

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of the Application of)
Southwestern Bell Telephone Company for)
Approval of Interconnection Agreement Under) Docket No. 13-SWBT-321-IAT
the Telecommunications Act of 1996 With)
Nex-Tech, Inc.)

ORDER APPROVING INTERCONNECTION AGREEMENT AMENDMENT

NOW, 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 and being duly advised in the premises, the Commission makes the following findings:

1. On March 2, 2020, Southwestern Bell Telephone Company d/b/a AT&T Kansas (SWBT)¹ filed an application for approval of an amendment to the negotiated interconnection agreement between itself and Nex-Tech, Inc. (Nex-Tech), originally approved in this docket on December 27, 2012.² SWBT states that the amendment implements the Federal Communications Commission's (FCC's) Unbundled Network Element (UNE) and Resale Forbearance Orders.

2. The Commission has jurisdiction to review negotiated interconnection agreements entered into by SWBT pursuant to K.S.A. 66-2005(z)(2)(A) and 47 U.S.C. §252(e).

3. 47 U.S.C. §252(e)(2) provides that the Commission may reject a negotiated interconnection agreement only if it finds that the agreement (or portions thereof) discriminates

¹Southwestern Bell Telephone Company d/b/a AT&T Kansas (SWBT) is an "electing carrier" referenced under K.S.A. 66-2005(x). See Docket No. 12-SWBT-797-MIS.

²The interconnection agreement between SWBT and Nex-Tech was also modified on September 4, 2014, and January 21, 2016.

against a telecommunications carrier not a party to the agreement; or the implementation of such an agreement (or portions thereof) is not consistent with the public interest, convenience, and necessity.

4. Commission Staff submitted a Report and Recommendation in regards to the interconnection agreement amendment on May 1, 2020, attached hereto and made a part hereof by reference. Staff explained that the FCC Orders referred to by SWBT in its application remove the requirements for Incumbent Local Exchange Carriers (ILECs) to provide Competitive Local Exchange Carriers (CLECs) access to certain analog facilities owned by the ILEC provided over copper facilities at wholesale rates. Staff found no evidence to conclude the interconnection agreement amendment discriminated against any telecommunications carrier, nor that it was inconsistent with the public interest, convenience, or necessity. Staff recommended approval.

5. The Commission finds Staff's findings and recommendation to be reasonable and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The interconnection agreement amendment filed March 2, 2020, between SWBT and Nex-Tech is approved.

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).

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 05/07/2020



Lynn M. Retz
Executive Director

MRN

Susan K. Duffy, Chair
Shari Feist Albrecht, Commissioner
Dwight D. Keen, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Susan K. Duffy
Commissioner Shari Feist Albrecht
Commissioner Dwight D. Keen

FROM: Kelly Mabon, Senior Telecommunications Analyst
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: May 1, 2020

SUBJECT: Docket No. 13-SWBT-321-IAT
In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement Under the Telecommunications Act of 1996 With Nex-Tech, LLC.

BACKGROUND:

On March 2, 2020, Southwestern Bell Telephone Company d/b/a AT&T Kansas (SWBT) filed an Application for modification of the Interconnection Agreement with Nex-Tech, LLC (Nex-Tech). Staff recommends approval of this Application.

The Commission action date is **Sunday, May 31, 2020.**

BACKGROUND:

The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 66-1,188. K.S.A. 66-1,190 requires all telecommunications public utilities doing business in Kansas to “publish and file with the commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate, and shall furnish the commission copies of all rules and regulations and contracts between such telecommunications public utilities pertaining to any and all jurisdictional services to be rendered by such telecommunications public utilities.”

The U.S. Congress and the Federal Communications Commission (FCC) have pre-empted certain aspects of state regulation of interconnection between telecommunications carriers. Section 252(e)(2) of the Federal Telecommunications Act of 1996 (47 U.S.C. §252(e)(2)) requires the

Commission to presume that interconnection agreements entered into through negotiation and submitted for Commission approval are valid unless:

- 1) the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- 2) the implementation of such an agreement (or portions thereof) is not consistent with the public interest, convenience, and necessity.

ANALYSIS:

The Modification removes certain analog Unbundled Network Elements (UNE) (Analog Loops) and certain wholesale resale offerings from the original Agreement per the Federal Communications Commission (FCC), FCC 19-72 FCC UNE and resale forbearance Order dated August 2, 2019^[1]. Additional modifications were made to the Agreement to remove the requirement for DS1/DS3 Unbundled Dedicated Transport (DS1/DS3 UDT) between Tier 1 wire centers and/or wire centers subject to UDT forbearance under FCC 19-66^[2] and Public Notice DA 19-733^[3], dated August 1, 2019. Any Analog UNE qualifying service ordered before February 1, 2020, considered existing embedded base are grandfathered until August 2, 2022. Any DS1/DS3 qualifying service considered UDT embedded base, ordered on or before January 11, 2020, are grandfathered until July 12, 2022. SWBT filed for approval of this Amended Agreement between SWBT and Nex-Tech. The Amendment expires *concurrent* with the existing Agreement.

The current FCC Orders remove the requirement for the Incumbent Local Exchange Company (ILEC) to provide Competitive Local Exchange Company (CLEC) access to certain analog facilities owned by the ILEC, provided over copper facilities at wholesale rates. Those rules were imposed under the Telecommunications Act of 1996. The original rules were written to require ILEC companies to lease the existing facilities to CLEC companies at wholesale prices. This would have allowed the CLEC to compete in the telecommunications market against the ILEC without the upfront expense of constructing its own telecommunications network. The initial rules were written based on the technology at that time, which was analog copper facilities. As telecommunications companies transition to newer Internet Protocol (IP) technologies with fiber, the copper facilities are being replaced by updated technology and facilities.

SWBT contends that implementation of this Agreement complies fully with Section 252(e) of the Federal Act and believes approval is consistent with the public interest, convenience, and necessity and does not discriminate against any telecommunications carrier.

^[1] FCC 19-72, *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*; <https://docs.fcc.gov/public/attachments/FCC-19-72A1.pdf>.

^[2] FCC 19-66, *Report And Order On Remand (WC Docket Nos. 05-25, 16-143; GN Docket No. 13-5) and Memorandum Opinion And Order (WC DOCKET NO. 18-141)*, Released July 12, 2019; <https://docs.fcc.gov/public/attachments/FCC-19-66A1.pdf>.

^[3] FCC DA 19-733, *Wireline Competition Bureau Releases List Of Common Language Location Identification Codes For Price Cap Incumbent Local Exchange Carrier Wire Centers Subject To UNE Transport Forbearance*, Released August 1, 2019; <https://docs.fcc.gov/public/attachments/DA-19-733A1.pdf>.

Having reviewed the Agreement between SWBT and Nex-Tech, LLC, Staff finds no evidence to conclude this Agreement discriminates against any telecommunications carrier, nor is it inconsistent with public interest, convenience, or necessity. Staff believes the public will generally benefit from KCC approval of this Application.

The companies are registered with the Kansas Secretary of State and are active and in good standing with that office.

RECOMMENDATION:

Staff recommends the Commission grant approval of this Application for a Modification to the Interconnection Agreement between SWBT and Nex-Tech, LLC.

CERTIFICATE OF SERVICE

13-SWBT-321-IAT

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 05/07/2020.

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

BRUCE A. NEY, AVP SR LEGAL COUNSEL
SOUTHWESTERN BELL TELEPHONE CO.
D/B/A AT&T KANSAS
816 CONGRESS AVE
SUITE 1100
AUSTIN, TX 78701-2471
Fax: 512-870-3420
bn7429@att.com

SCOTT ROE, VIDEO SOLUTIONS MANAGER
NEX-TECH, LLC
2418 VINE ST
PO BOX 339
HAYS, KS 67601
Fax: 785-625-7070
sroe@nex-tech.com

/S/ DeeAnn Shupe

DeeAnn Shupe