

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Jay Scott Emler

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.)

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.

2. On March 11, 2019, the Commission Staff (Staff) submitted its Report and Recommendation dated March 8, 2019, containing its analysis and recommendation of Wisper's Application.

3. Staff finds Wisper to have adequate expertise to operate telecommunication services in Kansas. The Company is currently operating 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, Wiper 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 awarded high cost support under the FCC Connect America Fund (CAF) II for specific census blocks in Kansas and obtained Eligible Telecommunications Carrier (ETC) status by the Commission in Docket No. 19-WIIZ-225-ETC. Staff further states that Wisper has been shown to have the financial ability to operate effectively as a CLEC in Kansas. Staff notes that Wisper was awarded \$1,607,524.30 in CAF II funding for Kansas and will provide broadband at 25 Mbps download and 3 Mbps upload with low-latency service to 414 locations in the census blocks it was awarded high cost support. 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 line 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 March 8, 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 granted 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).¹

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; Emler, Commissioner

Dated: 03/19/2019



Lynn M. Retz
Secretary to the Commission

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

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Dwight D. Keen
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

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

DATE: March 8, 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 the areas served by Southwestern Bell Telephone Company of Kansas d/b/a AT&T Kansas (AT&T), United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink), and all rural exchanges that are no longer subject to the protection of the rural exemption guidelines. On February 14, 2019, Wisper filed a Motion to Amend Territory Request to modify the requested areas to include only those Kansas territories served by AT&T and CenturyLink. Staff recommends approval of Wisper's Application as amended. Staff further recommends the proposed access tariff be approved and effective the date of the Commission Order.

BACKGROUND:

In December 2018, Wisper filed an 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. Wisper's ETC Application was granted by the Commission on February 14, 2019, in Docket No. 19-WIIZ-225-ETC.

In this Application, Wisper requests authority to operate as a CLEC in the areas served by AT&T and CenturyLink in the state of Kansas.

ANALYSIS:

Pursuant to K.S.A. 66-131, no common carrier or public utility shall transact business in the state of Kansas until it shall have obtained a Certificate from the Commission that public convenience 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 the state.

In making the determination as to whether the public convenience will be promoted by the transaction of said business, the Commission determined that it would look at a number of factors when determining whether a particular application is consistent with the public interest. The factors may include, but are not limited to, the provider's commitment to meet all requirements of the existing statutes and orders.

K.S.A. 2013 Supp. 66-2005 (w) states:

“...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.”

Staff has reviewed this Application and the information supports Wisper's technical, managerial, and financial capabilities to provide local exchange and exchange access services in the state of Kansas. Wisper's management team has over 150 years of combined experience in the telecommunications/communications industry, including extensive experience in finance.

Wisper was awarded \$1,607,524.30 in CAF II funding for Kansas, to be received over ten years, to provide broadband at 25 Megabits per second (Mbps) download and 3 Mbps upload with low-latency service of 100 milliseconds or better to 414 locations in specific areas in Kansas. Wisper estimates that its initial network deployment in Kansas will require approximately 1,816 person-hours of work to complete. In addition, Wisper will require sales and support services from employees in Kansas. Upon completion of its CAF II commitments, Wisper expects to continue to deploy network to underserved communities in Kansas and will likely require additional employees for those efforts. Wisper expects to complete its initial network buildout by the end of 2022. Wisper will then extend its network to serve additional residential, commercial, and municipal customers continuing to focus on underserved communities in Kansas.

Wisper states in its Application that it currently provides broadband Internet access and Voice over Internet Protocol (VoIP) services to approximately 1,500 total customers in Illinois, Missouri, Oklahoma, and Kansas. In response to Request for Information (RFI) 2, Wisper states that it currently only provides broadband services in Kansas. None of its broadband customers subscribe to Wisper's VoIP services.

Pursuant to K.S.A. 66-2017, Wisper does not need a Certificate of Convenience and Authority to provide telecommunications services via VoIP technology in Kansas. However, Wisper states that it seeks CLEC authority to supplement its initial plans to deploy broadband Internet and voice services to underserved areas in eastern Kansas. Wisper will provide wireless broadband Internet and a variety of both regulated and non-regulated voice services upon approval. According to

Wisper's response to RFI 1, although it will primarily provide voice services via VoIP, it will also utilize traditional time-division multiplexing (TDM) circuit-switched service for provisioning certain services such as fax, security services, and telephone lines for elevators via a copper DS-0. Wisper will likely purchase lines via resale for these purposes. Additionally, Wisper may decide to collocate in incumbent local exchange carrier (ILEC) central offices and/or carrier hotels, and will order trunk lines when and where necessary to access tandems to carry Wisper's customer traffic. Wisper may also use ILEC collocation and purchase DS-0 loops in order to provide Ethernet over copper services along with Plain Old Telephone Service (POTS) for commercial customers within a short distance from the central office.

Wisper states in its Application that it has requested to opt into an existing interconnection agreement with CenturyLink for its initial service area network, which CenturyLink will file with the Commission for approval. Wisper further states that it will seek an interconnection agreement with AT&T. Wisper should be reminded that it cannot commence providing regulated telecommunications services in the Kansas until the agreements are approved by the Commission.

The Company has registered with the Kansas Universal Service Fund (KUSF) third-party administrator, GVNW Consulting, Inc. (GVNW), but has not yet remitted any forms or paid any KUSF assessments. Wisper's first Carrier Remittance Worksheet will be due to GVNW by April 15, 2019.

Wisper is an Illinois for-profit corporation, headquartered in Mascoutah, Illinois. Wisper is registered with the Kansas Secretary of State's Office with a status of "Active and in Good Standing." Wisper stated that it is committed to adhering to the Commission's prescribed business practice by submitting a signed Telecommunications Carrier Code of Conduct document, dated December 19, 2018.

To the extent that the Company's presence in Kansas would increase the consumer's options for CLEC services, Staff believes the general public would benefit from Commission approval of this Application.

RECOMMENDATION:

Staff recommends the Commission grant this Application authorizing Wisper to provide CLEC and exchange access services in the areas served by AT&T and CenturyLink in the state of Kansas. Staff recommends the proposed access tariff be approved and effective the date of the Commission Order.

Wisper may not provide regulated CLEC services in the state of Kansas until interconnection agreements in the respective areas have been filed with and approved by the Commission.

Upon approval, Wisper is required to file an annual interrogatory, remain current with the Kansas Secretary of State's office, pay all Commission and KUSF assessments, follow the Telecommunications Carrier Code of Conduct, follow all applicable Commission Orders, and report revenues to the KUSF third party administrator. Failure to meet these requirements could result in the revocation of its Certificate.

CERTIFICATE OF SERVICE

19-WIIZ-280-COC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 03/19/2019.

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