

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

In the Matter of the Application of Nex-)
Tech, LLC for an Order Confirming)
Relinquishment of its Eligible) Docket No. 24-NTHT-589-ETC
Telecommunications Carrier)
Designation in Specified Census Blocks)

**NOTICE OF FILING OF STAFF'S
AMENDED REPORT AND RECOMMENDATION**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and files the instant Amended Report and Recommendation in response to the Amended Application of Nex-Tech, LLC (“Nex-Tech”) requesting approval to relinquish the Company’s designation as a high-cost Eligible Telecommunications Carrier (“ETC”) in 242 specified census blocks in Kansas. Nex-Tech filed an Amended Application to add 2 more census blocks to the 240 census blocks listed in Exhibit A to its initial Application.

Staff believes Nex-Tech has met the requirements for relinquishment as identified in § 214(e)(4). For the reasons detailed herein, Staff recommends the Commission find (1) that the census blocks in question are indeed served by at least one other ETC; and (2) that all customers currently served by Nex-Tech will continue to be served. Staff recommends the Commission grant Nex-Tech’s request to relinquish its ETC designation for high-cost purposes in the 242 census blocks listed in Nex-Tech’s updated Exhibit B.

WHEREFORE, Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and reasonable.

Respectfully submitted,
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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Steve Garrett, Deputy Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: March 11, 2025

SUBJECT: Docket No. 24-NTHT-589-ETC

In the Matter of the Application of Nex-Tech, LLC for an Order Confirming Relinquishment of its Eligible Telecommunications Carrier Designation in Specified Census Blocks.

EXECUTIVE SUMMARY:

On February 23, 2024, Nex-Tech, LLC (Nex-Tech) filed an Application with the Kansas Corporation Commission (Commission) requesting approval to relinquish the Company's designation as a high-cost Eligible Telecommunications Carrier (ETC) for 240 census blocks in Kansas. Nex-Tech seeks relinquishment of ETC status in the Abilene exchange census blocks listed in Nex-Tech's Exhibit A.

On March 7, 2025, an Amended Application was filed to add 2 census blocks to their relinquishment request. Nex-Tech requests to add 2 census blocks to the 240 census blocks stated in the February 2024 application. Accordingly, Nex-Tech is requesting relinquishment of its ETC designation in a total of 242 census blocks in the Abilene exchange. Nex-Tech filed Exhibit B with this amendment replacing Exhibit A, which contains the complete list of census blocks where Nex-Tech requests relinquishment and also includes details of Staff's census block analysis.

Staff recommends the Commission issue an Order approving Nex-Tech's request to relinquish the Company's ETC designation and require the remaining ETCs to ensure that all customers served by Nex-Tech will continue to be served in the Abilene exchange.

Although all ETCs should know and understand the obligations they committed to when they applied to become an ETC, Staff recommends the Commission serve the Order on all competitive ETCs designated in the exchanges approved for relinquishment so that they fully understand their ongoing ETC obligations and requirement to serve Nex-Tech's remaining customers.

BACKGROUND:

The Federal and Kansas Telecommunications Acts contain provisions to develop universal service funds to maintain and advance universal service, which led to the establishment of the Federal Universal Service Fund (FUSF) and the Kansas Universal Service Fund (KUSF), respectively. The FUSF provides support through four programs, including the high-cost program, which provides funding to carriers to ensure that residents in high-cost areas have access to reasonably comparable service at rates reasonably comparable to urban areas, and the Lifeline program, which assists low-income consumers by providing a discount on their monthly local telephone charges so that telephone service is more affordable.

To be eligible to receive support from the FUSF, a carrier is required to be designated an ETC. A state commission may designate a carrier as an ETC in accordance with 47 U.S.C. § 214(e)(1), which requires:

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received:

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

The Commission derives its authority to designate ETCs pursuant to 47 U.S.C. § 214(e)(2), which requires:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

The Commission derives its authority to order carrier or carriers to provide service to unserved community or portion thereof pursuant to 47 U.S.C. § 214(e)(3), which requires:

If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) of this title to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof. (Emphasis added)

The Commission derives its authority to permit an eligible telecommunications carrier to relinquish its designation pursuant to 47 U.S.C. § 214(e)(4), which requires:

A State commission...shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission...of such relinquishment. **Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission ... shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.** The State commission ... shall establish a time, not to exceed one year after the State commission ... approves such relinquishment under this paragraph, within which such purchase or construction shall be completed. (Emphasis added)

Nex-Tech certified in Docket No. 24-GIMT-612-GIT that all federal high-cost dollars for 2023 were in compliance with 47 U.S.C. § 254(e) of the Federal Telecommunications Act of 1996.¹ This certification must indicate that all federal high-cost support provided to such carriers within the State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

ANALYSIS:

Nex-Tech has filed four Applications with this Commission seeking ETC authority for both FUSF and KUSF purposes in Docket Nos. 03-NTHT-1051-ETC, 04-NTHT-498-ETC, 05-NTHT-140-ETC, and 06-NTHT-1022-ETC. The Commission granted the Applications as follows:

¹ *Order Directing Submission of Certification Letters to the FCC and USAC*, Docket No. 24-GIMT-612-GIT, September 24, 2024.

- On November 14, 2003, in Docket No. 03-NTHT-1051-ETC, the Commission granted Nex-Tech's Application for ETC authority in the Almena exchange in the Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) service area.
- On June 8, 2004, in Docket No. 04-NTHT-498-ETC, the Commission granted Nex-Tech's Application for ETC authority in the Brightspeed Companies of Kansas (BrightSpeed) formerly United Telephone Companies of Kansas (now d/b/a CenturyLink) entire United Study Area.² The approved Brightspeed Study Area exchanges are as follows: Alma, Altamont, Baldwin, Buhler, Burlingame, Burlington, Burrton, Clifton, Clyde, Delphos, Downs, Ellinwood, Eskridge, Fredonia, Garnett, Glasco, Haven, Hiawatha, Highland, Hillsboro, Holton, Horton, Junction City, Kincaid, Leonardville, Longford, Luray, Lyndon, Melvern, Milford, Moran, Morrill, Mound Valley, Olsburg, Onaga, Osawatomie, Osborne, Oskaloosa, Oswego, Paradise, Pomona, Powhattan, Quenemo, Riley, Russell, Troy, Valley Falls, Wakefield, Wathena, Waverly, Westmoreland, Westphalia, and White Cloud.³
- On October 18, 2004, in Docket No. 05-NTHT-140-ETC, the Commission granted Nex-Tech's Application for ETC authority in the Norton exchange in the AT&T service area.
- On June 15, 2006, in Docket No. 06-NTHT-1022-ETC, the Commission granted Nex-Tech's Application for ETC authority in the Abilene, Atwood, Bird City, Great Bend, Hays, Hoxie, McDonald, McPherson, Oakley, Oberlin, Phillipsburg, Plainville, Salina, Smith Center, St. Francis, and Stockton exchanges, which are all in AT&T's service area.

The Commission granted Nex-Tech's request to relinquish its ETC authority as follows:

- The Commission issued an Order on November 5, 2008, granting Nex-Tech's request to relinquish its ETC authority for federal and state high-cost support purposes in the Oakley exchange in Docket No. 09-NTHT-196-ETC;
- The Commission issued an Order on March 14, 2007, granting Nex-Tech's request to relinquish its ETC authority for federal and state high-cost support purposes in the entire United Study Area in Docket No. 07-NTTH-773-ETC; and
- The Commission issued an Order on April 23, 2019, granting Nex-Tech's request to relinquish its ETC authority for federal and state high-cost support purposes in the Atwood, Bird City, Great Bend, Hays, Hoxie, McDonald, McPherson, Norton, Oberlin, Phillipsburg-Kirwin, Plainville, Salina, Smith Center, St. Francis, and Stockton exchanges; but denying Nex-Tech's request to relinquish its ETC authority in the Abilene exchange in Docket No. 19-NTHT-244-ETC.⁴

Nex-Tech requests ETC relinquishment for certain census blocks in the Abilene exchange identified in Nex-Tech's Exhibit B. Nex-Tech states that its relinquishment request is prompted by the Commission's designation of other telecommunications carriers as ETCs for the purpose of being eligible to receive federal high-cost universal service fund ("USF") support in the Abilene exchange census blocks. As was the case in the previous relinquishment request in Docket No.

² *Order Approving Name Change*, Docket No. 24-UTDT-476-CCN, May 7, 2024.

³ The Downs, Luray, Paradise, and Russell exchanges were sold by CenturyLink to Rural Telephone Service Company, effective October 1, 2006. The sale of the exchanges did not affect Nex-Tech's ETC authority or obligations.

⁴ Nex-Tech filed a Petition for Reconsideration (PFR) of the Commission's April 23, 2019 Order on May 8, 2019. The Commission issued an Order Denying Nex-Tech's PFR on June 4, 2019. The Commission's April 23, 2019 Order also recognized Nex-Tech's desire to cease participation in the KLSP, effective May 31, 2019.

19-NTHT-244-ETC, this application is based on changes in both federal and state high-cost support. Furthermore, Nex-Tech states that the ETC designation creates increased regulatory obligations and believes maintaining its ETC designation in the Abilene exchange is no longer justified.⁵

Nex-Tech's relinquishment request will not adversely affect any existing customers, as it will continue to offer services to customers in the relinquished areas in the Abilene exchange. Furthermore, Nex-Tech relinquishment will not result in the removal of any telecommunications facilities in the relinquished areas.⁶

Thus, in order to grant relinquishment, the Commission must: (1) find that the area is served by at least one other ETC; and (2) that all customers served by the relinquishing carrier will continue to be served. As is evident in the statute and further articulated by the FCC,

...the section 214(e)(4) relinquishment process allows for the states (or the [FCC], if applicable) to conduct an inquiry at a sufficiently granular level to ensure that the customers in that area 'will continue to be served.' The relinquishment process not only entails an evaluation of what service providers are present in an area at a given point in time, but of the practical ability of those providers to take on additional consumers as might be needed once the relinquishing carrier is no longer an ETC subject to associated obligations in that area. Indeed, section 214(e)(4) not only involves an inquiry regarding the capabilities of other service providers, but to the extent needed, includes a grant of authority to obligate remaining ETCs to acquire adequate facilities within a defined time period.⁷

In its analysis of Nex-Tech's Application, Staff first looked into whether the subject census blocks were served by at least one other ETC; then, Staff analyzed whether the customers served currently by Nex-Tech will continue to be adequately served if Nex-Tech's relinquishment were granted.

Whether Requested Relinquishment Census Blocks are Served by Another ETC

For the 242 census blocks in the Nex-Tech relinquishment area, the Commission first needs to determine whether there is at least one other ETC that would be able to provide USF support to consumers. High-cost Eligible Telecommunications Carriers are required to offer services to consumers in their designated service area, which means the Commission needs to determine whether there is at least one high-cost ETC in the relinquished census blocks. Nex-Tech has indicated in their Amended Application and Staff has confirmed in the analysis in Exhibit B, other designated ETCs in the relinquishment area exist for high-cost purposes.⁸

Resound Networks, LLC (Resound), Mercury Wireless Kansas, LLC d/b/a Mercury Broadband (Mercury Broadband) and Southwestern Bell Telephone Company D/B/A AT&T Kansas (AT&T Kansas) ETC authority utilized 2010 census block data. Staff compared Nex-Tech's Exhibit B also using 2010 census block data to census block data from Resounds Docket No. 21-RNWT-254-ETC (Docket 21-254), Mercury Broadband Docket No. 21-MWKT-258-ETC (Docket 21-

⁵ Application ¶ 6.

⁶ *Id.* ¶ 8.

⁷ *USTelecom Forbearance Order*, FCC 15 166, ¶ 111.

⁸ See Staff Exhibit B.

258), and AT&T Kansas Docket No. 24-SWBT-318-MIS (Docket 24-318) to determine if another ETC serves the census block.⁹ Per Staff's review, there is at least one high-cost ETC that is able to provide high-cost support to consumers in all of the census blocks for which Nex-Tech is relinquishing.

Therefore, for high-cost purposes, Staff believes this step of the relinquishment process has been met.

Whether Relinquished Customers will Continue to be Adequately Served by Remaining ETCs

High-Cost ETCs

Staff believes the second requirement has also been met because the remaining high-cost ETCs have an obligation to ensure that the remaining customers will continue to be served in each census block for which each ETC has received high-cost ETC authority.

Although Staff believes the statutory requirement for ETC relinquishment has been met for the requested relinquishment areas in all 242 census blocks, some concerns still exist about the remaining ETCs' practical ability to ensure that all remaining customers will continue to be served.

Some high-cost ETCs have built their facilities in more densely populated parts of an exchange. It appears that the only occasion in which a high-cost ETC could be required to build out new facilities to a customer would be for a "reasonable request for service" for which another high-cost ETC does not currently have facilities (i.e., new construction).

As an ETC, Nex-Tech is required to offer universal service throughout its designated service area to all reasonable requests for service. Nex-Tech has historically been eligible to receive state and federal funding to assist with the cost to provide universal service in high-cost areas. To date, Nex-Tech has received \$877,216 in federal high-cost support.¹⁰

If the relinquishment request is granted, Nex-Tech would no longer be required to serve all requesting customers in accordance with 47 U.S.C. § 214(e)(4) in the Abilene exchange.

Nex-Tech is current with regard to Commission assessments. The Company is also current with regard to KUSF assessments.

RECOMMENDATION:

Staff believes Nex-Tech has met the requirements for relinquishment as identified in § 214(e)(4). Staff recommends the Commission find (1) that the census blocks in question are indeed served by at least one other ETC; and (2) that all customers currently served by Nex-Tech will continue to be served. Thus, Staff recommends the Commission grant Nex-Tech's request to relinquish its ETC designation for high-cost purposes in the 242 census blocks listed in Nex-Tech's Exhibit B.

⁹ See *Id.*

¹⁰ <https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi>, last viewed February 13, 2025.

Staff recommends the Commission issue an Order granting Nex-Tech's request to relinquish its ETC designation in 242 census blocks, effective upon Commission Order.

Although all ETCs should know and understand the ETC obligations that they committed to when they applied to become an ETC, Staff recommends the Commission serve the Order on all ETCs designated in the Abilene exchange so that they fully understand their ongoing obligations.

CERTIFICATE OF SERVICE

24-NTHT-589-ETC

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Amended Report and Recommendation was served via electronic service this 11th day of March, 2025, to the following:

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