construction date. Aristotle could not see how using original construction dates would make sense, especially since many of those construction dates likely pre-date Aristotle's receipt of CAF II funds. Therefore, Aristotle used the date of reporting rather than the original build date. If it is important, Aristotle can track down the original build dates for each of these facilities and submit them to PSC staff.

Aristotle followed a similar logic with respect to the addressable customer base and used the reporting date rather than the date of tower construction. It did not occur to Aristotle that this would be confusing, since we had no active customers or consumer interest in Missouri at the time. Aristotle regrets any confusion this decision may have caused.

In sum, Aristotle met the December 2022 40% milestone of targeted locations and will meet the December 2023 60% milestone.

**Staff Argument: Aristotle Did Not Adequately Explain How Funding is Being Used**

Aristotle will be happy to provide a detailed breakdown of all Missouri-related CAF II expenses along with spreadsheets, invoices, etc. to Staff if needed. It was not Aristotle's intent to be overly general; we provided the information to Missouri PSC staff in the same format as we provided it to other states in which we won CAF II support. Staff did not specify what specific information they wanted, and Aristotle misunderstood the level of detail Missouri PSC staff intended to request.

To address generally the specific areas of concern raised in the Memorandum:

- **Long-form application.** CAF II rules allow the funding to be used for any expenditure provided that expenditure is in or for the state for which the funds are awarded. It is not relevant that the Long-Form Application was filed prior to receipt of CAF II funds. Aristotle was awarded the funding in November of 2018 and, while it was not finally authorized until June of 2019, the expenses incurred preparing that form—which include engineering, legal, and accounting services—are reimbursable out of CAF II proceeds. This is no different than other federally funded broadband programs. For example, USDA Reconnect specifically allows reimbursement of pre-grant award engineering, financial, legal, and compliance expenses.
- **Maintaining ETC Status in Missouri.** Aristotle acknowledges that this category title may be confusing. This expenditure category includes legal and regulatory work related to (1) obtaining ETC status in Missouri (which involved both FCC

regulatory counsel and local Missouri counsel), (2) annual filings and reports to the Missouri PSC, and (3) annual filings and reports to the FCC and USAC.

- **Network Deployment.** Aristotle has purchased steel, radios, base cabinets, routers, switches, and cabling for use in Missouri and has also expended money in travel time and consultants for site acquisition, surveying, and topographic and environmental research. The equipment and Cell Towers on Wheels (COWs) that have been purchased are for deployment in Missouri and, if not deployed by Aristotle, will be utilized by the company to whom the CAF II blocks are being transferred.

**Staff Argument: Aristotle Did Not Disclose Lobbying Efforts for Broadband Deployment Relief**

Staff is correct that Aristotle's failure to disclose our response to the FCC's April 7, 2022, letter of concern was an oversight. The other four FCC letters PSC staff attached to their memorandum are summaries of in-person meetings between the Coalition of RDOF Winners, of which Aristotle is a member, and the FCC. However, PSC staff's characterization of Aristotle's meetings with the FCC regarding our RDOF award as "lobbying" or as requesting "broadband relief" is inaccurate.

Aristotle's meetings with the FCC were pursuant to our obligations under the RDOF program, and the meetings were to discuss options for addressing an unprecedented increase in the cost of materials that has significantly reduced the relative value of the RDOF award. Aristotle's CEO was Chair of the FCC's Broadband Deployment Advisory Committee, and in that

capacity, had numerous conversations with the FCC regarding the RDOF program, including reducing the standby letter of credit requirement in RDOF, which the FCC ultimately took some steps to do. This type of regulatory advocacy is not lobbying.

Second, Aristotle's meetings with the FCC were not related to our "ability or inability to meet [our] broadband deployment obligations," which was the scope of Staff's inquiry (DR 30). These meetings were to discuss improvements to the RDOF program that will ensure efficient deployment of RDOF funds. Aristotle is part of a 38-member coalition that has requested the FCC increase funds available to RDOF recipients because of unprecedented cost increases for materials due to inflation and increased demand for fiber and other broadband-related infrastructure. While some of the members of the coalition have asked for broadband relief, their requests are due to being overbuilt by ARPA and Capital Projects funds, and Aristotle is not among these companies. Aristotle has made clear in every meeting with the FCC that we are not asking for broadband relief, nor will we be defaulting on any of our broadband obligations; however, the FCC recently *sua sponte* increased the amount of money being given to A-CAM recipients due to these unprecedented cost increases, and it is Aristotle's position that if this dispensation is being given to one set of USF recipients, it should be given to all recipients. While some members of the coalition do have additional agendas with respect to the RDOF program, Aristotle's interest is related to the overall needs of the program and the concern that if companies do default, this will prevent the underlying locations from being served, since those locations will miss the window to be included in BEAD funding. This is a policy position taken by Aristotle's CEO, not a reflection of Aristotle's ability or inability to meet broadband obligations under RDOF.

Third, Aristotle's RDOF award is in Arkansas, Illinois, and Mississippi and, therefore, is completely unrelated to any of Aristotle's CAF II obligations in Missouri. Aristotle reasonably understood the Missouri PSC's request for correspondence to be referring to correspondence relevant to Aristotle's Missouri CAF II deployment. For this reason, Aristotle disclosed that USAC was conducting an audit; however, it did not occur to Aristotle to disclose unrelated FCC meetings regarding RDOF, particularly when those meetings were not concerning our ability to meet our broadband deployment obligations, much less our CAF II obligations in Missouri.

Finally, Aristotle is unclear what the letter from Senator Wicker, et al. has to do with Aristotle other than that it makes a similar point regarding the need for additional RDOF funding. It should be noted that the reference to amnesty in the Senator's letter was put there by the Senator even though the Coalition of RDOF Winners requested that it be removed because most of the coalition members are not interested in amnesty. The note remained, and for that reason, whenever Aristotle has met with the FCC concerning RDOF, FCC staff has brought the issue up. At no point in time has Aristotle requested, nor is Aristotle entertaining the thought of, defaulting on any of our RDOF obligations, so will have no need for an amnesty. Aristotle has made this fact abundantly clear to the FCC on every occasion.

**Staff Argument: Aristotle is Not Advertising Service Availability**

Aristotle acknowledges that we have not put out yard signs or door hangers to announce our service availability in Missouri. It is Aristotle's normal practice to "soft launch" in new markets prior to engaging in on-the-ground marketing. In addition, Aristotle had concern

that such direct advertising would cause consumer confusion by aggressively promoting Aristotle services only to have another company take on provision of services a few weeks later when the Section 214 transfer was consummated. At the beginning of the year, Aristotle did not apprehend that the Section 214 transfer might take more than six months. When Aristotle became aware of the elongated timeline, we began to promote our service in Missouri via word of mouth and added our Missouri deployment on our website. This approach to marketing is not unique to Missouri. In fact, in every market Aristotle serves, the website and other online outreach are Aristotle's primary marketing engine because directing consumers to our website allows potential customers to request service directly without having to call in to customer service.

Two important notes:

- **The timing of adding Missouri information to Aristotle's website was not related to the USAC audit.** Once we understood that a Section 214 transfer would not be imminent (and, therefore, consumer confusion would be minimal because there would be time to explain the transfer of services before it occurred), we requested that our web designer add Missouri to the website. This request was made several weeks before the changes were implemented.
- **Aristotle does not list Missouri cities on our website because none of our CAF II areas are located inside any of the cities in the respective counties.** Aristotle lists cities in Arkansas because we received CARES Act funding through the Arkansas Rural Connect program, and the listed cities are either in a "guaranteed service area" or are in cities served by our legacy network. Aristotle's Arkansas



network is much larger than just the listed cities, as it also covers much of the area outside the cities' limits. Our experience in Arkansas has been that sometimes, by listing a specific city or town, consumers will incorrectly assume we do not serve areas outside the city or town's limits and that listing specific cities and towns sometimes leads consumers to incorrectly assume that service is *not* available at locations that are *not* listed. If it is important for our website to list cities and towns in Ozark, Howell, and Oregon for some reason, we can add those cities that we do cover; however, since none of our CAF II locations are in those cities, we elected to list the counties to encourage those who live in the county to call Aristotle.

Aristotle uses search engine optimization to boost our website's reach, and we currently have 158 leads in Missouri, the oldest of which was received on January 3, 2023, and the most recent was today (September 27). Of those leads, Aristotle can serve 56 locations with broadband. Of those 56 locations, only three are in the three counties for which Aristotle receives CAF II funding, and none are located in any of our CAF II blocks. Should Aristotle receive a lead from a CAF II area, we will be able to serve that location within the required 10 days. Regardless of the fact that no leads are inside our CAF II areas, Aristotle is nonetheless in the process of closing sales with those potential customers we can serve. Moreover, Aristotle does have two customers in Missouri, but we did not mention them previously because they are not broadband customers.

Aristotle will confirm broadband speeds in Missouri when it has customers with which to do so. If PSC staff would like Aristotle to do street-level testing outside some CAF II locations,

that is something we can do. That said, Aristotle's CAF II areas are spread out across three counties in fairly remote locations, so if the Missouri PSC does make this request, we ask that it select proximate locations.

**Staff Argument: Removing Aristotle's ETC Status Will Not Affect Broadband Funding in Missouri**

Staff asserts that removing Aristotle's ETC status will not impact the ability of the acquiring company to receive CAF II funds in Howell, Ozark, and Oregon counties once the Section 214 transfer is complete. Aristotle does not know for a fact whether this is true, but we assume that Staff confirmed this with the FCC. What Staff fails to apprehend, however, is that once Aristotle enters into an operating agreement with the acquiring company, the acquiring company will stand in Aristotle's shoes until the Section 214 transfer is complete, and the loss of ETC status by Aristotle will impact the acquiring company's ability to perform.

The FCC specifically allows CAF II deployment to be accomplished by a CAF II recipient operating through a third-party. Aristotle has exactly this relationship with a company in Illinois, which relationship was approved by the FCC in 2019. That company is responsible for deployment in Illinois of the CAF II locations, which includes the network, customer acquisition, advertising (done in that company's name), customer installation, and repairs. Aristotle is responsible for compliance, testing, and reporting and is ultimately responsible for deployment should the operating company fail to perform.

By November of 2022, Aristotle and the acquiring company agreed in principle regarding the Section 214 transfer, and, with legal counsel, determined that the two companies would enter into an operating agreement<sup>1</sup> pending Section 214 transfer. Pursuant to this operating agreement, the acquiring company would be responsible for deployment of the network, customer acquisition, customer installation, and repairs, and during this operating period—as in Illinois—Aristotle will ultimately remain responsible for reporting, compliance, and ensuring the CAF II obligations are met until such time as Section 214 transfer is complete. In exchange for operating the network, Aristotle will transfer to the operating company the bulk of the CAF II funds, retaining only enough to cover regulatory, legal, and compliance matters.

When Aristotle responded to PSC staff's question regarding the impact on the acquiring company of non-renewal of Aristotle's ETC status, Aristotle said that there would not be an impact because the acquiring company also is an ETC. However, our response was made prior to the realization that the timing of the cessation of the funding stream to Aristotle and the closing of the Section 214 transfer would not align.

Staff recognizes that the Section 214 transfer will not be completed by January 2024. Therefore, while Staff's recommendation not to certify Aristotle's ETC status will not have a practical effect on Aristotle (since the operating agreement will require the majority of future CAF II funds to be transferred to the acquiring company anyway), it will impact the acquiring company's ability to operate the CAF II network. If Aristotle does not have access to CAF II funds

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<sup>1</sup> The acquiring company's attorney has been working on documenting the operating agreement for the past few months. We have been told that we will receive a copy of that agreement this week or next. The preliminary written agreement between the parties, a copy of which was previously provided by Aristotle to Staff, was not countersigned. Aristotle has attached the countersigned version of this preliminary agreement. It is a confidential document.

come January, neither will the acquiring company. This necessarily will delay any further CAF II deployment Missouri until such time as the Section 214 transfer is complete, assuming Staff is correct that the money will be held in reserve until such time as the transfer takes place.

Moreover, as noted earlier, if the Section 214 transfer is not approved for any reason, Missouri risks losing the remaining CAF II funds entirely, even if an operating agreement is in place. This is because Aristotle, as the CAF II recipient, will no longer qualify to receive funds if we are not an ETC, and the operating agreement will cease to be in effect.


#### **Staff Recommendation**

Terminating Aristotle's ETC status will not help Missouri consumers. Aristotle made a commitment to serve Missouri consumers through the CAF II program, and that is what we have done and continue to do. Part of that commitment is taking the form of transferring our CAF II blocks to a third party that is present in Missouri and who has asked to take over because many of the CAF blocks sit inside of their existing network. For this reason, the acquiring company is better able to leverage the CAF II funds to ensure they are utilized in the most efficient way possible to serve the maximum number of Missouri consumers. The cost of building a single tower has skyrocketed over the past two years from the \$75,000 Aristotle paid during our CARES Act build to over \$200,000 due to inflation and demand for broadband materials. Transferring the CAF II funds to the acquiring company will ensure that broadband service is more affordable by ensuring that the remaining CAF II funds are used in the most impactful way for Missouri consumers. Not renewing Aristotle's ETC status would serve an

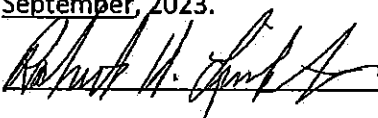
unjustified punitive purpose, and stopping the CAF II income stream, even for a temporary space in time, will not benefit Missouri in light of the pending transfer of the CAF II blocks and the current and ongoing enormous need for broadband in these counties.

Staff's Report addresses matters that are not pertinent to Section 54.314 certification. For the forgoing reasons, we object to Staff's recommendation to omit Aristotle from the list of certified ETCs to be sent to the FCC. For the same reasons, we oppose Staff's recommendation that its memorandum be sent to the FCC and request, at a minimum, that if Staff's memorandum is transmitted that this response is also attached.

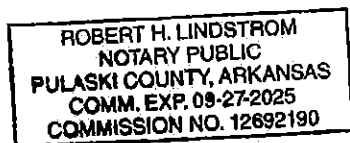
FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
L. Elizabeth Bowles  
CEO  
Aristotle Unified Communications L.L.C.

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this day 27<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
Notary Public

My Commission expires on: 9-27-2025



TO-2023-0436

Bowles Direct

Schedule 5 is confidential in its entirety pursuant to 20 CSR 4240-2.0135 as market specific information relating to services offered in competition with others