

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

In the Matter of the Complaint of Ideatek )  
Telecom, 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. )

**PETITION FOR RECONSIDERATION AND**  
**MOTION FOR DISQUALIFICATION OF EXAMINER**

Comes now Wamego Telecommunications Company, Inc. ("Wamego") and requests reconsideration of the Commission's April 4, 2019 Order Appointing Examiner Pursuant to K.A.R. 82-1-220a(f). In support thereof, the Petitioner and movant states as follows:

1. On March 26, 2019, Ideatek Telecom, LLC (Ideatek) filed a Complaint and Request for Interim Emergency Relief and Expedited Review against Wamego.
2. On April 4, 2019 the Commission entered its Order Appointing Examiner Pursuant to K.A.R. 82-1-220a(f) ("Order Appointing").
3. In the Order Appointing, at ¶2, the Commission states as fact that: "[o]n January 25, 2019, Ideatek submitted porting requests to Wamego, which Wamego has failed to act upon." The basis for this contention, as shown in Footnote 1 of the Order Appointing is an allegation of IdeaTek's Complaint, which allegation Wamego has denied in its Contingent Response filed herein March 29, 2019. In such Contingent Response Wamego states, at ¶ 28, p. 10, "The only specific porting request Wamego has received from IdeaTek was an 8XX number porting request, which was honored and timely completed."

There has been no hearing regarding IdeaTek's assertion that it submitted other porting requests and no basis for the Commission to make a finding or assertion of fact That Wamego has "refused" (per IdeaTek's complaint) or "failed" (per the Order Appointing) to satisfy IdeaTek porting requests. Such statement in the Order should be reconsidered and revised to recognize it is an assertion of one party only, and not a fact determined by the Commission through due process of law. At this time the Commission has a factual basis only to find that IdeaTek has made such a claim.

3. In the Order Appointing the Commission designated Brian G. Fedotin, Deputy General Counsel & Chief Appellate Counsel of the Commission, as examiner herein.

3. As examiner Mr. Fedotin is tasked with determining if expedited treatment is warranted, overseeing the discussion between the parties, acting as mediator or negotiator and issuing interim rulings controlling the actions of the parties throughout the proceeding. Such rulings directly affect the interests of Wamego, both in this proceeding and generally, including *inter alia* a possibility that Wamego could be directed to incur new costs without opportunity for recovery of such costs, contrary to Wamego's property rights.

4. Inherent in the duties of an examiner is to conduct the proceeding and issue decisions in a fair and impartial manner, and to avoid even the appearance of impropriety or conflict of interest. An examiner cannot act as a mediator or negotiator, or make decisions affecting the interests of a party, when a conflict or appearance of conflict exists that renders it impossible for the examiner to be recognized and accepted as a neutral party.

5. The examiner designated in this case is currently lead counsel for the Commission in a proceeding pending in the District Court of Marion County, Kansas

(*Moundridge Telephone Co., Inc., et al. v. Kansas Corporation Commission*, Case No. 18 CV 21) in which the designated examiner is counsel directly adverse to the interests and positions of Wamego. The examiner has further acted adverse to the positions of Wamego in multiple prior matters which, like the current pending Marion County matter, have been proceedings related to Wamego's claim for relief in the Commission's Docket No. 12-IWRZ-848-ETC. The examiner's activity in conflict with the interests of Wamego has extended continuously over a period exceeding three and a half years, and continues at present. At every stage of all such proceedings, in multiple pleadings, briefs and oral argument, the designated examiner has actively opposed Wamego's arguments, authorities and positions.

6. At a minimum the examiner's representation adverse to Wamego creates the appearance of a conflict if not an actual inability to act as a fair and impartial examiner in any matter before the Commission in which Wamego is the subject of a complaint. This circumstance will directly undermine the ability of the examiner effectively to conduct any negotiation or act as a mediator in an attempt to resolve this matter. It will further corrupt the legitimacy and propriety of any decision made by the examiner on the merits in this proceeding.

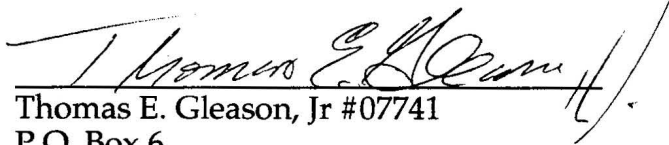
7. Any action or decision herein by the designated Hearing Examiner, whether temporary or final, would be subject to challenge on the basis of the foregoing conflict of interest alone, reducing or negating entirely any benefit from the use of a Hearing Examiner to expedite proceedings herein.

8. The Commission has available one or more other individuals qualified to be designated as Hearing Examiner in this proceeding. It is unnecessary that an individual with a current role and ongoing activity directly adverse to one of the parties herein act as Hearing Examiner.

WHEREFORE, Wamego requests reconsideration of the Commission's Order Appointing Examiner Pursuant to K.A.R. 82-1-220a(f) dated April 4, 2019; that upon reconsideration the Commission clarify its statement in ¶ 2 thereof as specified herein; and that the Commission determine Brian G. Fedotin is disqualified from serving as Hearing Examiner due to his representation directly adverse to Wamego in another active matter and related prior matters.

Respectfully submitted,

GLEASON & DOTY, CHARTERED

A handwritten signature in cursive script, appearing to read "Thomas E. Gleason, Jr.", is written over a horizontal line.

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ATTORNEYS FOR WAMEGO

## VERIFICATION


STATE OF KANSAS  
COUNTY OF DOUGLAS

$$\left. \begin{array}{l} ) \\ ) \\ ) \end{array} \right\} \text{SS:}$$

I, Thomas E. Gleason, Jr., of lawful age, being first duly sworn upon my oath, state: I am counsel for Wamego Telecommunications Company, Inc. in this proceeding; 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.

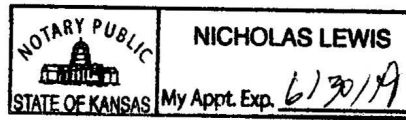
Thomas E. Gleason, Jr.

Subscribed and sworn to before me this 5<sup>th</sup> day of April, 2019.

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

My Commission Expires:

6/30/19



## 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 5th day of April, 2019:

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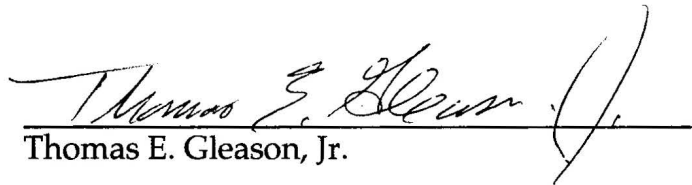
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