

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Complaint of IdeaTek )  
Telcom, LLC (Complainant) Against Wamego )  
Telecommunications Company, Inc. ) Docket No. 19-WTCT-393-COM  
(Respondent) to Require Wamego to (1) Port )  
Customers and (2) Refrain from Taking Any )  
Action that Could Result in the Blocking of )  
Customer Calls )

**STAFF'S RESPONSE TO WAMEGO'S OBJECTION TO JURISDICTION AND  
MOTION FOR DISMISSAL FOR WANT OF JURISDICTION**

**Staff supports a finding of proper jurisdiction to investigate this matter.**

**Relevant Background**

1. On March 26, 2019, IdeaTek Telcom, LLC (IdeaTek) filed a Complaint<sup>1</sup> against Wamego Telecommunications Company, Inc. (Wamego) alleging that Wamego violated 47 C.F.R. 52.34(c), 47 U.S.C. 251(b)(2) and K.S.A. 66-2003(e) by refusing to port IdeaTek's customers after it had submitted a valid number portability request to Wamego (Count 1). IdeaTek also alleged that Wamego violated 47 U.S.C. 251, K.S.A. 66-1,189, K.S.A. 66-2001(e), K.S.A. 66-2003(d), and K.S.A. 66-2005(y) by refusing to route traffic to IdeaTek's customers when a call is placed to an IdeaTek customer by a Wamego customer (Count 2).

2. On March 29, 2019, Wamego filed a Response<sup>2</sup> which in part moved for dismissal of the Complaint for want of jurisdiction. Wamego argued that Voice-over-Internet-Protocol (VoIP) service is "jurisdictionally interstate" because VoIP service is an "information service"

---

<sup>1</sup>Complaint and Request for Interim Emergency Order and Expedited Review and Motion to Assess Costs Pursuant to K.S.A. 66-1502 (March 26, 2019) (Complaint).

<sup>2</sup>Wamego Telecommunications Company, Inc. Objection to Jurisdiction, Motion for Dismissal for Want of Jurisdiction and Contingent Initial Reply Addressing Request for Expedited Procedure (March 29, 2019) (Response).

under the Federal Communications Act (FCA). Therefore, the Kansas Corporation Commission (KCC or Commission) is pre-empted from adjudicating IdeaTek's Complaint. Furthermore, Wamego argued that K.S.A. 66-2017(a) prohibits the KCC from regulating VoIP.

### **Legal Authority**

3. Kansas administrative agencies have no common-law powers. Any authority claimed by an agency or board must be conferred in the authorizing statutes either expressly or by clear implication from the express powers granted.<sup>3</sup>

### **Argument – Statutory Authority**

4. The Kansas statutes generally allow investigations into the services and practices of telecommunications public utilities in Kansas to determine if they are unfair, discriminatory, unreasonable, or otherwise insufficient.<sup>4</sup> The Kansas statutes also allow for investigations into alleged violations of the public utilities act or orders of the Commission.<sup>5</sup> The Kansas statutes specifically mandate that customers shall be accorded number portability and that a telecommunications carrier is entitled to interconnection with a local exchange carrier to transmit and route voice traffic regardless of the technology by which the voice traffic is originated by and terminated to a consumer.<sup>6</sup> Therefore, under a theory that Wamego's practices are unfair/unreasonable/discriminatory/insufficient or that Wamego's actions constitute a violation of the public utilities act, the KCC has jurisdiction to investigate this matter. Staff's legal argument here should not be taken as an assertion that any violations have occurred, but only that the KCC has authority to investigate the claims.

---

<sup>3</sup>Fort Hays State University v. Fort Hays State University Chapter, American Assoc. of University Professors, 290 Kan. 446, p. 455 (2010).

<sup>4</sup>See K.S.A. 66-1,191; K.S.A. 66-1,192.

<sup>5</sup>Id.

<sup>6</sup>See K.S.A. 66-2003(e); K.S.A. 66-2005(y); *see also* K.S.A. 66-2003(d).

### **Argument – Definition of VoIP as an “information service”**

5. Wamego argues that VoIP service is “jurisdictionally interstate” because it is an IP-based service and because it has been defined as an “information service” by the 8<sup>th</sup> Circuit Court of Appeals.<sup>7</sup> Wamego’s argument here can be seen as both a request to find pre-emption and a request to find that IdeaTek does not meet the statutory elements to be entitled to interconnection under federal law.

6. This case does not involve pre-emption because the KCC is not regulating VoIP. In the 8<sup>th</sup> Circuit case, the Minnesota Public Utilities Commission (MPUC) was attempting to regulate a VoIP provider.<sup>8</sup> Here, the KCC is regulating Wamego, a regulated local exchange carrier, under Kansas law.

7. The Commission can, however, examine Wamego’s argument that IdeaTek does not meet the statutory elements to be entitled to interconnection under federal law. Several of the Kansas statutes incorporate the federal statutes by reference, such as K.S.A. 66-2005(y); K.S.A. 66-2005(z)(2)(A); K.S.A. 66-2003(d); and K.S.A. 66-2017(c)(2). To the extent the Commission is enforcing the language of the federal statutes, the interpretation of those statutes is relevant.

8. However, it is important to distinguish the federal statutes from the state statutes.

9. The Kansas statutes define “telecommunications carriers” differently than the FCA and include VoIP carriers as entities that provide the “transmission of telephone messages” under K.S.A. 66-104(a).<sup>9</sup> Therefore, even if the federal definition of “telecommunications carriers” excludes VoIP, it would only affect the KCC’s enforcement of the federal statutes adopted through

---

<sup>7</sup>See Response at 2-7; *Charter Advanced Servs. (MD), LLC v. Lange*, 903 F. 3d 715 (8<sup>th</sup> Cir. 2018).

<sup>8</sup>See *Charter Advanced*, 903 F.3d 715 at 719.

<sup>9</sup>See K.S.A. 66-1,187 (defining a “telecommunications carrier” as an entity that provides “telecommunications service” and “telecommunications service” as the provision of a service for the “transmission of telephone messages.”).

the state statutes by reference, rather than the state statutes themselves that use different language or have different interpretations.

10. For example, one could argue that K.S.A. 66-1,191 or K.S.A. 66-1,192's prohibition on unfair or otherwise harmful practices prohibits the denial of interconnection and number portability regardless of what is required under federal law. One could also argue that K.S.A. 66-2005(y)'s first sentence regarding interconnection is broader than the federal requirement because it specifically indicates interconnection is required "regardless of the technology" used.<sup>10</sup> In addition, as mentioned above, the state statutory requirement under K.S.A. 66-2005(y) to allow "telecommunications carriers" to interconnect with local exchange carriers could apply due to the state definition of these entities.

11. Finally, even when looking at the federal statutes, there are some instances where the FCC has indicated the definition of VoIP is irrelevant.<sup>11</sup>

12. For example, the FCC has specifically required local exchange carriers to port numbers to and from VoIP providers because "number portability – whether to and from an interconnected VoIP provider, LEC, or non-LEC carrier – clearly makes use of telephone numbers, implicating 'facets of numbering administration' under section 251(e)(1)...".<sup>12</sup> The FCC has also required all traffic – including VoIP-PSTN traffic -- to be subject to § 251(b)(5) (reciprocal compensation for the transport and termination of traffic) on the theory that VoIP providers are

---

<sup>10</sup>See K.S.A. 66-2005(y) (stating: "Notwithstanding the provisions of this act, and subject to any applicable exemption from interconnection generally, a telecommunications carrier is entitled to interconnection with a local exchange carrier or an electing carrier to transmit and route voice traffic between both the telecommunications carrier and the local exchange carrier or electing carrier **regardless of the technology by which the voice traffic is originated by and terminated to a consumer...**"). (Emphasis added).

<sup>11</sup>See *generally* In the Matter of Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund, 26 F.C.C. Rcd. 17663, ¶ 933 (2011).

<sup>12</sup>In the Matter of Numbering Policies for Modern Commc'ns, 30 F.C.C. Rcd. 6839, ¶¶ 56-57 (2015).

providers of telecommunications.<sup>13</sup> Therefore, Wamego's attempt to distinguish VoIP as an "information service" is not relevant to all of the requirements under 47 U.S.C. § 251.

WHEREFORE, Staff respectfully requests the Commission find that it has jurisdiction to investigate this matter and deny Wamego's motion to dismiss.

Respectfully Submitted,



Michael Neeley, S. Ct. #25027  
Senior Litigation Counsel  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: 785-271-3173

---

<sup>13</sup>In the Matter of Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund, 26 F.C.C. Rcd. 17663, ¶ 954 (2011).

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 Objection to Jurisdiction and Motion for Dismissal for Want of Jurisdiction* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



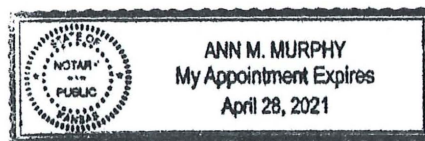
\_\_\_\_\_  
Michael Neeley # 25027  
Kansas Corporation Commission of the  
State of Kansas

Subscribed and sworn to before me this 4th day of April, 2019.



\_\_\_\_\_  
Notary Public

My Appointment Expires: April 28, 2021



## CERTIFICATE OF SERVICE

19-WTCT-393-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Wamego's Objection to Jurisdiction and Motion for Dismissal for Want of Jurisdiction was served via electronic service this 4th day of April, 2019, to the following:

TERRI PEMBERTON, ATTORNEY  
CAFER PEMBERTON LLC  
3321 SW 6TH ST  
TOPEKA, KS 66606  
Fax: 785-233-3040  
terri@caferlaw.com

MARK P. JOHNSON, PARTNER  
DENTONS US LLP  
4520 MAIN STREET STE 1100  
KANSAS CITY, MO 64111-7700  
Fax: 816-531-7545  
mark.johnson@dentons.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

GLENDA CAFER  
IDEATEK TELCOM, LLC  
CAFER PEMBERTON LLC  
3321 SW 6TH AVE  
TOPEKA, KS 66606  
Fax: 785-233-3040  
glenda@caferlaw.com

DANIEL P. FRIESEN, PRESIDENT  
IDEATEK TELCOM, LLC  
111 OLD LMILL LN  
BUHLER, KS 67522  
Fax: 866-459-2829  
daniel@ideatek.com

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

BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
b.fedotin@kcc.ks.gov

MICHAEL NEELEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3167  
m.neeley@kcc.ks.gov

THOMAS E. GLEASON, JR.  
WAMEGO TELECOMMUNICATIONS COMPANY, INC.  
PO Box 6  
Lawrence, KS 66044  
Fax: 785-456-9903  
gleason@sunflower.com



---

Ann Murphy