

**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 for Wisper ISP)
Inc. For Designation as an Eligible)
Telecommunications Carrier for Purposes of) Docket No. 19-WIIZ-225-ETC
Receiving Federal Universal Service Support)
From the FCC Connect America Fund - Phase II.)

ORDER

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 duly advised in the premises, the Commission finds and concludes as follows:

1. On December 7, 2018, Wisper ISP Inc. (Wisper) filed an Application requesting designation as an Eligible Telecommunications Carrier (ETC) under Section 214(e)(2) of the Telecommunications Act of 1996 and Federal Communications Commission (FCC) Rule 54.201.¹ Wisper filed a Revised Application on December 19, 2018.² Specifically, Wisper sought ETC status to be able to participate in the high-cost program within the federal universal service fund as a result of the reverse auction (Auction 903) process conducted by the FCC to provide support under the Connect America Fund (CAF), Phase II (Phase II), to receive support in the rendition of voice and broadband service in unserved high-cost areas in Kansas.³

¹ 47 U.S.C. § 214 (e) (1) and 47 C.F.R. § 54.201.

² Revised Application of Wisper ISP Inc. for Designation as an Eligible Telecommunications Carrier (December 19, 2018).

³ See, Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5999, paras 141 et seq. (2016) (Phase II Auction Order and/or FNPRM).

2. In the Revised Application, Wisper indicated it was committed to offering broadband service at rates of speed equal to the baseline performance tier under CAF II, which consists of 25 megabits per second (Mbps) download and 3 Mbps upload with low latency below 100 milliseconds. Wisper was actually awarded CAF II support based on a commitment to provide 100 Mbps download and 20 Mbps upload over the six-year implementation period in the census blocks identified in the Revised Application.⁴ These higher rates of speed are regarded as above baseline and indicate a higher level of commitment than was set forth in the Amended Application.⁵ The Revised Application, however, referenced the 25/3 Mbps performance standard and Staff completed its Report and Recommendation advising support for the Wisper ETC status as a component of the CAF II process using the baseline tier of 25/3 Mbps and the FCC minimum service offering requirements. The Commission issued an Order on February 14, 2019, adopting the Staff recommendation and granting the Revised Application.⁶

3. In reviewing the record, it became apparent to Wisper that its Revised Application contained a clerical error and the Revised Application should have referenced the above baseline performance standard of 100/20 Mbps and not the 25/3 Mbps rate that was included in the Amended Application. Accordingly, Wisper filed a Motion to Re-Open the Docket to Correct the Error in the Application along with an Amended Application with the 100/20 Mbps performance standard on September 9, 2019.⁷ The correction of the error would revise the ETC request to be consistent with the FCC's CAF II award to Wisper for Kansas. The Motion to Reopen the Docket

⁴ *Connect America Fund Phase II Auction (903) Closes Winning Bidders Announced FCC Form 683 Due October 15, 2018*, WC Docket No. 10-90, DA 18-887 (August 28, 2018), Attachment A.

⁵ Phase II Auction Order, at ¶ 15.

⁶ Order Granting Eligible Telecommunications Carrier Status (February 14, 2019).

⁷ Motion to Re-Open Docket to Modify Order (September 9, 2019).

was filed within a reasonable period of time of the date in which the Commission issued its Order of February 14, 2019.

4. K.A.R. 82-1-230(k) provides the procedure for reopening the record in a docket where testimony has been closed. Rule 230(k) allows the Commission to reopen the record for good cause shown.⁸ The decision to reopen a docket is discretionary with the Commission and may only be done by the issuance of an order.⁹ In addition to showing good cause, the Commission looks to see if any party would be prejudiced if a docket were reopened.

5. In reviewing the Motion to Reopen Docket, the Commission finds that there is good cause for granting the request and because the only party in the Docket is Wisper, no prejudice exists for any other party. The Commission finds that the ETC Revised Application was granted on the basis of the CAF II award and the need to provide operating authority for Wisper to render advanced telecommunications and information services to rural and high cost areas of Kansas with high-cost support. The FCC award was determined based on a reverse auction (Auction 903) and Wisper received a preliminary award based on a commitment to provide broadband rates of 100/20 Mbps. To be consistent with the award and to recognize the clerical error contained in the Revised Application, the Commission finds that there is good cause to address the ETC request on the basis of the performance standard on which the FCC made its determination. Consequently, there is merit for reopening the docket to correct the error regarding the correct performance standard. No party would appear to be prejudiced and if the ETC determination is approved at the higher speed, it would appear to be an enhancement to the service previously approved, assuming the service offering is comparable to other services being provided in Kansas and the rest of the country.

⁸ K.A.R. 83-1-230(k) provides: "After the record of testimony has been closed by the presiding officer, any party may apply to reopen the record for good cause shown."

⁹ Id.

6. Having determined that there is good cause to reopen the docket, the Commission also accepts the Amended Application for filing. The Staff will need to review the Amended Application in light of the higher speeds and make a determination whether the service offering is in the public interests and consistent with the FCC minimum service offering requirements. Upon the submission of the updated Staff Report and Recommendation and any other information in the record that may be necessary for making a final determination, the Commission shall take the matter under consideration and make a final determination, with the understanding that Wisper has requested an expedited review and the correction in the Amended Application does not appear to create undue complexity in reviewing and deciding this matter. The Commission also takes note that the Wisper motion was made within approximately six months from the Commission's original decision on February 14, 2019, and has not resulted in such a delay as to cause the evidence in the record to be out of date or outside a reasonable timeframe for reopening the Docket.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Wisper ISP, Inc. Motion to Re-open Docket to Modify Order is granted and Docket No. 19-WIIZ-225-ETC is reopened. The Wisper ISP Inc. Amended Application filed in this matter on September 9, 2019, is also accepted in the Docket for the purpose of determining Eligible Telecommunications Carrier status in the 196 census blocks identified in the Revised Application for the purpose of qualifying for the high cost fund within the federal universal service program, and in conformity with the Connect America Fund Phase II Auction.

B. 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).¹⁰

¹⁰ K.S.A. 66-118b; K.S.A. 77-503 (c) and K.S.A. 77-531(b).

C. 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.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 09/19/2019

A handwritten signature in black ink, appearing to read "Lynn M. Retz", is written over a horizontal line.

Lynn M. Retz
Executive Director

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CERTIFICATE OF SERVICE

19-WIIZ-225-ETC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 09/19/2019.

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