

3. During the initial phase of the VoIP service, Ideatek was experiencing problems with calls being completed to Ideatek customers from Nex-Tech customers. This problem was temporarily remedied according to Ideatek through AT&T tandem switch trunks that both Ideatek and Nex-Tech were utilizing. This process was apparently terminated by Nex-Tech, and Ideatek's customers were unable to receive calls from Nex-Tech customers. As the parties began to address the situation, Nex-Tech indicated it would need to have an interconnection agreement with Ideatek to complete calls from its customers to Ideatek's. Ideatek took the position that an interconnection agreement is unnecessary as service had been established without an agreement and the nature of its service allowed Ideatek to be indirectly connected to Nex-Tech through third-party transport facilities. An impasse occurred, and Ideatek availed itself of the Commission Staff to assist in reaching a temporary arrangement with Nex-Tech, whereby Ideatek could have calls completed through an interim access trunk, referred to as a Session Initiation Protocol (SIP) trunk, pending a resolution of the issue of whether an interconnection agreement was required. As the SIP trunk was claimed to have been a tariffed service, Nex-Tech, during negotiations involving an interconnection agreement, invoiced Ideatek for \$1,946.13 for the SIP trunk. Because Ideatek indicated the interconnection agreement was not necessary and it should be able to maintain calling access between each companies' customers, it declined to pay, giving rise to Nex-Tech sending a disconnect notice for non-payment.

4. To avert disconnection and seeking a resolution of the dispute, Ideatek filed its complaint on January 18, 2019, seeking a decision that an interconnection agreement was not required, number portability should occur, local calls are technically feasible and do not require the SIP trunk or any offsetting charges as a result of reciprocal compensation. In conjunction with the complaint, Ideatek requested expedited review under K.A.R 82-1-220a to allow its customers

to maintain uninterrupted service during the time it would take to consummate an interconnection agreement or some alternative arrangement or disposition by the Commission regarding the issues. Ideatek raises issues concerning whether an agreement is necessary for indirect connection, number portability and reciprocal compensation that may potentially arise if this matter is resolved under Sections 251 and 252 of the federal telecommunications act and an interconnection agreement is ultimately approved. In turn, Nex-Tech filed a limited response reasserting it would not discontinue service, claiming the SIP arrangement was proper, an interconnection agreement is required and alleging impropriety with respect to porting numbers during the establishment of service by Ideatek in the Wakeeney exchange. Due to the complexity of the issues in the docket, Nex-Tech indicated it would supplement its response to issues beyond its argument against expedited treatment in the docket, but has yet to submit an additional response to the Ideatek complaint at this time.

5. On January 30, 2019, Ideatek filed a correction to its initial complaint and request for expedited review to address some factual discrepancies discovered in its original pleading. Ideatek submitted an Amended Complaint and Request for Expedited Review clarifying it had ported numbers in the Nex-Tech exchange from a third-party, Big River Telephone, and corrected some technical errors in the initial filing. Ideatek stated the corrections did not change the material aspects of its requests.

6. In addressing the issues in this docket, the Commission has jurisdiction pursuant to K.S.A. 66-1,192, K.A.R. 82-1-220 and K.A.R. 82-1-220a. The Commission may also have cause to exercise its authority under 47 U.S.C. §§ 251 and 252.

7. On January 31, 2019, the Commission pursuant to K.S.A. 82-1-220a(f) appointed an Examiner to determine whether or not the request for expedited review is warranted. K.A.R.

82-1-220a sets up a process for resolving disputes between competing telecommunications carriers in an expeditious manner. The request for expedited authority is filed in the same manner as a complaint under K.A.R. 82-1-220. The complaint for expedited review must be identified as “Request for Expedited Review” and contain a (1) description of circumstances giving rise to expedited review; (2) a description of service-affected issues justifying expedited review; (3) a description of efforts made by the parties to resolve the issues; (4) a list of issues under an interconnection agreement that are applicable to each dispute and (5) any proposed resolution of the dispute. Use of the expedited review process is contingent on the dispute directly affecting a party’s ability to provide uninterrupted service or the provisioning of service, functionality or network elements. Service is to be made on the same day to the opposing party in the complaint, Commission legal staff and Commission advisory counsel. Within three-days, the respondent is to address the request for expedited review and, if additional time is needed to fully respond to the complaint as a whole, the respondent may designate issues to be addressed in a later response. The Examiner is given the discretion to determine whether the complaint in light of its complexity and other factors is in need of a rapid and efficient decision. The Examiner must make a decision on whether expedited review is appropriate within ten business days of the filing of a request. If it is appropriate, there are several procedural steps to be followed by the Examiner in overseeing the process for resolution, including a hearing within 15 business days of filing the complaint if an informal resolution of the process through mediation or negotiation cannot be fulfilled.

8. The Examiner determines that the procedural requirements of the expedited review request process have been in all material respects met. There is a dispute between carriers that had the potential to adversely affect the provision of uninterrupted service. The complaint was timely

served. A limited response was filed by Nex-Tech within three business days. Accordingly, this leaves the decision to the discretion of the Examiner as to whether expedited review is warranted.

9. The Examiner finds that expedited review is not warranted at this time because of the interim arrangements made to preserve service during the pendency of this docket. The parties have reached an accommodation for continued service, and Nex-Tech has categorically restated in its pleading that it will not discontinue the interim SIP trunking services in place to maintain Ideatek's operations. Moreover, Nex-Tech has affirmatively represented that it will take no action that would threaten uninterrupted service. The Examiner determines the representations made by Nex-Tech and its provisioning of the SIP trunk will ensure customer calls will be completed while the parties continue their efforts to resolve their disputes. Consequently, there is no need for resolving the complaint under K.A.R. 82-1-220a, as there is no potential action by Nex-Tech that would impair Ideatek's ability to provide service during the course of this complaint proceeding. This matter is, therefore, best resolved under K.A.R. 82-1-220, especially given the nature of the dispute and the complexity of the issues, making an expedited resolution impractical. Of course, if the status quo changes and Ideatek's service becomes compromised, it may want to renew its request for expedited relief should the current situation deteriorate and Commission intervention become necessary.

10. Having determined the expedited review process is not needed under the conditions the parties presently find themselves does not mean the complaint process should be never ending. The parties have raised some practical and policy oriented issues involving VoIP service in a rural telephone company exchange. To avoid an unreasonable delay of this docket, a scheduling conference is set for February 13, 2019, at 2:00 p.m. CDST in the third floor conference room at the Commission offices at 1500 SW Arrowhead, Topeka, Kansas 6604-4027 to establish the

procedural process for Commission review of this matter in a period of 90 to 120 days from the time the complaint was amended on January 30, 2019. Based on the pleadings filed with the Commission to date, the Examiner has determined various issue that may be considered in this docket. They are as follows but are not intended to be exhaustive if the parties or the Commission desire to supplement or modify them in the course of these proceedings:

- (1) Is an interconnection agreement required for indirect connection by a VoIP service operator to establish service with a rural telephone company exchange;
- (2) Are there technical arrangements that may be made either through direct connection or indirect third-party facilitation that would be equal to or better than the interim provisioning now provided with the SIP trunk;
- (3) How was service provisioned between Ideatek and Nex-Tech's customers before the SIP trunk arrangement and why is that arrangement not sufficient (if possible provide a diagram showing the way service would be provisioned using indirect connection and using the SIP trunk);
- (4) To what extent may reciprocal compensation between a data network service and a local telephone exchange be utilized to permit traffic transport and termination;
- (5) What obligations are imposed under 47 U.S.C. §271 (b) (2) and (c) (2) that would require local exchange interconnection with a VoIP or a data network;
- (6) What costs are imposed on the respective parties to provide transmission and routing for local exchange service provided via VoIP;
- (7) Do the costs of direct connection with a local exchange company by a VoIP service operator create a barrier to competition, if an alternative measure of interconnection is technically feasible;
- (8) What if any pronouncement has the Federal Communications Commission made regarding interconnection and/or an interconnection agreement between a VoIP service operator and a rural local exchange carrier;
- (9) Are there any Kansas Corporation Commission orders, regulations or statutes that would be applicable to a resolution of this matter or result in the parties having to obtain certificate authority; and

(10) What is an appropriate allocation of Commission assessment costs in a complaint matter involving an incumbent local exchange public utility and a VoIP service operator.

11. Although the need for an interconnection agreement has not been decided in this matter at this juncture, if the parties elect to negotiate an interconnection agreement for purposes of the exchange and network services provided between the parties, the Commission is prepared to provide mediation and/or arbitration services to resolve disputes that may give rise to an application of 47 U.S.C. §§ 251 and 252.

WHEREFORE, the Examiner orders:

(A) The request for expedited review under K.A.R. 82-1-220a is denied and the docket shall proceed as directed under K.A.R. 82-1-220;

(B) A scheduling conference is set for February 13, 2019, at 2:00 p.m. in the Commission third floor conference room at 1500 S.W. Arrowhead Road, Topeka, Kansas, 66604-4027;

(C) This Order will be served by electronic service. This is a procedural order and constitutes non-final agency action. Parties may have five (5) business days to appeal this decision to the Commission under K.A.R. 82-1-220a(g).

(D) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE HEARING EXAMINER

/s/ Walker Hendrix
Walker Hendrix

Dated: February 1, 2019

CERTIFICATE OF SERVICE

19-RRLT-277-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Examiner Order on Request for Expedited Review and Other Procedural Rulings was served via electronic service this 1st day of February, 2019, to the following:

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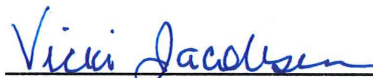
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