

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the Matter of the Application of Air Link)	
Rural Broadband, LLC for Designation as)	
An Eligible Telecommunications Carrier)	Case No. DA-2019-0102
In the State of Missouri)	

**RESPONSE TO THE SUPPLEMENTAL FILING TO THE APPLICATION AND
VERIFICATION OF AIR LINK RURAL BROADBAND, LLC FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF MISSOURI**

COMES NOW Conexon, LLC ("Conexon"), by its undersigned counsel, and for its Response to the Supplemental Filing to the Application and Verification of Air Link Rural Broadband, LLC ("Air Link") for Designation as an Eligible Telecommunications Carrier in the State of Missouri ("Supplemental Filing") hereby states as follows:

1. Air Link's FCC Bidding Behavior in the Federal Communications Commission's Connect America Fund – Phase II Auction Indicates Air Link Intended to Use Fixed Wireless Technology to Meet its CAF-II Performance Obligations.

Conexon does not have access to Air Link's Connect America Fund – Phase II ("CAF-II") long-form application filed with the Federal Communications Commission ("FCC"). However, portions of Air Link's CAF-II short-form application are publicly available on the FCC's website.¹ In those materials, Air Link indicated that it would bid at the 100/20 (downlink/uplink) Mbps and 25/3 Mbps tiers and meet its CAF-II performance obligations through the network deployment of a "Optical Carrier/Fiber to the End User" network to satisfy the FCC's CAF-II 100/20 Mbps "above baseline" tier and a "Terrestrial Fixed Wireless" network to satisfy the FCC's CAF-II 25/3 Mbps "baseline" tier. *See* Exhibit A. Air Link also listed the spectrum it intended to use in its

¹ See <https://auctionfiling.fcc.gov/form175/search175/index.htm>.

exhibit to its CAF-II short-form application addressing Air Link's access to spectrum in order to meet its CAF-II performance requirements. *See* Exhibit A.

2. Air Link's ETC Application Filed with this Commission Indicates that Air Link Intends to Use Fixed Wireless Technology.

In its initial ETC Application in the present case, Air Link indicates that it intends to use a mix of fiber optic and fixed wireless technologies in order to preserve future options.² This intention by Air Link was further supported in an email from Air Link's consultant, Robert Abrams, to Conexon's Jonathan Chambers³ dated November 28, 2018, stating in part:

Air Link does reserve the right to future expansion and the offer of subsequent services that may be satisfied through an expansion of its existing wireless network. It is for this reason only the company's ETC application included wireless in its application.⁴

In his e-mail to Mr. Chambers, Mr. Abrams also stated that "[i]t was understood by Air Link, the FCC, and I believe the Missouri Commission, that 100/20 Mbps broadband services cannot be reliably provided over wireless networks at this time."⁵

3. Air Link's Fixed Wireless Technology is Likely not Capable of Meeting the Requirements of the 100/20 Mbps Tier Using the FCC's New Testing Protocols.

Subsequent to the filing of Air Link's CAF-II short-form applications, but before the CAF-II auction began, the FCC released new rules detailing the testing protocol for

² *See* Application and Verification of Air Link Rural Broadband, LLC for Designation as an Eligible Telecommunications Carrier in the State of Missouri, pp. 2, 6 & 14.

³ Prior to joining Conexon as a Partner, Jonathan Chambers served as Chief of the Office of Strategic Planning for the Federal Communications Commission. He was part of the senior leadership at the FCC that reformed the Universal Service Fund, including the federal High Cost and Lifeline programs.

⁴ *See* e-mail attached hereto as Exhibit B.

⁵ *Id.*

the meeting the CAF requirements.⁶ These rules made it clear that recipients of federal CAF-II support would have to demonstrate an ability to deliver the actual speeds to consumer locations or face significant penalties. Conexon believes that the fixed wireless technologies Air Link proposes to use are incapable of meeting the requirements of the 100/20 Mbps tier using the new FCC testing protocols, particularly if Air Link plans to use unlicensed spectrum to do so.

4. Clarity Regarding the Capabilities of Air Link’s Fixed Wireless Technologies is Needed.

Conexon desires and requests clarity as to the capabilities of Air Link’s fixed wireless technologies and whether Air Link has plans to satisfy its CAF-II/ETC performance obligations using fixed wireless technologies. Air Link’s Supplemental Filing states that it “believes its ‘above baseline’ commitments to provide a reliable broadband service meet these obligations [sic] will require a fiber-to-the-premises access method.”⁷

Conexon requests that Air Link state on the record in this proceeding its view, as expressed to Mr. Chambers in the email referenced above, that the provision of 100 Mbps/20 Mbps broadband services cannot be reliably provided over fixed wireless networks at this time.

Conexon desires a clear record in this proceeding regarding the technological limitations of fixed wireless services from which the Commission can make a more informed decision regarding the capabilities of Air Link’s proposed broadband

⁶ See <https://docs.fcc.gov/public/attachments/DA-18-710A1.pdf> (rel. July 6, 2018) (¶¶ 60-67) (“Consistent with the Commission’s universal service goals, we adopt a compliance framework that encourages ETCs to comply fully with their performance obligations and includes the potential for USAC to audit test results.”)

⁷ See Air Link’s “Supplemental Filing”, pp. 7-8.

deployment, as well as the qualifications of Air Link to be designated as an ETC in Missouri.

WHEREFORE, Conexon respectfully requests that the Missouri Public Service Commission to allow limited additional time for discovery by the parties and to hold a hearing in order provide an opportunity to obtain testimony regarding the capabilities of Air Link's proposed fixed wireless network components before ruling on Air Link's ETC Application.

Respectfully submitted,

/s/ Megan E. Ray

Megan E. Ray, *Mo. Bar #62037*
Andereck, Evans, Lewis, Figg & Battagler, L.L.C
3816 S. Greystone Ct., Ste. B
Springfield, MO 65804
(417) 864-6401 (telephone)
(417) 864-4967 (fax)
Email: mray@lawofficemo.com

ATTORNEY FOR CONEXON, LLC

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Application was served by electronic mail or U.S. Mail, postage prepaid, this 9th day of January, 2019 upon all counsel of record and the following:

Office of the Public Counsel
Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, Missouri 65102
staffcounsel@psc.mo.gov

/s/ Megan E. Ray

Megan E. Ray