

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Susan K. Duffy

Application of AMG Technology Investment)
Group, LLC d/b/a NextLink Internet for) Docket No. 21-AMGT-257-ETC
Expansion of its Eligible Telecommunications)
Carrier Designation for the Purpose of)
Providing Services Supported by the FCC's)
Rural Digital Opportunity Fund.)

**ORDER DENYING PETITIONS TO INTERVENE OF
UNITED COMPANIES AND RLECS**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records, the Commission rules as follows:

1. On January 6, 2021, AMG Technology Investment Group, LLC d/b/a NextLink Internet (NextLink) filed its Application for expansion of its Eligible Telecommunications Carrier (ETC) designation due to the addition of territories gained through the Rural Digital Opportunity Fund (RDOF) Auction.¹

2. On February 15, 2021, Ideatek Telcom, LLC (Ideatek) and Blue Valley Telecommunications, Inc.; The Golden Belt Telephone Association, Inc.; Haviland Telephone Company, Inc.; JBN Telephone Company, Inc.; KanOkla Telephone Association, Madison Telephone, LLC; One Point Technologies, Inc.; The Pioneer Telephone Association, Inc.; Rainbow Telecommunications Association, Inc., Rainbow Communications, LLC, and South Central Telephone Association, Inc. (collectively United Companies) filed a Joint Petition to

¹ Application for AMG Technology Investment Group, LLC (Jan. 6, 2021).

Intervene, pursuant to K.A.R. 82-1-225 and K.S.A. 77-521(a).² United Companies allege their legal rights, individually and together, will be substantially affected by the decision in this docket, as the decision has “a substantial effect on the construction, deployment, and maintenance of their respective and future fiber networks in Kansas.”³ Additionally, United Companies claim their legal rights and interests may be substantially affected as some were participants, competitor bidders, and awardees in the RDOF, the fund established by the FCC to “efficiently fund the deployment of broadband networks in rural America.” The RDOF is the basis for NextLink’s request to obtain ETC designation from the Commission.⁴ United Companies also provide factual disputes regarding NextLink’s ability to provide service as stated in its Application.

3. On February 19, 2021, Cunningham Telephone Company, Inc. (Cunningham); Home Telephone Company, Inc. (Home); Moundridge Telephone Company, Inc. (Moundridge); Twin Valley Telephone, Inc. (TVT) and Zenda Telephone Company, Inc. (Zenda) (collectively RLECs) filed a Joint Petition to Intervene, citing K.A.R. 82-1-225, K.S.A. 77-521(a) alleging factual disputes regarding NextLink’s ability to provide service and stating that NextLink’s conduct “unfairly interfered” with several of the RLECs’ opportunities to participate in the RDOF Auction.⁵ Further, the RLECs claim their legal rights and interests would be substantially affected as actual or potential participants, competing bidders, and awardees in the RDOF proceedings, intended by the FCC to “efficiently fund the deployment of broadband networks in rural America.”⁶ And “approval of NextLink’s request would frustrate and reduce the opportunity for competitive choice available to Kansas consumers.”⁷

² Joint Petition to Intervene (Feb. 15, 2021).

³ *Id.*, ¶ 4.

⁴ *Id.*, ¶ 5.

⁵ Joint Petition to Intervene of RLECs, ¶ 13 (Feb. 19, 2021).

⁶ *Id.*, ¶ 3.

⁷ *Id.*, ¶ 9.

4. On February 26, 2021, NextLink filed its Response to Petitions for Intervention, stating it would file an amended Application to address the allegations of the petitioners.⁸ Additionally, NextLink states the United Companies and RLECs had an opportunity to participate in the RDOF process, and the FCC provided the venue through which the United Companies and RLECs could have raised the substantive issues made in the joint petitions.⁹ Given that the parties seeking intervention were afforded a challenge process at the FCC, NextLink objects to the grant of their intervention in the docket.¹⁰

5. On March 2, 2021, NextLink filed an amended Application providing additional information about its ability to provide service in unserved locations.¹¹

6. Under Kansas law, the Commission shall grant intervention if the petition: (1) is submitted in writing to the Commission, with copies served upon all parties named in the notice of the hearing, at least three business days before the hearing; (2) states facts demonstrating the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervener under any provision of law; and (3) the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.¹² Further, the Commission may grant intervention at any time upon determining the intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.¹³ At any time during a proceeding, the Commission may impose limitations on an intervener's participation.¹⁴

⁸ Response of AMG Technology Investment Group, LLC d/b/a NextLink Internet to Petitions to Intervene (Feb. 26, 2021).

⁹ *Id.*, ¶ 2.

¹⁰ *Id.*, ¶ 3.

¹¹ Amendment to Application on Behalf of AMG Technology Investment Group (Mar. 2, 2021).

¹² K.S.A. 77-521(a); K.A.R.82-1-225(a).

¹³ K.S.A. 77-521(b).

¹⁴ K.S.A. 77-521(c).

7. The Commission finds the petitioners failed to demonstrate a legal right, duty, privilege, immunity or other legal interest that may be substantially affected by this proceeding. Both United Companies and RLECs seek re-litigation of the FCC's decisions for its RDOF proceeding; decisions the Commission cannot change. Simply put, the Commission lacks authority to impact, in any way, the FCC's RDOF decisions.

8. United Companies and RLECs fail to provide any specificity as to how they qualify as interveners under any provision of law. The Commission has previously stated vague petitions lacking detail and failing to articulate how legal rights are substantially affected do not support intervention.¹⁵

9. The United Companies state their legal interests will be substantially affected by the Commission's ETC decision as the decision has a substantial effect on the construction, deployment, and maintenance of their respective current and future fiber networks in Kansas.¹⁶ However, the United Companies fail to specify what the substantial effects on construction, deployment, and maintenance on their respective current and fiber networks will be.

10. RLECs claim approval of NextLink's request would frustrate and reduce the opportunity for competitive choices available to Kansas consumers.¹⁷ The RLECs fail to elaborate why NextLink's ETC designation would frustrate or reduce competitive choice in Kansas. Rather, the RLECs level allegations that NextLink's RDOF bidding conduct was improper. As stated above, what occurred during the FCC RDOF process has no bearing on the Commission's ETC determination and the Commission has no authority to alter the FCC's decision to award the census

¹⁵ See Order Denying Brightergy's Petition to Intervene, ¶¶ 5-6 (Sep. 15, 2016) (Docket No. 16-KCPE-593-ACQ); see also Prehearing Officer Order Denying Intervention to Kansas City Power & Light Company, ¶ 6 (Nov. 1, 2011) (Docket No. 11-EPDE-856-RTS).

¹⁶ United Companies Petition, ¶ 4.

¹⁷ RLECs Petition, ¶ 11.

blocks to NextLink. To the extent Petitioners question NextLink's qualifications to receive ETC designation under Kansas law, the Commission finds its Staff is qualified and capable of investigating such issues without Petitioners' participation.

11. United Companies and RLECs fail to demonstrate a legal right, duty, privilege, immunity or other legal interest that may be substantially affected by this proceeding. Petitioners' apparent interests in re-litigating the FCC's decisions regarding NextLink's qualifications are outside the scope of this docket and duplicative to functions Staff is capable of performing. Therefore, the interventions are not in the interests of justice and may impair the orderly and prompt conduct of the proceedings. The respective Petitions to Intervene are denied.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Joint Petitions to Intervene of United Companies and RLECs are denied.

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).¹⁸

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 04/08/2021



Lynn M. Retz
Executive Director

PZA

¹⁸K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

21-AMGT-257-ETC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
electronic service on 04/08/2021.

ERIC PYLAND, CHIEF FINANCIAL OFFICER
AMG Technology Investment Group, LLC
D/B/A NextLink Internet
95 Parker Oaks Lane
Hudson Oaks, TX 76087
eplyand@team.nxlink.com

MARK DOTY
GLEASON & DOTY CHTD
401 S MAIN ST STE 10
PO BOX 490
OTTAWA, KS 66067-0490
Fax: 785-842-6800
doty.mark@gmail.com

ETHAN KAPLAN, GENERAL COUNSEL
IDEATEK TELCOM, LLC
111 OLD MILL LN
BUHLER, KS 67522
Fax: 866-459-2829
ekaplan@ideatek.com

COLLEEN JAMISON
JAMISON LAW, LLC
P O BOX 128
TECUMSEH, KS 66542
colleen.jamison@jamisonlaw.legal

PHOENIX ANSHUTZ, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
p.anshutz@kcc.ks.gov

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
a.latif@kcc.ks.gov

JOSHUA T. GUYAN
KELLEY DRYE & WARREN LLP
3050 K STREET, NW, SUITE 400
WASHINGTON, DC 20007
jguyan@kelleydrye.com

CHRIS M LAUGHLIN, ATTORNEY
KELLEY DRYE & WARREN LLP
3050 K STREET, NW, SUITE 400
WASHINGTON, DC 20007
claughlin@kelleydrye.com

ROSE MULVANY HENRY
ROSE HENRY LAW LLC
12461 AUGUSTA DRIVE
KANSAS CITY, KS 66109
rose@rosehenrylaw.com

/S/ DeeAnn Shupe
DeeAnn Shupe