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May 17, 2019

Ms. Lynn M. Retz
Secretary to the Commission
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Re: KCC Docket No. 17-SWBT-158-MIS

Dear Ms. Retz:

Attached you will find AT&T Kansas' Response to Nex-Tech's Petition for Reconsideration of the Commission's Order of April 23, 2019.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce A. Ney".

Bruce A. Ney
AVP—Senior Legal Counsel

Attachment

cc: Parties of Record

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

In the Matter of the Application of Southwestern)	
Bell Telephone Company d/b/a AT&T Kansas for)	
an Order Confirming Relinquishment of Its Eligible)	Docket No. 17-SWBT-158-MIS
Telecommunications Carrier Designation in Specified)	
Areas, and Notice Pursuant to K.S.A. 2015 Supp.)	
66-2006(d) of Intent to Cease Participation in the)	
Kansas Lifeline Services Program.)	

**AT&T KANSAS' RESPONSE TO NEX-TECH'S
PETITION FOR RECONSIDERATION OF
THE COMMISSION'S ORDER OF APRIL 23, 2019**

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T Kansas"), and submits its Response to Nex-Tech, LLC's ("Nex-Tech") Petition for Reconsideration ("PFR") of the Commission's Order of April 23, 2019 ("April 23 Order"). AT&T Kansas respectfully requests the Commission deny Nex-Tech's PFR, which challenges a discretionary ruling yet presents nothing new and does not demonstrate any error.

1. Nex-Tech's PFR concerns the denial of its request to intervene in this proceeding. The April 23 Order denied Nex-Tech's request to intervene because (i) Nex-Tech had not filed a timely request and therefore had no legal entitlement to intervene, and (ii) intervention would not be in the interests of justice and would disrupt the orderly and prompt conduct of the proceeding. In particular, the April 23 Order found that the sole purpose of Nex-Tech's intervention would be to contest AT&T Kansas' relinquishment of the Abilene exchange, but that Nex-Tech had notice of the Abilene exchange's implication in this docket since March 2017 and had not previously sought to intervene, so allowing intervention at this point would be unfair.¹ The Commission also found that Nex-Tech had committed in Docket No. 16-022 to serve the entire Abilene

¹ April 23 Order at ¶ 17.

exchange, and that obligation is “not contingent upon or nullified by AT&T’s relinquishment” of the Abilene exchange.² Thus, the Commission found, allowing intervention would only “disturb the orderly conclusion on the Abilene exchange.”³ Because it did not allow Nex-Tech to become a party, the Commission also denied Nex-Tech’s request for partial reconsideration of the Commission’s March 14, 2019 Relinquishment Order in this proceeding.⁴

2. Nex-Tech’s PFR does not appear to challenge the Commission’s finding that it has no absolute legal right to intervene. Rather, Nex-Tech challenges the Commission’s refusal to use its discretion to allow intervention in the interests of justice. Specifically, Nex-Tech asserts that its proposed intervention “does not seek to add to the record,” but simply asks the Commission “to reconsider based on the evidence of record.”⁵ The problem with Nex-Tech’s argument is that it does not identify any legal error and there is no “evidence of record” that would support the Commission reconsidering its discretionary decision.

3. Nex-Tech relies on two arguments. It first contends that its request “serves the interests of justice by asking the Commission to reconsider its decision as it relates to the Abilene exchange based on its statutory obligations [sic] to determine whether relinquishing AT&T is in the public interest of the consumers.”⁶ The objective federal relinquishment standard in 47 C.F.R. § 214(e)(4), however, does not include any “public interest” element, so Nex-Tech’s argument is irrelevant.

4. Nex-Tech’s other argument is that the Commission “has known for over two years that Nex-Tech was unable to ensure continued services in all of AT&T’s exchanges should

² *Id.* at ¶ 18.

³ *Id.* at ¶ 19.

⁴ *Id.* at ¶ 21.

⁵ Nex-Tech PFR at ¶¶ 15, 18.

⁶ *Id.* at ¶ 15.

AT&T be granted relinquishment from those exchanges.”⁷ As the April 23 Order stated, however, when Nex-Tech obtained its ETC designation in Docket No. 06-1022, it committed to serve all of the Abilene exchange. That obligation is “not contingent upon or nullified by AT&T’s relinquishment.”⁸ Accordingly, “justice dictates that . . . Nex-Tech simply be required to do its legal duty, which it freely agreed to do in the 06-1022 Docket.”⁹

5. Moreover, Nex-Tech’s assertion that it could not serve all of the Abilene exchange if AT&T Kansas is granted relinquishment is not supported. Nex-Tech states that its service in the Abilene exchange depends on obtaining wholesale/resale service from AT&T Kansas.¹⁰ But AT&T Kansas has made clear that it will continue providing the same non-Lifeline basic voice services throughout Kansas after relinquishment unless or until AT&T Kansas receives permission to discontinue such service in accordance with FCC rules, and it likewise will continue providing wholesale/resale services to Nex-Tech under their interconnection agreement and/or applicable law, unless either of those changes. Thus, even if AT&T Kansas’ wholesale/resale services were relevant here, absent such approval to discontinue basic voice service, there is no reason to doubt that it will continue providing the same services to Nex-Tech in the Abilene exchange after relinquishment.

⁷ *Id.* at ¶ 17.

⁸ April 23 Order at ¶ 18.

⁹ *Id.*

¹⁰ Nex-Tech PFR at ¶ 17.

6. Accordingly, AT&T Kansas requests the Commission reject Nex-Tech's PFR.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bruce A. Ney", is written over a horizontal line.

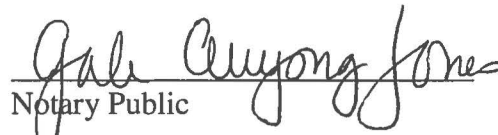
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VERIFICATION

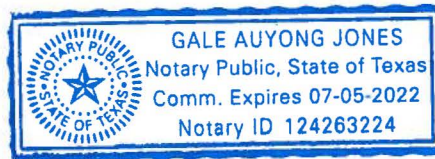
I, Javier Rodriguez, of lawful age, and being first duly sworn, now state: I am Area Manager-Regulatory Relations, and have read AT&T Kansas' Response to Nex-Tech's Petition for Reconsideration of the Commission's Order of April 23, 2019 on AT&T's Request to Relinquish Its Eligible Telecommunications Carrier Designation and verify the statements contained herein to be true and correct to the best of my knowledge and belief.


Javier Rodriguez

Subscribed and sworn to before me this 17th day of May, 2019.


Notary Public

My appointment expires: 7/5/22



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing AT&T Kansas' Reply in Support of Its Petition for Reconsideration was electronically served this 17th day of May 2019 to:

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