

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.)

**OBJECTION OF IDEATEK TO THE PETITION TO INTERVENE OF INDEPENDENT
TELECOMMUNICATIONS GROUP, COLUMBUS ET AL.**

COMES NOW Ideatek Telcom, LLC (“Ideatek”), and objects to the Petition to Intervene filed by the Independent Telecommunications Group, Columbus, et al., (“Columbus”) on the basis that Columbus has failed to state an interest in this proceeding sufficient to support its intervention, because Columbus’ intervention would negatively impact the orderly conduct of this proceeding, and because granting Columbus intervention is not in the interests of justice. In support of this objection, Ideatek states the following:

1. On March 26, 2019, Ideatek filed its complaint against Wamego Telecommunications Company, Inc. (“Wamego”) seeking a Commission order requiring Wamego to port Ideatek’s customers and to prevent Wamego from taking any action intended to, or that could, block or otherwise prevent calls between Wamego and Ideatek customers (“Complaint”).

2. On March 29, 2019, Columbus filed a Petition to Intervene (“Petition”) on behalf of eleven (11) rural telephone companies, arguing that Columbus, as an association of rural

telephone companies, should be allowed to intervene in this proceeding, individually and as a group.¹

3. K.S.A. 77-521(a) and K.A.R. 82-1-225(a) provide that a petition for intervention as a matter of right shall be granted if three conditions are met: (1) the petition is submitted in writing and provided to the parties at least three days before hearing; (2) the petition states facts demonstrating that 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. Columbus' Petition fails to state facts demonstrating that its legal interests may be substantially affected by this proceeding. Further, the orderly and prompt conduct of the proceeding will be impaired by allowing Columbus to intervene and participate and granting Columbus intervention is not in the interests of justice.

4. In Docket No. 13-MKEE-447-MIS, the Commission expressed its standards for intervention, stating,

Intervention in Commission proceedings is not automatic. In the future, the Commission will require petitions to include a more detailed demonstration of their interests and an explanation of why those interests are not properly represented by other parties. In keeping with the requirements of K.S.A. 77-521, prospective intervenors should provide specific facts demonstrating their rights, duties, privileges, immunities, or other legal interests affected by the proceeding and the relief they seek from the Commission. The Commission notes in proceedings with multiple parties asserting an attenuated or speculative nexus about the possible impact of a Commission decision on their interests can impair the orderly and prompt conduct of the proceedings and may not add materially to the record upon which the Commission must base its decisions.²

¹ Columbus Petition, p. 1.

² Docket No. 13-MKEE-447-MIS, "Order on Jurisdiction and Standing" issued April 26, 2013, ¶ 9.

5. Columbus alleges that this proceeding asserts rights that, if approved, would require a rural telephone company situated similarly to Columbus to perform acts and incur costs “without provision for reasonable compensation.”³ This Complaint docket has nothing to do with rate setting. The Columbus companies have Commission processes available to them that allow them to seek compensation in rates for any costs they may incur in providing service. “Reasonable compensation” is not an issue in this docket.

6. Further, the Order resulting from this docket will not impact the costs of the eleven companies in the Columbus group. This docket concerns a service arrangement between Ideatek and Wamego and will impose legal obligations only on these parties.

7. Finally, there continues to be no basis in fact that future costs to the Columbus companies are a driving factor behind their petition to intervene. In contrast, Ideatek’s costs in this proceeding will be substantially impacted if these eleven companies are allowed to expand the docket beyond the limited issues presented for consideration in the Complaint. This would discourage Ideatek and other competitors from seeking resolution of a complaint at the Commission in the future if groups of incumbent telephone companies with extensive resources can hijack such complaints and overwhelm a smaller competitor. Based upon the very minimal facts Columbus chose to present in its Petition, Columbus’ intervention appears to have more to do with ganging up on and beating down a competitive threat than it has to do with any specific legal interests in the matter.⁴ Ideatek seeks the proper balance of interests in this proceeding, including those of rural consumers who have long lacked access to competitive offerings.

8. Columbus also bases its request for intervention upon a list of general issues identified in a separate docket involving Ideatek and a different rural telephone company.

³ Columbus Petition, ¶3.

⁴ Especially considering that the State Independent Alliance group of 16 rural incumbents have also filed for intervention, making it 27 rural telephone companies asking to be allowed to join in this proceeding.

Columbus claims that it will be impacted by a Commission decision on issues listed in Docket No. 19-RRLT-277-COM, which concerned a complaint filed by Ideatek against Rural Telephone/Nex-Tech. The list of general issues in the Rural Telephone docket that Columbus relies on for intervention is not part of this docket. The matters involved in Ideatek's Complaint against Wamego are much more limited and are based upon facts unique to the dispute between Ideatek and Wamego. Ideatek's Complaint against Wamego requires the Commission to determine *if Wamego* has the ability to port Ideatek's customers and complete calls from Wamego's customers to Ideatek's customers based upon *Wamego's existing facilities, contracts and technology*. This question is limited to the circumstances involved in this case and is specific to the facts underlying the Complaint. It will not "substantially" affect Columbus' members.

9. If allowed to intervene, it is clear that Columbus and its eleven members intend to inject into this docket issues that will result in a major expansion of the case, thus hindering the orderly and prompt conduct of the proceeding. Ideatek is the complainant and has carefully framed its Complaint to address the specific factual situation and issues Ideatek now faces with Wamego. Columbus should not be allowed to intervene and turn this limited Complaint into an industry-wide free for all. If the Commission wishes to generally investigate broadly the list of issues identified by Columbus on interconnection, exchange of traffic and porting of numbers⁵, the Commission should do so in a generic proceeding, as recommended by Ideatek in its Complaint.⁶

10. Adding to the disruption Columbus' intervention would cause is the fact that Columbus has not represented that its eleven different companies are completely aligned for purposes of this proceeding or if they will be representing unaligned positions through-out the

⁵ Columbus Petition, ¶ 4.

⁶ Complaint, ¶ 26.

proceeding. Columbus requested that its eleven members be allowed to intervene “individually and as a group”.⁷ Since Columbus stated its interests so broadly and generically, the Commission cannot readily determine whether its involvement will impair the orderly and prompt conduct of the proceedings. At least one of Columbus’ member companies already ports and trades traffic using a bill and keep Voice over Internet Protocol interconnection trunk with Ideatek without cost or negotiated agreement today. Hopefully Columbus is not pursuing this intervention with the intent of injecting disagreement between Ideatek and a rural telephone company that has, up to now, worked cooperatively with Ideatek without the need for litigation.

11. Allowing Columbus to intervene and broaden this docket would also undermine Ideatek’s desire to obtain a quick resolution, and, therefore, it is not in the interests of justice as required by K.S.A. 77-521. Ideatek has requested this docket proceed under an expedited process because Wamego’s refusal to port customers is harming Ideatek’s business and operations. Allowing Columbus to intervene and expand this proceeding into what would essentially be a generic investigation would make expedited resolution of the immediate threat – Wamego not porting customers and completing calls – virtually impossible. As Wamego pointed out in its response to this Complaint filed on March 29, 2019, the generic issues list suggested by the Hearing Officer in the 19-RRLT-277-COM docket caused the Hearing Examiner to conclude that “expedited proceedings were inappropriate ... the Hearing Examiner noted particularly ‘the nature of the dispute and the complexity of the issues, making an expedited resolution impractical.’”⁸

12. Columbus also alleges that each of its members, as a contributor to the Kansas Universal Service Fund (“KUSF”), “has an interest, on its own behalf and on behalf of its

⁷ Columbus Petition, p. 1.

⁸ Wamego’s response, ¶¶ 46, 47.

customers, in assuring that both contributions to and distributions from that fund are lawful and appropriate.”⁹ First, Columbus has not provided a legal basis that would support its representation of these customers individually. The interests of individual customers are different and conflicting, and these customers have not authorized Columbus to represent them. Columbus and its members have no statutory authority to represent these interests either, such as what has been legislatively granted to the Citizens’ Utility Ratepayers Board.

13. Second, KUSF issues are irrelevant to this docket. KUSF matters do not dictate, or even inform, the decision the Commission is being asked to make in Ideatek’s Complaint.

14. Finally, Columbus alleges that each of its members have an interest, like the interests of all ratepayers, that actions of the KCC related to the KUSF and/or to the competitive provisioning of telecommunications service are made in a competitively neutral manner.¹⁰ This statement of interest is so vague as to be meaningless. Furthermore, Columbus has not been entrusted with the obligation or right to protect the public interest or to stand watch over the Commission to make sure the Commission protects the public interest.

15. For the foregoing reasons, Columbus has failed to show that it should be allowed to intervene in this proceeding as a matter of right. Further, Columbus has failed to show it should be allowed permissive intervention under K.S.A. 77-521(b) and K.A.R. 82-1-225(b).¹¹ As such its Petition should be denied.

WHEREFORE, Ideatek respectfully request the Commission issue an Order denying the Petition to Intervene of Columbus and its members.

⁹ Columbus Petition, ¶6.

¹⁰ Columbus Petition, ¶7.

¹¹ Permissive intervention is allowed if the Commission finds only that that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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