

Office of Broadband and Connectivity
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
Governor



JAY DARDENNE
Commissioner of Administration

September 30, 2022

Via Email Only:
Ken Conner, Director
Divisional Operations, Sparklight
T: 903-312-4866
210 East Earll Drive
Phoenix, AZ 85012
kenneth.conner@sparklight.biz

RE: GUMBO Grant Application No. 87
GUMBO Protest No. 20

Dear Mr. Conner:

The Louisiana Office of Broadband Development and Connectivity (OBDC) is providing grants to private providers of broadband services to facilitate the deployment of broadband service to unserved areas of the state. Unserved areas are those without internet access speeds of at least 25 Mbps download and 3 Mbps upload (25:3 Mbps) provided through wireline or fixed wireless infrastructure. The GUMBO grant program funds eligible projects through a competitive grant application process.

Between November 1, 2021, and January 12, 2022, interested broadband service providers were invited to submit applications for GUMBO grant funds. Those applications were then published in accordance with La. R.S. 51:2370.4 (C)(1).

On July 25, 2022, OBDC identified all of the parties whose GUMBO grant applications had been approved. Any party opposed to the award had seven (7) days, or until August 1, 2022 to file a protest with the Director.

Conexon Connect, LLC ("Conexon") submitted GUMBO Grant Application Number 87 for the purpose of providing broadband internet service to unserved portions of East Carroll Parish. On July 25, 2022, OBDC announced that it intended to award the requested GUMBO grant to Conexon. On August 1, 2022, Cable One, Inc./Fidelity Communications d/b/a Sparklight ("Sparklight") submitted a timely protest of that award.

For the following reasons, I hereby deny Sparklight's protest.

I. BACKGROUND

At the outset, I note that Sparklight's August 1, 2022 protest includes virtually no narrative whatsoever of its arguments. Rather, Sparklight simply offers two categories identified as "Upload/download speed" and "Number of locations." Sparklight's single sentence explaining these categories is "Number of serviceable locations within the proposed area, including the speeds those serviceable locations **are able to receive** (Emphasis added). Sparklight lists "960/50 mbps" as the Upload/Download speed and 2,856 as the number of locations. Thus, as best OBDC can determine, Sparklight is alleging that it is "able to service" 2856 locations within the area applied for in Conexon's application, at a speed of 960/50 mbps.

On August 9, 2022, OBDC requested that Starlight provide additional documents that would assist it in its analysis of Starlight's protest. These documents sought subscription data that included, but were not limited to, service address, subscribed download/upload speed, maximum available download/upload speed available, and redacted billing statements for 10% of the subscribed protest locations.

In response to OBDC's request for additional documents, Sparklight provided documents which included some redacted billing statements with subscriber addresses as well as a spreadsheet outlining subscribed download/upload speed and available download/upload speed¹.

On September 6, 2022, Conexon responded to Sparklight's protest on several grounds. First, Conexon contends that the more than 500 signed statements from residents of East Carroll Parish provide evidence that there is a lack of reliable and affordable broadband service within East Carroll Parish. Conexon also points to an "affordability metric" which allegedly illustrates that its own broadband subscription offerings are more affordable than those of Sparklight. Additionally, Conexon suggests that Sparklight's information it provides on Form 477 does not satisfactorily advance Sparklight's argument that it adequately services the area at issue. Next, Conexon points to Sparklight's use of DOCSIS technology, and explains limitations of this technology. Last, Conexon submits that the data submitted by Sparklight is inconsistent and does not suffice to substantiate its claim.

II. LAW AND ANALYSIS

As the protesting party, Sparklight bears the burden of proof to establish that the areas it is protesting are served.² Additionally, the Rules permit OBDC to ask for any relevant information or documentation to assist it with evaluating a party's protest.³

¹ It is noteworthy that none of the subscriber data submitted by Sparklight was within the 6 months of the service availability date of December 31, 2021 that was requested. Given that the applicable time frame for the analysis of whether an area is "served" would be at the time of application, OBC sought subscription data for the 6 months **prior to** December 31, 2021 so that the issue of service might be properly evaluated. Sparklight has provided redacted bills which are all within 30-60 days of this letter.

² See, Rules, at §501(C)

³ See, Rules, at §501(D)&(E)

As noted, Sparklight has implied in its protest that it is able to provide broadband speeds exceeding the statutory threshold of 25:3 to 2,856 locations within the area that Conexon has applied for funding. However, Sparklight must establish through supporting documentation that it already adequately serves the areas at issue. Sparklight has submitted shapefiles, heatmaps, an Affidavit, FCC Form 477, a spreadsheet, and redacted subscription statements to support its position. I have reviewed all of these documents. Additionally, I have consulted with two third party-reviewers with significant experience in the broadband arena. It is my opinion that for the following reasons, Sparklight has not satisfied its burden of proof to establish that it provides reliable service to the applied-for areas.

Because Sparklight has provided such a limited explanation of its position, it is difficult to discern and analyze its argument. Again, though, turning to the words within its one-page protest, Sparklight states that the information it has provided is the “number of serviceable locations within the proposed project area, including the speeds those serviceable locations are able to receive.” Based on this information, it appears that Sparklight is not asserting that the locations within the area “are receiving” the speed of 960/50 mbps, but rather, that they are “able to receive” these speeds. It is OBDC’s opinion that the intent and purpose of the Gumbo Act is the statutorily mandated speeds will be delivered and received **functionally** and **reliably**. When I consider the paucity of information set forth in Sparklight’s narrative, it is my opinion that Sparklight has not met its burden to demonstrate that the necessary speed is reliably delivered and received by the residents of the area at issue.

Speed Testing

Sparklight has offered no data or evidence with regard to specific speeds actually delivered and received by its customers or at locations within the area. In its response, Conexon asserts that Sparklight utilizes a DOCSIS technology type, and that such technology has inherent limitations, particularly with regard to the upload portion of the network. Conexon’s argument has been corroborated by OBC’s third party consultants. That is, DOCSIS networks use a mixture of fiber and coaxial cable to provide network service to customers. The Fiber component provides Up and Down service to a Node, and from the Node, via coaxial cable to the customer’s location. While the speeds available to the Node on the fiber have been reported to be very high, the speeds to the customer over the coaxial cable may be limited. In such a system, data is distributed by coaxial fiber to customers, and this can fluctuate greatly in speeds, due to a number of factors, including bad coaxial cable, amplifiers, filters, data taps, and “loading” during peak times. Significantly, many customers share service from the same node, thereby reducing speed to the customer greatly, particularly during peak usage. As Conexon explains, “cable systems that were designed with limited upload capacity and high oversubscription ratios have become strained.”

Although Sparklight did submit a spreadsheet outlining the speed subscribed to at certain subscriber locations, as well as the potential available speeds at certain locations, this information still does not establish what speeds are actually **received** at certain locations within the area. Additionally, while Sparklight claims node speeds of 950/50 within its spreadsheet, there are no supporting speed tests to substantiate these claims. Without Sparklight providing any speed tests at actual customer locations, Sparklight still has not demonstrated that the minimum statutory

speeds are consistently and reliably received at specific customer locations. Thus, Sparklight has not established what true speeds are available to its customers, and has therefore, failed to carry its burden of proof as the protestor.

FCC 477

FCC Form 477 does not gather data on every end user located throughout the United States. Instead, it gathers data at the “census block” level. “Census blocks are ‘statistical areas bounded by visible features, such as streets, roads, streams, and railroad tracks, and by nonvisible boundaries, such as selected property lines and city, township, school district, and county limits and short line-of-sight extensions of streets and roads.’ Census blocks are the smallest unit of geography defined by the Census Bureau – there were a total of 11,166,336 defined for the 2010 census, covering the U.S. and its territories – but are diverse in size. While the largest block is over 8,500 square miles (it’s in Alaska), half the blocks are smaller than a tenth of a square mile (6.4 acres).”⁴

According to the FCC, “a provider that reports deployment of a particular technology and bandwidth in a census block may not necessarily offer that service everywhere in the block.”⁵ It is common for residents and business that do not have access to broadband internet service to be located within census blocks where other residents or businesses do have broadband access. However, because a service provider may accurately report on Form 477 that it provides broadband service in a census block even if it only provides that service to a single end user located within that census block, FCC Form 477 cannot be relied upon to determine whether areas are “unserved” pursuant to the GUMBO Rules.

Additionally, FCC Form 477 merely requires internet service providers to list the highest advertised speed that the provider offers in a designated area. In contrast, the GUMBO Rules define an area as “unserved” if broadband service “of at least 25:3 Mbps” is not available in that area from any provider. FCC Form 477 references maximum available speeds, while the GUMBO Rules reference minimum available speeds. In reference to broadband internet service, a maximum speed is one that may be achieved during optimal conditions, which may only occur sporadically or at certain times of the day when the amount of traffic on the network is low. Conversely, a minimum speed is one that must be met or exceeded at all times. In other words, the FCC’s 477 form asks for a list of census blocks where an ISP advertises the availability of service, and further asks for general technology type and the maximum advertised speed. However, certain technologies being used to provide internet access service, due to technical limitations, may have actual maximum download and upload speeds that are less than what is reported as maximum *advertised* download and upload speeds on FCC Form 477.

⁴ More About Census Blocks, FCC Form 477. Federal Communications Commission (modified October 27, 2020). https://transition.fcc.gov/form477/Geo/more_about_2020_census_blocks.pdf. Referencing 2010 Census Summary File 1 Urban/Rural Update Technical Documentation prepared by the U.S. Census Bureau, 2012 at A-10, <http://www.census.gov/prod/cen2010/doc/sf1.pdf>.

⁵ *Fixed Broadband Deployment Data from FCC Form 477*. Federal Communications Commission. (updated August 24, 2022). Retrieved September 21, 2022. [https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477#:~:text=All%20facilities%2Dbased%20broadband%20providers,in%20at%20least%20one%20direction.&text=Mobile%20providers%20file%20maps%20of,DO%2C%20HSPA%2C%20LTE\)](https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477#:~:text=All%20facilities%2Dbased%20broadband%20providers,in%20at%20least%20one%20direction.&text=Mobile%20providers%20file%20maps%20of,DO%2C%20HSPA%2C%20LTE)).

Sparklight has submitted an FCC Form 477 as a supplement to its protest. However, Sparklight's indication that it reports on its Form 477 some census blocks included in Protest no. 20 only means that Sparklight advertises the availability to at least one location in a census block. Moreover, the form certainly does not confirm that Sparklight provides the same level of service, or any service whatsoever, to everyone in the applied-for area. As such, I cannot declare the applied for area as served based upon Sparklight's FCC Form 477.

Other Conexon Arguments

Conexon has also proposed that Sparklight fails to meet the "affordability metric" because Conexon allegedly offers more robust subscription packages at a lower cost. While cost is one of the factors for scoring in the evaluation of applications, it was not, nor was it required to be, the sole consideration when evaluating applications. Nevertheless, because I find that Sparklight has not even established that it adequately delivers the statutorily mandated service speeds to the area at issue, an evaluation of the protestor and applicant's affordability metrics is moot.

Last, Conexon has offered what it alleges are more than 500 sworn statements from residents of the area at issue attesting to the lack of adequate broadband service. Again, local support may be considered or evaluated during the award phase; however, at the protest phase, I am not charged with weighing such support or lack of for a particular vendor. Rather, it is clear that as the protestor, Sparklight has not met its burden of establishing that it delivers consistent and reliable service at the required speeds to the area at issue. Thus, I decline to rule on this issue raised by Conexon as it too is moot.

III. CONCLUSION

Pursuant to La. R.S. 51:2370.5(D), this decision is final and conclusive unless it is appealed to the Commissioner of Administration within fifteen (15) days of receipt. Pursuant to La. R.S. 51:2370.5(H), the decision of the Commissioner of Administration shall be final and conclusive unless it is appealed to the Nineteenth Judicial District Court within seven (7) days of receipt.

Sincerely,



Veneeth Iyengar
Executive Director
Office of Broadband Development and Connectivity

cc: Conexon