

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

In the Matter of the Application of Cox Kansas )  
Telcom, LLC to Expand Its Service Area and ) Docket No. 15-COXT-396-ETC  
for Designation as an Eligible )  
Telecommunications Carrier in Certain Rural )  
Territories in the State of Kansas. )

**STAFF'S RESPONSE TO WAMEGO'S MOTION**

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby files its response to Wamego Telecommunications Company, Inc.'s (Wamego) *Motion of Wamego Telecommunications Company, Inc. for Determination of Sufficiency of Cox's Request for Negotiation of Interconnection* (Motion) filed on May 8, 2015. Staff states the following:

**I. BACKGROUND**

1. On March 10, 2015, Cox Kansas Telcom, LLC (Cox) filed an Application with the Commission requesting expansion of its Certificate of Convenience to provide regulated telecommunications services in the Wamego and Saint George exchanges. Wamego is the incumbent local exchange carrier (ILEC) in both exchanges.<sup>1</sup>

2. On March 17, 2015, Wamego filed a petition to intervene in the docket and moved for a procedural schedule including a hearing. Wamego's petition to intervene was granted on March 31, 2015, and the parties were ordered to file a procedural schedule by April 14, 2015. The parties filed a *Joint Motion for Procedural Schedule* on May 15, 2015.

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<sup>1</sup>Cox also sought Lifeline only Eligible Telecommunications Carrier (ETC) designation expansion in those exchanges.

3. Wamego filed its Motion on May 8, 2015. Wamego states that it received a letter from Cox requesting negotiations to develop an interconnection agreement.<sup>2</sup> Wamego also states that Cox cannot satisfy the rural entry guidelines adopted by the Commission pursuant to K.S.A. 66-2004 and K.S.A. 66-2005.<sup>3</sup> Wamego's main contention is that Cox cannot meet the requirement to provide service to all customers in the rural telephone company study area.<sup>4</sup> Wamego asks the Commission to determine whether Cox's request for interconnection "constitutes a bona fide request for interconnection and whether Wamego is obliged to negotiate interconnection as requested by Cox."<sup>5</sup>

4. Staff recommends denial of Wamego's Motion because Cox does not need to make a "bona fide request" for interconnection under 47 U.S.C. § 251(f)(1) in order to interconnect with Wamego. Staff's reasoning is explained below.

## **II. ARGUMENT**

### **A. COX DOES NOT NEED TO MAKE A BONA FIDE REQUEST FOR INTERCONNECTION WITH WAMEGO BECAUSE WAMEGO PROVIDED VIDEO PROGRAMMING AFTER FEBRUARY 8, 1996, AS REFERENCED UNDER 47 U.S.C. § 251(F)(1)(C)**

5. 47 U.S.C. § 251(c) requires all incumbent local exchange carriers to negotiate in good faith for interconnection with their telecommunications facilities. 47 U.S.C. § 251(f)(1)(A) provides an exemption from this requirement for "rural telephone companies," and requires the rural telephone companies to provide interconnection only upon a "bona fide request" and a state policy determination. However, pursuant to 47 U.S.C. § 251(f)(1)(C), "rural telephone

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<sup>2</sup>Motion of Wamego Telecommunications Company, Inc. for Determination of Sufficiency of Cox's Request for Negotiation of Interconnection, p. 1 (May 8, 2015).

<sup>3</sup>Id. at 2.

<sup>4</sup>Id. at 2.

<sup>5</sup>Id. at 3.

companies” that provided video programming after February 8, 1996, are not entitled to this exemption.

6. Wamego is required to interconnect in good faith with any requesting carrier pursuant to 47 U.S.C. § 251(c) without a “bona fide request” under 47 U.S.C. § 251(f)(1)(A) because Wamego provided video programming after February 8, 1996, as referenced under § 251(f)(1)(C). Stated another way, Wamego does not meet the requirements to be entitled to a “bona fide request” under the § 251(f)(1)(A) because it began providing “video programming” after February 8, 1996.

7. Wamego does not directly provide video programming, but its affiliate WTC Communications, Inc. (WTC Communications) began providing video programming in 2000 (*see* Exhibit A). Wamego would likely argue that because it does not directly provide video programming, the § 251(f)(1)(C) limitation would not apply. The Commission should reject this argument. Wamego should be deemed a “provider of video programming” as explained below.

8. The D.C. Circuit Court of Appeals reasoned in *Association of Commercial Enterprises v. Federal Communications Commission*<sup>6</sup> that an ILEC could not circumvent § 251(c)’s obligations merely by setting up an affiliate to offer telecommunications services.<sup>7</sup> In *Commercial Enterprises*, the appellants challenged an FCC order allowing for the merger of Ameritech and SBC, making Ameritech a wholly-owned subsidiary of SBC.<sup>8</sup> The FCC order stated that by doing so, Ameritech could avoid § 251(c)’s resale obligations with respect to advanced services if those services were provided solely by the affiliate.<sup>9</sup> Adherence to the FCC

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<sup>6</sup>*Ass’n of Commercial Enterprises v. F.C.C.*, 235 F.3d 662 (D.C. Cir. 2001).

<sup>7</sup>*Id.* at 667.

<sup>8</sup>*Id.* at 664.

<sup>9</sup>*Id.* at 665.

order would mean that any ILEC would be entitled to set up a similar affiliate to avoid § 251(c)'s resale obligations.<sup>10</sup>

9. The FCC argued on appeal that § 251(h)(b)(2)'s definition of an ILEC as a “successor and assign” of an ILEC would not include an affiliate if it did not possess the monopoly assets of the ILEC.<sup>11</sup> The Court noted that this “tortured statutory interpretation” was at odds with the “clear purpose of the Telecommunications Act - particularly the requirements of § 251(c) – [] to prevent an ILEC from abusing its market power over the local loop to prevent competition.”<sup>12</sup> The Court held that the FCC could “not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services.”<sup>13</sup> Thus, the FCC's interpretation was unreasonable.<sup>14</sup>

10. Here, Wamego indirectly provides video programming through an affiliate wholly owned by its parent company: WTC Holdings, Inc. (WTC Holdings). Both Wamego and WTC Communications are wholly owned by the same entity, and Wamego should not be allowed to circumvent its § 251(c) obligations by providing video programming through an affiliate and arguing that it should be afforded special treatment under § 251(f). Wamego may argue that because WTC Communications is not a subsidiary of Wamego, the reasoning from *Commercial Enterprises* does not apply. However, this would ignore the clear purpose of the Telecommunications Act as agreed to by the Court – “to prevent an ILEC from abusing its market power over the local loop to prevent competition.”<sup>15</sup> Additionally, it appears that WTC Communications *was* a subsidiary of Wamego at one point based upon an Annual Report made

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<sup>10</sup>Id. at 665.

<sup>11</sup>Id. at 666.

<sup>12</sup>Id. at 668.

<sup>13</sup>Id. at 668.

<sup>14</sup>Id. at 668.

<sup>15</sup>See Id. at 668.

at the Kansas Secretary of State's Office in 2000 indicating that Wamego owned greater than 5% of WTC Communications (*see* Exhibit B). WTC Holdings was not incorporated until 2011 (*see* Exhibit C). Wamego should not be allowed to avoid its interconnection obligations through corporate restructuring, consistent with *Commercial Enterprises*.

11. Additionally, in *GTE Serv. Corp. v. F.C.C.*<sup>16</sup>, the D.C. Circuit Court of Appeals held that the phrase "provider of interstate interexchange telecommunications services" referenced under 47 U.S.C. § 254(g) was ambiguous as to whether it encompassed commonly owned or controlled affiliates.<sup>17</sup> The Court ultimately concluded that interpreting the phrase "provider of interstate interexchange telecommunications services" under 47 U.S.C. § 254(g) to encompass commonly owned or controlled affiliates was reasonable in light of the text and regulatory purpose of 47 U.S.C. § 254(g).<sup>18</sup>

12. Here, 47 U.S.C. § 251(f)(1)(C) cancels § 251(f)(1)(A)'s exemption in an area where a rural telephone company "provides video programming." Given that the purpose of § 251(c) is to prevent an ILEC from abusing its market power over the local loop to thwart competition, interpreting the phrase "provides video programming" to encompass commonly owned or controlled affiliates is reasonable.<sup>19</sup>

13. In this case, because Wamego is required to abide by § 251(c), and § 251(f)'s exemption would not apply, as explained above, Cox would be entitled to interconnection without a bona fide request.

WHEREFORE, Staff respectfully requests that the Commission deny Wamego's Motion.

Respectfully Submitted,

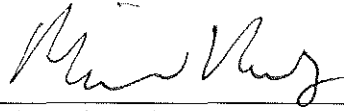
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<sup>16</sup>*GTE Serv. Corp. v. F.C.C.*, 224 F.3d 768 (D.C. Cir. 2000).

<sup>17</sup>*Id.* at 773.

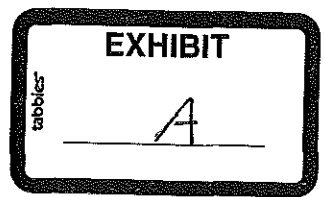
<sup>18</sup>*Id.* at 773.

<sup>19</sup>*Ass'n of Commercial Enterprises v. F.C.C.*, 235 F.3d 662, 668 (D.C. Cir. 2001).



Michael Neeley, S. Ct. #25027  
Michael Duenes, S. Ct. #26431  
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1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: 785-271-3173  
Fax: 785-271-3167

Kansas Corporation Commission  
Information Request



Request No: 32

Company Name WAMEGO TELECOMMUNICATIONS

WTCT

Docket Number 15-COXT-396-ETC

Request Date April 16, 2015

Date Information Needed April 23, 2015

RE:

Please Provide the Following:

(a) Does Wamego or any of its affiliates offer video programming?

(b) If yes, please list each exchange, city or town in which Wamego or its affiliate offers video programming and when the company began providing such service.

Submitted By H. Baumhardt

Submitted To T. Gleason

Wamego Telecommunications Company, Inc. objects to this request for the reason that it seeks irrelevant and immaterial information. Wamego Telecommunications Company, Inc. does not provide video services. Video service provided by an affiliate of Wamego Telecommunications Company, Inc. is not relevant to the pending application in this Docket.

Subject to the foregoing Objection to its admission in this proceeding Wamego Telecommunications Company, Inc. provides the following response:

Wamego Telecommunications Company, Inc.'s affiliate WTC Communications, Inc. began providing video services to customers in the cities of Wamego and St. Marys in 2000. The WTC Communications video service areas gradually and incrementally expanded over time until 2016, by which date those service areas included all Wamego Telecommunications Company, Inc. customers in the entire Wamego, St. George and Paxico exchange areas.

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

Verification of Response

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: 

Date: 

Kansas Secretary of State  
Corporate Annual Report

AR

1. Tax Closing Date 12/31/00  
Month/Day/Year  
2. Due Date 10/15/01  
3. State of Incorporation KANSAS

EXHIBIT

tabbles

B

Corporation ID No. 278-323-1  
Corporation Name  
**WTC COMMUNICATIONS, INC.**  
Mailing Address  
**529 LINCOLN, P.O. BOX 25  
WAMEGO, KS 66547**

09-05-2001 14:10:00  
050 \$  
4410 01  
2783231 AA



00164501

| 4. Officers Name                 | Residential Address        | City, State, Zip Code   | Director Y/N |
|----------------------------------|----------------------------|-------------------------|--------------|
| Pres. <b>STEVEN L. SACKRIDER</b> | <b>2216 CAT CREEK DR.,</b> | <b>WAMEGO, KS 66547</b> | <b>Y</b>     |
| Sec. <b>EARL DAYLOR</b>          | <b>106 WILSON CR.,</b>     | <b>WAMEGO, KS 66547</b> | <b>Y</b>     |
| Treas. <b>WAYNE M. UBEL</b>      | <b>704 WALNUT,</b>         | <b>WAMEGO, KS 66547</b> | <b>Y</b>     |

| 5. Board of Directors Name (If not listed above) | Residential Address    | City, State, Zip Code   |
|--|------------------------|-------------------------|
| <b>JUNIOR L. CLARK</b>                           | <b>714 ASH,</b>        | <b>WAMEGO, KS 66547</b> |
| <b>CLEMENT B. GUTH</b>                           | <b>505 PARKVIEW,</b>   | <b>WAMEGO, KS 66547</b> |
| <b>ALFRED J. EICHMAN</b>                         | <b>1509 GRANDVIEW,</b> | <b>WAMEGO, KS 66547</b> |
| <b>DONALD D. EISENBEIS</b>                       | <b>404 SYCAMORE,</b>   | <b>WAMEGO, KS 66547</b> |

6. Stockholders who own 5% or more of capital stock  
WAMEGO TELEPHONE CO., INC 529 LINCOLN, WAMEGO, KS 66547

ALL CORPORATIONS

| 7. Shares Issued (Common or Preferred) | Total Stock Paid Up |
|--|---------------------|
| 10,000 COMMON                          | \$ 10,000.          |
|  | \$                  |
|  | \$                  |
|  | \$                  |

8. Federal Employer Identification Number: 48-1221390

9. Phone No. (785) 456-2237

052501  
01-19-01

CCH

08160427 755565 S66760B

2000.05000 WTC COMMUNICATIONS, INC.

S66760B1

10. Nature and kind of business in which the corporation is engaged: \_\_\_\_\_

**TELEPHONE COMMUNICATION****NON-KANSAS CORPORATIONS ONLY**

11. State the value of real property/real assets owned and used by the corporation in and outside of Kansas, and where located:

| Value of Property |  | Where Located |
|-------------------|--|---------------|
| Within Kansas     |  |               |
| Outside Kansas    |  |               |

**ALL CORPORATIONS**12. Does the corporation own or lease land in Kansas that is suitable for use in agriculture? YES \_\_\_\_\_ Complete item 13. NO X

This question does not apply to: 1) Tracts of land of fewer than 10 acres; 2) Contiguous tracts of land that in the aggregate are fewer than 10 acres;

3) State-assessed railroad operating property.

**13. Agricultural Land**

a. Total number of stockholders of the corporation \_\_\_\_\_

b. Value of agricultural and nonagricultural assets that are owned and controlled by the corporation, both within and outside Kansas, and location of land:

|                |                 | Value | Where Located |
|----------------|-----------------|-------|---------------|
| Outside Kansas | Nonagricultural | \$    |               |
|                | Agricultural    | \$    |               |
| Within Kansas  | Nonagricultural | \$    |               |
|                | Agricultural    | \$    |               |

c. Provide information on each lot, tract or parcel of agricultural land in Kansas that is owned or leased by the corporation.  
(If extra space is needed, attach additional pages.)

| Location of tract or lot |         |          |       |                                 |   |    | Indicate for each tract or parcel if the tract is... |                          |                           |                           |   |
|--------------------------|---------|----------|-------|---------------------------------|---|----|--|--------------------------|---------------------------|---------------------------|---|
| County                   | Section | Township | Range | Number of acres in tract or lot | Was this tract acquired after July 1, 1981? |    | Purpose for which land is owned or leased            | OWNED BY the corporation | LEASED TO the corporation | LEASED BY the corporation | If leased by the corporation, indicate to whom leased |
|                          |         |          |       |                                 | Yes   | No |  |                          |                           |                           |   |
|                          |         |          |       |                                 |   |    |  |                          |                           |                           |   |

d. Provide total agricultural acres for:

- Total acres owned and operated .....
- Total acres owned and operated and irrigated .....
- Total acres leased by the corporation .....
- Total acres leased by the corporation and irrigated .....
- Total acres leased to the corporation .....
- Total acres leased to the corporation and irrigated .....

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct.

Executed on the 21 of August, 2001  
Day Month Year


Authorized Signature

**STEVEN L. SACKRIDER**

Name of Signer (printed or typed)

**PRESIDENT**

Title/Position

Rev. 10/00 mb  
052502  
01-19-01 CCH

08160427 755565 S66760B

2000.05000 WTC COMMUNICATIONS, INC.

K.S.A. 17-7603, 17-7605

S66760B1

# For Profit Articles of Incorporation

**The name of the corporation:**

WTC Holdings, Inc.



File date: 07/28/2011

File time: 18:24:26

Business Entity Number: 6554935

**Registered office in Kansas:**

1037 S 127th St. E  
Wichita, Kansas  
67207-4509

**Name of the resident agent at the registered office:**

Roger Lyons

**Mailing address for official mail:**

WTC Holdings, Inc.  
1037 S 127th St. E  
Wichita, KS  
672074509 USA

**The nature or purpose of the business entity:**

The purpose of this business entity is to engage in any lawful act or activity for which the entity may be organized under the laws of Kansas.

**This business entity will have the ability to issue stock.**

**Total number of shares of stock the corporation is authorized to issue:**

Shares: 10000

Type: common

Class: none

Value: 0.01/per share

**Special designations, powers, rights, limitations or restrictions applicable to any class of stock or any special grant of authority to be given to the board of directors.**

**Will the powers of the incorporator(s) terminate upon filing the articles of incorporation?**

No

**Expiration date of the corporate existence:**

Perpetual

**Tax closing month:**

December

**Incorporator information:**

Erik J. Jensen  
950 Seventeenth Street  
Suite 1600  
Denver CO  
80202 USA

"I declare under penalty of perjury pursuant to the laws of the State of Kansas that the foregoing is true and correct."

Execution date: 07/28/2011

**The signature(s) of the incorporator(s):**

Erik J. Jensen  
Erik J. Jensen



I, Kris W. Kobach, Secretary of State of Kansas, do hereby certify that this is the true and correct copy of the original document filed electronically on 07/28/2011.

Kris W. Kobach

Kansas Secretary of State

Memorial Hall, 1st floor - 120 SW 10th Ave. - Topeka, Kansas 66612-1594

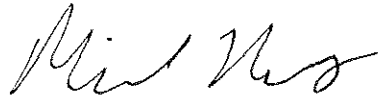
phone: (785) 296-4564 - email: [kssos@kssos.org](mailto:kssos@kssos.org) - url: [www.kssos.org](http://www.kssos.org)

KANSAS SECRETARY OF STATE  
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STATE OF KANSAS            )  
  ) ss.  
COUNTY OF SHAWNEE    )

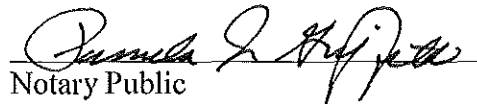
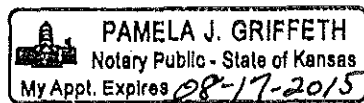
**VERIFICATION**

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Response to Wamego's Motion* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027  
Kansas Corporation Commission of the  
State of Kansas

Subscribed and sworn to before me this 15th day of May, 2015.

  
Notary Public

My Appointment Expires: August 17, 2015

## CERTIFICATE OF SERVICE

15-COXT-396-ETC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Response to Wamego's Motion was served by electronic service on this 15th day of May, 2015, to the following:

CURT STAMP, DIRECTOR REGULATORY AFFAIRS -  
OK/KS/AR  
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D/B/A COX COMMUNICATIONS, INC  
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OKLAHOMA CITY, OK 73118-1161  
Fax: 405-286-3501  
curt.stamp@cox.com

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gleason@sunflower.com

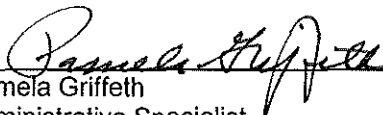
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Pamela Griffeth  
Administrative Specialist