

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.,)
(Respondent) to Require Wamego to (1) Port) Docket No. 19-WTCT-393-COM
Customers and (2) Refrain from Taking Any)
Action that Could Result in the Blocking of)
Customer Calls)

WAMEGO TELECOMMUNICATIONS COMPANY, INC. OBJECTION TO
JURISDICTION, MOTION FOR DISMISSAL FOR WANT OF JURISDICTION
AND
CONTINGENT INITIAL REPLY ADDRESSING REQUEST FOR EXPEDITED
PROCEDURE

Comes now Wamego Telecommunications Company, Inc. ("Wamego") and objects to the jurisdiction of the Kansas Corporation Commission ("Commission") to entertain the Complaint filed herein by IdeaTek Telcom, LLC ("IdeaTek" or "Complainant"). Wamego moves to dismiss the Complaint in its entirety for lack of jurisdiction over Wamego herein and over the subject matter hereof. Further, without waiving its Objection and for the purpose of avoiding potential undue delay, Wamego submits a contingent initial response to the Complaint's request for expedited procedure under K.A.R. 82-1-220a. Wamego states:

1. Wamego is a Kansas corporation in good standing and a Local Exchange Carrier ("LEC") providing local exchange and exchange access services pursuant to one or more Certificates of Convenience and Authority issued by this Commission.

2. Wamego is a rural telephone company as defined by K.S.A. 66-1,187(l) a carrier of last resort pursuant to K.S.A. 66-2009 and an Eligible Telecommunications Carrier ("ETC") for receipt of state and federal universal service support pursuant to the December 5, 1997 Order of the Commission in its Docket No. 97-GIMT-241-GIT.

3. Wamego has provided reliable and affordable telecommunications services to Kansas consumers for over a century; pursuant to K.S.A. 66-2005(b) Wamego is regulated by the Commission under traditional rate of return regulation.

I. OBJECTION TO JURISDICTION

4. On March 26, 2019 IdeaTek filed a Complaint ("Complaint") with the Commission against Wamego asserting certain claims against Wamego allegedly related to IdeaTek's provision of service to Kansas consumers in Wamego's service area. IdeaTek failed to serve its Complaint on Wamego in the manner required by K.A.R. 82-1-220a and therefore has not established jurisdiction over Wamego for purposes of a Complaint requesting expedited procedure.

5. The service claimed to be provided by IdeaTek and underlying its Complaint herein is not a telecommunications service, and as to such service IdeaTek is not a telecommunications provider.

6. IdeaTek's service is in fact an information service. Information services are interstate in nature as shown in the following particulars:

A. VoIP Services are Jurisdictionally Interstate.

7. In its Complaint, IdeaTek states that it is both a competitive local exchange carrier ("CLEC") and a provider of interconnected voice over Internet Protocol ("VoIP") services in Kansas. Complaint ¶¶ 2-3. However, for purposes of the instant proceeding, IdeaTek only operates as a VoIP provider in Wamego's services area because IdeaTek is only authorized to provide service as a CLEC in AT&T and Embarras Communications (now CenturyLink) territories.¹ As IdeaTek is a VoIP provider

¹ See *Application of Wildflower Telecommunications, LLC for a Certificate of Convenience and Authority to Provide Local Exchange and Exchange Access Services within the State of Kansas*, Order and Certificate, Docket No. 06-WLDT-1005-COC, p. 5, ¶ 16 (rel. May 1, 2006); Order Nunc Pro Tunc, p. 2, ordering paragraph A (rel. Jan 15, 2014) (correcting original Order and Certificate to add Embarras's territory to IdeaTek's authorized service area).

offering service in Wamego's territory, it is necessary to apply the appropriate regulatory regime for VoIP services to determine each party's rights and responsibilities under the rules of the Federal Communications Commission ("FCC") and this Commission.

8. The FCC has recognized that interconnected VoIP is an "IP-enabled service."² Kansas statutory authority is in accord with this recognition. K.S.A. 66-2017(d)(1) defines IP-enabled service as "any service, capability, functionality, or application using an internet protocol (IP) that enables an end user to send or receive a voice, data or video communication in an IP format; Subsection (d)(4) of the same statute identifies Voice over Internet Protocol as a service that "uses an internet protocol (IP)".

9. It is well-settled that IP-enabled services are jurisdictionally interstate because "a substantial portion of Internet traffic involves accessing interstate or foreign websites."³ When the FCC reclassified broadband Internet access service as a telecommunications service, the FCC continued to recognize that "broadband Internet access service is jurisdictionally interstate for regulatory purposes."⁴ The FCC determined in its 2018 *Net Neutrality Repeal Order* that "[t]he record continues to show that [IP-enabled] service is predominantly interstate because a substantial amount of

However, even if, *arguendo*, IdeaTek were authorized as a CLEC in Wamego's service area, it would still be operating as a VoIP, and not as a CLEC, because it provides service using IP-based technologies, rather than providing traditional telephone service.

² *IP-Enabled Services*, Report and Order 24 FCC Rcd. 6039, 6043-43, ¶ 8 (2009).

³ *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 5 (D.C. Cir. 2000) (quoting *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling, 14 FCC Rcd 3689, 3701-02, ¶ 18 (1999)).

⁴ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd. 5601, 5803 ¶ 431 (2015).

Internet traffic begins and ends across state lines.⁵ Thus, it is clear that VoIP, as an IP-enabled service, is jurisdictionally interstate.⁶

B. Recent FCC and Court Decisions Show that VoIP Services are Information Services.

10. In the Telecommunications Act of 1996, Congress drew a distinction between lightly regulated "information services" and more heavily regulated "telecommunications services."⁷ The federal Communications Act ("FCA") defines "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of facilities used."⁸ The FCC concluded, and courts have agreed, that the definition of "telecommunications service" was intended to clarify that telecommunications services are common carrier services."⁹

11. The classification of a service as a telecommunications service vs. an information service is important because that will determine whether provisions under Title II of the FCA, which contain, among other things, the right to interconnection under Section 251, 47 U.S.C. § 251, apply. Various entitlements and obligations set forth in the FCA - including the entitlement to access an incumbent's network for local

⁵ *In the Matter of Restoring Internet Freedom*, 33 FCC Rcd. 311, 430 ¶ 199 (2018) ("Net Neutrality Repeal Order").

⁶ "[T]he [FCC] determin[ed] that interconnected VoIP services are properly classified as interstate" and extended "TRS contribution requirements to providers of these services." *IP-Enabled Services*, Report and Order, 22 FCC Rcd. 11275, 11294 ¶ 37 (2007).

⁷ 47 U.S.C. § 153(24), (53).

⁸ 47 U.S.C. § 153(53).

⁹ *Cable & Wireless, PLC*, Order, 12 FCC Rcd 8516, 8521, ¶ 13 (1997); *see also Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921, 926-27 (D.C. Cir. 1999).

service pursuant to Section 251 of the FCA - attach only to entities providing “telecommunications service.”¹⁰

13. The FCC has not yet generally classified VoIP as a telecommunications service or an information service.¹¹ Nonetheless, a recent decision by the FCC supports classifying VoIP as an information service, rather than a telecommunications service. Prior to 2015, the FCC had classified broadband service as an information service, which meant that broadband Internet service was not subject to FCA Title II common carrier regulation.¹² In 2015, the FCC adopted an order reclassifying broadband Internet access service from an information service to a telecommunications service.¹³ In January 2018, the FCC issued its *Net Neutrality Repeal Order* in which it reinstated the information service classification of broadband Internet access service. In doing so, the FCC relied on the definition of “information service” in the FCA, which defines information service as:

the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.¹⁴

¹⁰ *Ip-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863, 4881 ¶ 26 (2004) (citing 47 U.S.C. § 251).

¹¹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Further Notice of Proposed Rulemaking, 33 FCC Rcd. 8952 ¶ 25 & n.112 (2018).

¹² *Net Neutrality Repeal Order*, 33 FCC Rcd at 316-17 (citations omitted).

¹³ *Id.* at 317 (citing *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd. 5601 (2015)).

¹⁴ *Id.* (citing 47 U.S.C. § 153(24)).

The FCC's analysis determined that broadband Internet access met the definition of an "information service" in the Act, and therefore that service should be classified as an information service rather than a telecommunications service.

14. Although the FCC's *Net Neutrality Repeal Order* only applied to broadband Internet access and not to VoIP, the Court of Appeals for the Eighth Circuit undertook the same analysis as the FCC to determine that VoIP service is an information service, and therefore, not subject to state public service commission or Title II regulation. In *Charter Advanced Servs. (MD), LLC v. Lange*, 903 F.3d 715 (8th Cir. 2018), the Minnesota Public Utilities Commission sought to regulate Charter Advanced by asserting that VoIP was a "telecommunications service" as defined by the FCA. The Eighth Circuit noted that the "FCC has so far declined to classify VoIP services as either information or telecommunications services, despite repeated opportunities to do so."¹⁵

15. As a result of the FCC's lack of classification of VoIP as information service or a telecommunications service, the Eighth Circuit interpreted the language of the FCA itself to determine VoIP's classification. The court analyzed the same section of the FCA that the FCC did in the *Net Neutrality Repeal Order*, and concluded that VoIP service was an "information service" under the FCA because "the touchstone of the information services inquiry is whether [VoIP] acts on the consumer's information—here a phone call—in such a way as to 'transform' that information."¹⁶ The Eighth Circuit concluded that VoIP "is an information service because it 'mak[es] available information via telecommunications' by providing the capability to transform that information through net protocol conversion."¹⁷ Because VoIP is an information service,

¹⁵ *Charter* 903 F.3d at 718 (citing the FCC's amicus brief filed with the Eighth Circuit; other citations omitted).

¹⁶ *Id.* at 719 (citing the definition of information service in 47 U.S.C. § 153(24)).

¹⁷ *Id.* at 720 (citations omitted).

the Eighth Circuit ruled that state regulation of the VoIP service was preempted, and that the state public service commission did not have jurisdiction over VoIP. Similarly, the Commission does not have jurisdiction to adjudicate IdeaTek's Complaint because VoIP is an interstate information service. As such, federal law preempts Commission regulation over any issues that arise from VoIP service.

16. It is important to note that another corollary of the *Charter* decision is that because VoIP is an information service, the obligations under Section 251 of the FCA do not apply because Title II of the FCC only applies to telecommunications carriers. Specifically, Section 251(a)(1) states that "[e]ach telecommunications carrier has the duty - to interconnect directly or indirectly with the facilities and equipment of *other telecommunications carriers*."¹⁸ As a VoIP provider, IdeaTek is an information service provider, and not a telecommunications carrier. Therefore, there is no obligation for Wamego to interconnect directly or indirectly with IdeaTek under Section 251.

C. The Commission Statutorily Lacks Jurisdiction Over VoIP Services.

17. This Commission is without jurisdiction generally to entertain complaints or make Orders regarding the provision of interstate services. More specifically, Kansas statute bars Commission jurisdiction over the subject matter of the instant complaint.

18. K.S.A. 66-2017(d) includes the following definition:

"Voice over Internet Protocol" or "VoIP" is any service that:

(A) Uses an internet protocol (IP) to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in an IP;

(B) utilizes a broadband connection from the user's location; and

(C) permits a user to receive a call that originates on the public switched telephone network (PSTN) and to terminate a call to the PSTN.

¹⁸ 47 U.S.C. § 251(a)(1) (emphasis added).

19. K.S.A. 66-2017(a) states “Except as otherwise provided in this section, no VoIP service, IP-enabled service, or any combination thereof, shall be subject to the jurisdiction of, regulation by, supervision of or control by any state agency or political subdivision of the state.” The Commission is therefore statutorily without jurisdiction to consider or address the method or methods by which a VoIP provider enables a user to receive a call that originates on the PSTN. K.S.A. 66-2017(a) acts as a shield against state regulation but also precludes a VoIP provider from utilizing Commission authority as a sword to compel any means of implementing any element of the service.

20. Based on the foregoing Wamego objects to the jurisdiction of the Commission over Wamego in the premises, over any aspect of the interstate information service provided by the Complainant, and over the means by which the Complainant delivers a VoIP service as defined by Kansas statute. Wamego therefore moves that the Complaint be dismissed in its entirety, with any cost thereof assessed solely to the Complainant IdeaTek Telecom, LLC.

II. CONTINGENT INITIAL REPLY

21. Without waiving its objection to jurisdiction set forth *supra.*, and in a good faith effort to cooperate in a timely manner in a proceeding seeking expedited procedure under K.A.R. 82-1-220a, Wamego submits the following initial reply as contemplated by K.A.R. 82-1-220a(e) (which may or may not be determined to be applicable), addressing only those assertions by the Complainant claimed to justify the use of expedited procedure

22. Pursuant to the provisions of K.A.R. 82-1-220a(e) and assuming without admitting the applicability of that regulation, Wamego requests an

additional twenty days following determination of the foregoing Motion to Dismiss and determination of the request for expedited procedure, whichever is later, to address all claims of the Complaint other than those at ¶¶ 44-49 of the Complaint specifically addressing the claim of need for expedited procedure.

A. Failure to Serve Complaint Timely as Required

23. IdeaTek may not avail itself of the procedure specified in K.A.R. 82-1-220a because IdeaTek has failed to comply with the unique service requirements of that regulation. Specifically, IdeaTek failed to serve its complaint on Wamego on the same day on which the complaint was filed with the Commission in accordance with the regulation. Under the explicit service provisions of the regulation the complaint was required to be served on Wamego (the “other party”) “by hand delivery or by facsimile or electronic mail with telephonic confirmation of receipt” (K.A.R. 82-1-220a(d)) on March 26, 2019, the date the Complaint was filed with the Commission.

24. Wamego is without information to know whether the Complaint was served, as required by the regulation, on Commission Legal Staff and/or Commission advisory counsel on March 26, 2019; Wamego notes the Complaint as filed with the Commission includes no certification of such service on Commission legal staff, on Commission advisory counsel, or in fact on anyone.

25. A complainant’s failure to satisfy any requirement of the Regulation under which it seeks relief is reason alone to deny expedited treatment of the complaint. The failure of IdeaTek to serve its Complaint on Wamego as specified in the Regulation is a particularly serious and consequential lapse. A purpose of the regulation is to compress the times ordinarily permitted for various actions by the parties, by a Hearing Examiner,

or by Commission Staff; by failing timely to serve the Complaint on its intended target the Complainant has arbitrarily and unreasonably compressed even further the opportunity of the responding party to consult with counsel, to investigate the assertions of the Complaint as to the claimed need for emergency treatment and to prepare and submit an additional response as to that claimed need.

26. If there exists any shortcoming in this contingent response it is attributable directly to the Complainant's failure to serve the complaint, and the Complainant should not be permitted to benefit by its failure of compliance.

B. Failure to Assert and Establish Good Cause for Expedited Treatment

27. IdeaTek has offered only generalities, unsupported conclusory assertions and factual inaccuracies in its effort to invoke the expedited procedures of K.A.R. 82-1-220a. An examination of each assertion, appearing at the Complaint's ¶¶ 44-49 (pp 21-22) reveals each is factually unsupported, erroneous and/or insufficient to constitute good cause to justify such procedure.

28. At ¶ 45 of its Complaint IdeaTek claims Wamego has "refus[ed] to port customer numbers who have requested that their numbers be ported to Ideatek." Wamego specifically denies this claim and asks that the Complainant be held to strict proof thereof. The only specific porting request Wamego has received from IdeaTek was an 8XX number porting request, which was honored and timely completed. Wamego was able to implement this porting request only because Wamego has lawful access to facilities permitting the transport of 8XX traffic. On information and belief Wamego understands all calls originating on the Wamego local network to this customer are being completed. Further, on

information and belief Wamego states this request and port is the occurrence referenced in ¶ 45 of the Complaint, and the assertions of that paragraph relating to the claimed effect on a particular business are false.

29. Wamego's management is personally familiar with management at IdeaTek's business customer in the Wamego service area, and that customer has given Wamego no indication it is not receiving telephone calls originating with Wamego's local exchange customers. That customer of IdeaTek is a substantial statewide business concern. It is reasonable to assume if that customer were unable to receive calls, the customer would be aware of it from its own customers and would at least make some minimal contact with Wamego to express its commercial concern. Wamego has had no communication, other than a generalized claim from IdeaTek, that calls are not completing.

30. With regard to any other IdeaTek customers in the Wamego service area, Wamego states it has not received porting requests from IdeaTek for ordinary (non-8XX) numbers and has therefore not refused to implement such requests. Wamego denies the Complainant's allegation that Wamego has "refused" to port such numbers. Rather Wamego has explained directly to Daniel Friesen, IdeaTek's "chief innovative officer," that Wamego lacks facilities necessary to accomplish porting of ordinary local numbers. IdeaTek's claim of refusal, as opposed to inability, is based solely on its own refusal to believe this factual information.

31. The Commission and its technical Staff have previously recognized and affirmed the limitations of Wamego's facilities that render porting infeasible in the circumstance created by IdeaTek. This Commission, in its Docket No. 05-WTCT-1093-MIS, entitled *In the Matter of the Petition of Wamego*

Telecommunications Company, Inc. for Suspension and Modification of the FCC's Requirement to Provide Local Number Portability, relieved Wamego of any obligation to port local telephone numbers to requesting wireless telecommunications carriers that lacked a point of interconnection within the applicable Wamego rate center. In granting a waiver from porting obligations the Commission noted:

7. Wamego also presented a persuasive argument in paragraphs 28-34 on the technical hurdles of the petition, in particular the lack of interconnecting, routing, and rating arrangements when the wireless carrier's point of interconnection (*POI*) is outside the petitioner's relevant rate centers. As accurately noted in the petition, this deficiency is acknowledged, but not addressed in the FCC's *Intermodal Porting Order* in Docket No. 01-92, *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, wireline to wireless LNP is being addressed, with no specific date set for resolution.

8. Staff noted there are two portability processes involved, porting local numbers to another carrier and transporting or interconnecting between the respective carriers. In this proceeding, the technical issue brought to light is related with the lack of transport arrangements when the wireless carrier does not have a *POI* within the petitioner's rate center and, hence qualifies for the "technically infeasible" exclusion reflected in Section 25 1(f)(2) *Suspension and Modifications for Rural Carriers*.

9. In its July 15, 2005 memorandum, Staff recommended the Commission grant Wamego's request for a waiver of the FCC's requirements in those situations where the requesting wireless carrier does not have a *POI* within Wamego's respective rate center, pending final resolution in this matter by the FCC.

10. The Commission finds and concludes that Wamego's application for a waiver of the LNP requirement should be approved, pending final FCC action.

The Commission, on recommendation of its Staff, reached the same conclusion in its Docket No.10-LHPT-450-MIS. There Staff reported and recommended:

Portability involves two processes; the porting of local numbers to another carrier and transporting or interconnecting calls between the respective carriers. The technical issues raised in this proceeding center

around the lack of transport or interconnection arrangements when the wireless carrier does not have a POI within the petitioner's rate centers and is requesting Type 1 interconnection. Staff believes these limited instances qualify for the ".... technically infeasible" exclusion contemplated in the [federal Telecommunications Act].

32. The Commission's waiver remains in effect, and the FCC has not taken final action to resolve the identified issue. The facts that made it technically infeasible for Wamego to port local numbers as requested by IdeaTek – specifically the absence of necessary facilities – are identical to those precluding wireless porting, whether or not Mr. Friesen agrees.

33. IdeaTek's claim, at ¶ 46, that "the issue is easily resolved" is not true, because resolution cannot be accomplished through "simple updating steps within Wamego's switch." Complainant's simplistic assertion ignores the facts, of which IdeaTek has been informed repeatedly, that such proposed "updating steps" would have Wamego route traffic over facilities of a third party that has not authorized its facilities for transport of local traffic to IdeaTek. This "solution" would require Wamego to disregard and violate its lawful obligations to that third party regarding the classes of traffic or traffic to or from an unauthorized carrier that may be routed over its facilities. Again, as IdeaTek has been advised repeatedly, Wamego has no facilities of its own capable of transporting traffic originating on the PSTN to some point of indirect interconnection with IdeaTek facilities, and there are no facilities to which Wamego has access over which Wamego may secure and provide transport of local non-8XX traffic to IdeaTek.

34. In fact, the circumstance of which IdeaTek complains may be resolved directly by the Complainant, with no necessity of action by the Commission under expedited proceedings or otherwise. IdeaTek claims, in its

Complaint, that Wamego could route local traffic from its customers for completion to IdeaTek customers in the Wamego exchange areas over the existing facilities of one or more third parties. As noted herein Wamego is presently unauthorized to route local traffic to IdeaTek over any such third-party facilities. If IdeaTek can obtain and provide documentation of such authority from the third party owner of any such existing facilities capable of transporting all local from the Wamego network to IdeaTek Wamego stands ready to make the necessary modifications to its switching suggested by IdeaTek in ¶ 46 of its Complaint.

35. IdeaTek has been made aware of the foregoing third-party solution but refuses to pursue it, insisting instead that Wamego bear the burden of acquiring access to local transport facilities, solely in order to give IdeaTek the capability IdeaTek is responsible for providing to its customers under K.S.A. 66-2017(d)(4)(C). Wamego's willingness to implement this solution clearly disproves all of IdeaTek's baseless claims throughout its Complaint regarding Wamego's motive and intent.

36. Further, resolution of this Complaint could be effectuated readily through a commercial agreement between the Complainant and Wamego defining and assigning to the parties their respective rights and responsibilities for transport and delivery of traffic and specifying terms of the business relationship between them. Wamego has offered terms for such an agreement to IdeaTek, but IdeaTek has failed and refused to negotiate such terms in good faith. Instead IdeaTek repeatedly demands that Wamego not require such an agreement but instead accede to all of IdeaTek's demands without entering into an agreement. IdeaTek routinely threatens injunction or other litigation if

Wamego fails to accede to those demands. As noted at ¶ 33, *supra.*, those IdeaTek demands include an insistence that Wamego violate its lawful obligations to one or more third parties.

37. The Complainant alleges at ¶ 47 that “granting Ideatek interim relief will prevent further competitive harm which may be irreparable and/or difficult to quantify. Ideatek cannot effectively compete with Wamego until the issue is resolved, stranding substantial investment in network facilities, sales, and marketing activities.” It is the Complainant’s responsibility, not Wamego’s, to assure that sufficient investment is made to permit IdeaTek to market and sell a service that meets the customer’s needs.

38. IdeaTek’s claim of “further competitive harm” as justifying expedited proceedings is factually unsupported and speculative. Any harm to IdeaTek’s “reputation in the marketplace” resulting from its inability to provide the services its consumers want and expect is a problem of IdeaTek’s own making. If IdeaTek were to sell an automobile and then deliver a vehicle without a steering mechanism, its reputation would undoubtedly be harmed – and rightfully so. There is no authority for, or public interest in, IdeaTek engaging in such commercial practices and then demanding that another party provide a remedy – under an expedited proceeding or otherwise.

39. It is likely true that “If Ideatek subscribers or prospective subscribers are unable to receive calls from Wamego subscribers, Ideatek cannot offer a service that meets basic customer needs.” This commercial reality, though, is not an emergency and the solution is in IdeaTek’s own hands. Again, Kansas statute specifies that the ability to complete calls from the PSTN is a component

of the VoIP service; it is therefore the responsibility of the party providing that service and receiving consumer compensation for it.

40. Failure of IdeaTek to market its service factually and advise potential customers of that service's technical limitations would amount to a willful, self-serving attempt to impose an emergency situation on a Kansas consumer solely for the purpose of seeking state action, contrary to the public interest and public safety. No such emergency exists warranting present invocation of agency authority under K.S.A. 77-536, and absent misconduct by IdeaTek no such emergency will arise.

41. Wamego denies the complaint's generalized and conclusory claim of the existence of any "situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action" that could authorize emergency agency action under K.S.A. 77-536. The Complaint, at ¶ 49, merely speculates that there may be "some customers *potentially* isolate[d] from contact initiated by others. The complainant affirmatively represents that these customers have the ability to complete calls to any and all numbers, including hospitals, public services, schools and the like.

42. Further, the Complaint's redundant allegations of "blocking" by Wamego are false. It is Wamego's understanding that all calls to IdeaTek's customer is going through, and there is no blocking by Wamego. IdeaTek has evidently attempted to sell services to customers without first establishing the efficacy of those services, and without advising consumers of the service's deficiencies. The complaint fails to establish that there are actual customers unable to receive calls originating on the PSTN from any source, whether or not related to a claim of emergency.

43. K.S.A. 77-536 does not contemplate or authorize an individual or an agency to declare the existence of an emergency without a factual basis, as a means to invoke state authority or action otherwise unavailable. No emergency action is necessary or warranted under the instant facts because IdeaTek can assure no such customers will be isolated; it is only necessary for IdeaTek to refrain from misrepresenting the capabilities of its service or to advise potential customers that the service may not be capable of receiving calls from the PSTN, at least until lawful and appropriate arrangements are made for facilities that can assure completion of such calls.

44. Finally, contrary to the claim of IdeaTek at ¶ 48, the subject matter of the Complaint plainly does not “fall... within the parameters of the Commission’s rule.” K.A. R. 82-1-220a plainly states its procedures “may be used to bring expedited resolution to disputes under *interconnection agreements entered into pursuant to 47 U.S.C. secs. 251 and 252 of the federal telecommunications act of 1996,*” not to “interconnection disputes” generally. Wamego remains amenable to interconnection with IdeaTek under a commercial agreement negotiated in good faith specifying the respective rights and responsibilities of the parties. It is IdeaTek, through this proceeding, and not Wamego, that attempts to coerce more favorable terms in such an agreement or to bypass such agreement altogether by improper use of the Commission’s complaint process.

C. Reasons Expedited Proceedings Are Inappropriate

45. The issues raised in this Complaint are of critical importance, potentially to all Kansas rural telephone companies. On information and belief Wamego states numerous other rural LECs intend to seek leave to intervene in this proceeding, just as occurred in the recent IdeaTek complaint proceeding

against Nex-Tech (Docket No. 19-RRLT-277-COM). Some of the general regulatory principles at issue in the instant docket may be common to all such carriers, while individual carriers' factual circumstances may affect the reasonable and lawful application of policies under consideration. It is in the public interest for the Commission to hear from these affected carriers before reaching a decision almost certain to carry precedential weight in subsequent proceedings.

46. The Hearing Examiner designated by the Commission in its Docket No. 19-RRLT-277-COM concluded under similar facts and claims that expedited proceedings were inappropriate. In the February 11, 2019 Examiner Order on Request for Expedited Review and Other Procedural Rulings the Hearing Examiner noted particularly "the nature of the dispute and the complexity of the issues, making an expedited resolution impractical."

47. Additionally, that Hearing Examiner identified at least ten separate issues that would have been addressed in resolving that proceeding, but for its settlement by the parties. The Hearing Examiner explicitly noted these issues were "not intended to be exhaustive if the parties or the Commission desire to supplement or modify them in the course of [the then-anticipated] proceedings...."

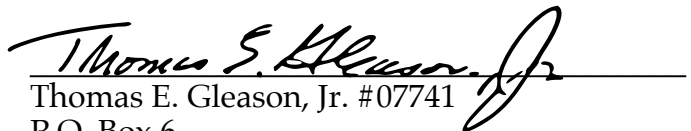
48. The IdeaTek complaint is replete with assertions unsubstantiated, unverified, inaccurate and/or conclusory. Expedited procedure in such a case is wholly inappropriate, as such a procedure would effectively preclude any reasonable opportunity for discovery, by which the truth of IdeaTek's claims could be tested. In its Order of April 22, 2002, in Docket No. 02-HOMT-209-AUD, the Commission found "Discovery serves all parties. It facilitates the hearing

process by sharpening issues that are brought to the Commission for resolution.” Given the extent of factual and legal issues in play in this proceeding the matter is particularly appropriate for discovery to facilitate hearing and sharpen issues.

WHEREFORE Wamego requests the Order of the Commission dismissing outright the Complaint by IdeaTek for lack of jurisdiction as set forth herein. Alternatively Wamego urges that the Commission: deny the inappropriate and unsupported request for expedited procedure under K.A.R. 82-1-220a, instead grant Wamego the additional time reasonably necessary to respond fairly to all assertions of the Complaint other than those addressed herein, thereafter establish reasonable discovery and procedural schedules for the docket, and grant to Wamego such other and further relief as may be reasonable in the premises.

Respectfully submitted,

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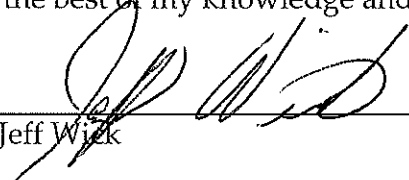
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VERIFICATION

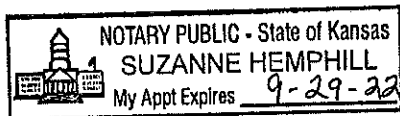
STATE OF KANSAS)
) ss:
COUNTY OF POTTAWATOMIE)

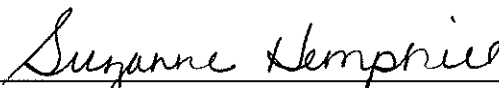
I, Jeff Wick, of lawful age, being first duly sworn upon my oath, state: I am President and General Manager of Wamego Telecommunications Company, Inc.; I have read the foregoing pleading, and upon information and belief state that the matters therein appearing are true and correct to the best of my knowledge and information.



Jeff Wick

Subscribed and sworn to before me this 29th day of March, 2019.





Notary Public

My Commission Expires:

9-29-2022

CERTIFICATE OF SERVICE

Thomas E. Gleason, Jr. certifies that the foregoing pleading was served by electronic delivery of a correct copy thereof to the following on the 29th day of March, 2019:

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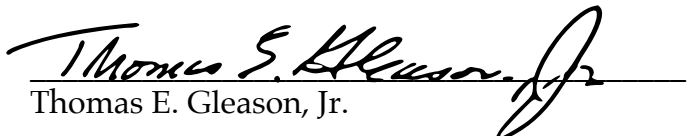
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