

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:                      Dwight D. Keen, Chair  
   Shari Feist Albrecht  
   Susan K. Duffy

In the Matter of the Application of Wisper ISP, Inc. )  
for a Certificate of Convenience and Authority        )     Docket No. 19-WIIZ-280-COC  
to Provide Local Exchange Service Within the        )                    (CLEC)  
State of Kansas.    )

**MODIFIED ORDER AND CERTIFICATE**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and record and being fully advised in the premises, the Commission finds and concludes as follows:

**I. BACKGROUND**

1.        On January 15, 2019, Wisper ISP, Inc. (Wisper) filed an Application requesting a Certificate of Authority authorizing the company to provide Local Exchange and Exchange Access Service within the state of Kansas. The Company plans to provide broadband Internet and voice services in underserved areas of Kansas. On February 14, 2019, Wisper filed a Motion to amend its territory request to include only those areas of Kansas served by AT&T and CenturyLink. On March 19, 2019, the Commission approved the Application finding Wisper possessed the requisite technical, managerial and financial capabilities to provide local exchange and exchange access service in the State of Kansas. In the Order, the Commission provided background references to Wisper's Eligible Telecommunications Carrier (ETC) Revised Application in Docket No. 19-WIIZ-225-ETC as support for Wisper's capabilities to provide competitive exchange access service in the state of Kansas as part of the Connect America Fund (CAF) II program. The Revised ETC Application contained an incorrect reference to the performance rate that Wisper would

deliver service under the ETC Application and stated it would provide service at 25 Megabits per second (Mbps) download and 3 Mbps upload, rather than the rate on which Wisper had been awarded a provisional grant under CAF II, which was 100 Mbps download and 20 Mbps upload. To correct the record, Wisper requested this Docket be reopened and in place of the incorrect reference, sought to have its CAF II commitment to provide 100 Mbps/20 Mbps with 100 millisecond or better latency recognized. With the understanding that Wisper has requested a correction in its Amended ETC Application in Docket No. 19-WIIZ-225-ETC and the competitive exchange access service in this Docket is not predicated on a specific performance rate, the Commission issues this Modified Order and Certificate to clarify the record and to reissue the Certificate of Convenience and Authority granted in the Order of March 19, 2019 in this Docket without a performance rate designation.

2. On September 25, 2019, the Commission Staff (Staff) submitted an updated Report and Recommendation dated September 20, 2019, containing its analysis and recommendation of Wisper's Application. The Staff indicated the Wisper request for competitive exchange access service was not predicated on a specific performance rate and the Order and Certificate in this Docket should be approved based on Wisper's overall technical, managerial and financial capability.

3. Based on a restatement of the Staff Report and Recommendation dated March 8, 2019 and the updated Report and Recommendation of September 20, 2019, the Commission issues this Modified Order and Certificate. Staff found Wisper to have adequate expertise to operate telecommunication services in Kansas. The Company operates in Illinois, Missouri, Oklahoma and Kansas and its management group has over 150 years of combined experience in the telecommunications industry, with extensive finance backgrounds. Wisper may be subject to the

requirements of Section 251(f) of the Telecommunications Act of 1996 should it desire to provide local exchange service in a rural area at a later date. Section 251(f) exempts rural local exchange companies from certain competitive entry requirements and establishes an explicit procedure for lifting the exemption. Certification in a rural telephone company's service area is also governed by K.S.A. 66-2004. At this time, Wisper is applying for authority to provide local exchange service within the service territories of AT&T and Century Link. It is a foreign for-profit company properly registered with the Kansas Secretary of State's office where its status is shown to be *active and in good standing*.

## **II. DISCUSSION AND ANALYSIS**

4. The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 2018 Supp. 66-1,188. Defining telecommunications public utilities, K.S.A. 2018 Supp. 104(a) provides in part that:

The term "public utility" as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages through any part of the state...

K.S.A. 2018 Supp. 66-131(a) provides in part that:

No...common carrier or public utility...governed by the provisions of this act shall transact business in the State of Kansas until it shall have obtained a certificate from the corporation commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state.

In determining whether the public convenience will be promoted by the transaction of said business, the Commission looks at a number of factors when determining whether a particular

application is consistent with the public interest. Regarding such factors, K.S.A. 2018 Supp. 66-2005(w) provides in part that:

...telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996...must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission.

5. According to Staff, Wisper has the requisite personnel and expertise to provide competitive local exchange telecommunication services. It was recently provisionally awarded high cost support under CAF II for specific census blocks in Kansas. Staff further states that Wisper has been shown to have the financial ability to operate effectively as a CLEC in Kansas. Staff also notes that Wisper will primarily provide voice services through VoIP, but will provide traditional time-division multiplexing circuit switched service to provision various business services. It does plan to purchase or lease lines through resale and may collocate in incumbent local exchange carrier central offices to permit access to trunk lines and tandem switches to carry customer traffic. The Company is anticipating an interconnection agreement with CenturyLink to support its initial service area network and plans to seek an interconnection agreement with AT&T.

6. Based on its investigation, Staff recommends the Commission grant Wisper's Application requesting Certificate authority to provide Local Exchange and Exchange Access Service. Staff further determines that the granting of Wisper's Application and issuance of the requested Certificate would be in the public interest of Kansans. The Commission directs Wisper to comply with the following requirements:

- (i) Wisper file Interrogatory Reports with the Commission; remain current with the Kansas Secretary of State's office, pay all Commission and Kansas Universal Service Fund (KUSF) assessments, and follow the Telecommunications Carrier Code of Conduct.

- (ii) Wisper register with GVNW Consulting, Inc., the KUSF Administrator, for KUSF purposes within 30 days of an order granting the company's Application.
- (iii) Once Wisper begins generating Kansas intrastate assessable retail revenue, the company, within 30 days of commencing operations, will ensure that it has made the appropriate KUSF remittance and payment election via the Company Identification and Operations Form (Attachment B) and submit the relevant Carrier Remittance Worksheets and assessment payments to GVNW.
- (iv) Wisper notify the Commission of any changes of contact personnel, address and/or phone numbers.

Wisper's failure to meet the foregoing requirements could result in the revocation of its Certificate of Convenience and Authority. Wisper will also need to execute interconnection agreements to provide regulated telecommunications services in Kansas, and the agreements will need to be approved by the Commission.

### **III. FINDINGS AND CONCLUSION**

7. Pursuant to K.S.A. 2018 Supp. 66-1,188, the Commission has jurisdiction to supervise and control telecommunications public utilities doing business in Kansas. Wisper is a telecommunications public utility under K.S.A. 2018 Supp. 66-1,187 and is subject to the Commission's jurisdiction. The Commission adopts Staff's analysis and recommendation of September 20, 2019, as stated in its Report and Recommendation, which is attached and made a part of the Order by reference, and finds that Wisper's Application should be granted and a Certificate of Convenience and Authority should be issued to Wisper authorizing it to engage in the business of providing Competitive Local Exchange Carrier services in the State of Kansas.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED AND CERTIFIED  
THAT:**

A. Wisper ISP, Inc.'s Application filed in this matter on January 15, 2019 is hereby reaffirmed without reference to the delivery performance rates and it is hereby issued a Certificate of Convenience and Authority authorizing the company to provide Local Exchange and Exchange Access Service in the State of Kansas within the territories served by AT&T Kansas and CenturyLink.

B. Wisper ISP, Inc. is directed to comply with the filing, payment, and notification requirements set forth in paragraph 6 above. Failure to meet these requirements could result in revocation of the company's Certificate.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>1</sup>

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED AND CERTIFIED.**

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 10/08/2019



Lynn M. Retz  
Executive Director

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<sup>1</sup> K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

Dwight D. Keen, Chair  
Shari Feist Albrecht, Commissioner  
Susan K. Duffy, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chair Dwight D. Keen  
Commissioner Shari Feist Albrecht  
Commissioner Susan K. Duffy

**FROM:** Christine Aarnes, Chief of Telecommunications & SPP Affairs  
Jeff McClanahan, Director of Utilities

**DATE:** September 20, 2019

**SUBJECT: Docket No. 19-WIIZ-280-COC (CLEC)**  
In the Matter of the Application of Wisper ISP, Inc. for a Certificate of  
Convenience and Authority to Provide Competitive Local Exchange Service  
Within the State of Kansas.

**EXECUTIVE SUMMARY:**

Wisper ISP, Inc. (Wisper) filed an Application on January 15, 2019, for authority to provide competitive local exchange carrier (CLEC) and switched access services in specific areas in Kansas. The Commission granted the Application in an Order dated March 19, 2019. Wisper filed a Motion to Re-Open the Docket to Modify Order (Motion) on September 9, 2019.<sup>1</sup> Staff recommends approval of the modification of the Order, as requested.

**BACKGROUND & ANALYSIS:**

On December 18, 2018, Wisper filed a Revised Application seeking eligible telecommunications carrier (ETC) authority in specific census blocks in which it was awarded Connect America Fund (CAF) II funding by the Federal Communications Commission (FCC). The Commission approved Wisper's Revised ETC Application on February 14, 2019, in Docket No. 19-WIIZ-225-ETC.

In this Docket, Wisper filed an Application seeking authority to operate as a CLEC in the areas served by AT&T and CenturyLink in the state of Kansas. Staff submitted a Report and Recommendation (R&R) to the Commission, dated March 8, 2019, recommending approval of Wisper's CLEC Application. Staff's March 8, 2019, R&R indicated that Staff had reviewed the Application and the information supported Wisper's technical, managerial, and financial capabilities to provide local exchange and exchange access services in the state of Kansas.

<sup>1</sup> The Commission issued an Order on September 19, 2019, granting the Motion.

Staff's March 8, 2019, R&R further explained that the FCC had awarded Wisper \$1.6 million in CAF II funding for Kansas to provide broadband Internet service at 25 Megabits per second (Mbps) download and 3 Mbps upload in specific areas in Kansas. The CAF II information was not included in Wisper's CLEC Application, but rather Staff included the additional information it had gleaned from the ETC Application to provide the Commission with additional information regarding the Applicant. The Commission issued an Order on March 19, 2019, approving Wisper's CLEC Application, which recited the 25 Mbps/3 Mbps information contained in Staff's March 8, 2019, R&R.

On September 9, 2019, Wisper filed an Amended Application and a Motion to re-open the ETC Docket (19-WIIZ-225-ETC) and a Motion to re-open this Docket and correct the Order. According to the filings, Wisper incorrectly stated that it committed to offer 25 Mbps/3 Mbps broadband Internet service in its Kansas CAF II census blocks, whereas its commitment was actually 100 Mbps download and 20 Mbps upload with low-latency of 100 milliseconds or better.

The correction of the broadband speed commitment by Wisper does not affect this Application, as a CLEC Certificate of Convenience is not necessary or required to provide broadband Internet services. Thus, Staff's analyses regarding Wisper's technical, managerial, and financial capabilities to provide local exchange and exchange access service in the state of Kansas and that approval is in the public interest remain unchanged.

**RECOMMENDATION:**

Staff recommends approval of the modification of the Order, as requested.



## CERTIFICATE OF SERVICE

19-WIIZ-280-COC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 10/08/2019.

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