

**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.)

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 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 in the State of Kansas. The Commission approved the Application on March 9, 2019, based on a technical analysis of the service to be provided by Wisper in the AT&T and Century Link service areas consistent with the public interest. In the Order, the Commission gave reference to the Federal Communications Commission's (FCC) CAF II awards. The Commission referenced the performance rates set forth in the Wisper Application in Docket No. 19-WIIZ-225-ETC (19-225 Docket), and referred to the baseline performance standard of 25 megabits per second (Mbps) download and 3 Mbps upload that had been included in the Revised Application filed in that Docket as a factor to be considered in assessing Wisper's ability to provide service. As noted in Docket No. 19-225 Docket, where Wisper now seeks to correct a clerical error in its Revised Application, the referenced baseline standard was not the correct determinate for the CAF II award, but rather the above baseline performance standard of 100 Mbps/20Mbps. To correct the clerical

error in its Revised Application and to conform its request for Eligible Telecommunication Carrier authority on the basis of the 100 Mbps/20 Mbps standard for the CAF II award, Wisper sought to reopen the 19-225 Docket and to correct the rate at which it will provide service.

2. Because the Commission Order of March 19, 2019 in this Docket contained the 25 Mbps/3 Mbps reference, Wisper filed a Motion to Re-Open Docket to Modify Order on September 9, 2019 to correct the clerical error for the performance rate to be provided by Wisper at 100 Mbps/20 Mbps under CAF II. Although the performance rate in this Docket is not a limiting factor for the competitive access provider authority granted by the Commission, the record should be corrected to include the applicable rate on which Wisper received the FCC CAF II award. The Commission also finds that the Motion to Re-Open is filed within a reasonable amount of time of the Commission's Order granting the authority in this Docket.

3. 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.¹ The decision to reopen a docket is discretionary with the Commission and may only be done by the issuance of an order.² In addition to showing good cause, the Commission looks to see if any party would be prejudiced if a docket were reopened.

4. In reviewing the Motion to Reopen Docket, the Commission finds that there is good cause for granting the request to correct the record to accurately reference the performance rate on which the CAF II award was made, and because the only party in the Docket is Wisper, no prejudice exists for any other party. The Commission finds the FCC award was determined based on a reverse auction (Auction 903) and Wisper received a preliminary award based on a

¹ 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."

² Id.

commitment to provide broadband rates of 100/20 Mbps. Although the performance rate in this Docket is not a limiting factor, the Staff is directed to address the correction and to supplement or reissue the Staff Report and Recommendation as may be necessary. The Commission noted the Certificate in this Docket was issued contingent on Wisper executing interconnection agreements to provide regulated telecommunications services in Kansas and approval of the agreements before service is provided. The Commission also recited other conditions in paragraph 6 of the Order of March 19, 2019 that will need to be followed.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Wisper ISP, Inc. Motion to Re-open Docket to Modify Order is granted and this Docket is reopened to correct the clerical error in the record.

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).³

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



Lynn M. Retz
Executive Director

wah

³ K.S.A. 66-118b; K.S.A. 77-503 (c) and K.S.A. 77-531(b).

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 09/19/2019.

MARK ALBERTYN, CHIEF FINANCIAL OFFICER
WISPER ISP INC
9711 FUESSER RD
MASCOUTAH, IL 62258
malbertyn@wisperisp.com

GLEND A CAFER, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
Fax: 785-233-3040
glenda@caferlaw.com

WALKER HENDRIX, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
w.hendrix@kcc.ks.gov

KRISTOPHER E. TWOMEY, ATTORNEY AT LAW
LAW OFFICE OF KRISTOPHER E. TWOMEY, P.C.
1725 I STREET, NW
SUITE 300
WASHINGTON, DC 20006
kris@lokt.net

/S/ DeeAnn Shupe
DeeAnn Shupe
