

**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 Telecommunications Carrier Designation) Docket No. 19-NTHT-244-ETC
and Notice Pursuant to K.S.A. 2015 Supp.)
66-2005 (d) of Intent to Cease Participation)
In the Kansas Lifeline Services Program.)

**STAFF REPLY TO NEX-TECH, LLC'S RESPONSE TO
STAFF'S REPORT AND RECOMMENDATION**

COMES NOW the Staff of the State Corporation Commission of the State of Kansas, and for its Reply to Nex-Tech, LLC's Response to the Staff's Report and Recommendation states as follows:

1. Staff filed a Report and Recommendation dated March 11, 2019, providing a detailed analysis and recommendation regarding Nex-Tech, LLC's (Nex-Tech) request to relinquish its Eligible Telecommunications Carrier (ETC) designation in specified areas and to cease participation in the Kansas Lifeline Service Program (KLSP) effective May 31, 2019.¹ The Report and Recommendation indicated Nex-Tech provided notice of its intent to cease participation in the KLSP; recommended the Commission grant ETC relinquishment in the Atwood, Bird City, Great Bend, Hays, Hoxie, McDonald, McPherson, Norton, Oberlin, Phillipsburg-Kirwin, Plainville, Saline, Smith Center, St. Francis, and Stockton exchanges; proposed denying Nex-Tech's request for ETC relinquishment in the Abilene exchange; and maintained support for having the remaining ETCs ensure all customers served by Nex-Tech will continue to be served in the wire centers (exchanges) where relinquishment is granted.²

¹ Staff Report and Recommendation, Docket No. 19-NTHT-244-ETC, March 11, 2019, at 1-9 (hereinafter "Staff R&R").

² Id. at 9

2. On March 25, 2019, Nex-Tech filed a Response to the Staff Report and Recommendation³. The Response agreed with the assessment that Nex-Tech had properly given more than 90 days of notice regarding its decision to cease participation in the KLSP, effective May 31, 2019, as required in K.S.A. 66-2006 (d), and a Commission Order should be issued granting Nex-Tech authority to withdraw from the KLSP.⁴ Nex-Tech also agreed with the Staff's Hays, Hoxie, McDonald, McPherson, Norton, Oberlin, Phillipsburg-Kirwin, Plainville, Saline, Smith Center, St. Francis, and Stockton exchanges, subject to the requirement that remaining ETC carriers commit to serve the wire center/exchanges where relinquishment may be granted.⁵ Nex-Tech did take exception to the Staff recommendation to deny ETC relinquishment in the Abilene, Kansas exchange based on the Commission granting Southwestern Bell Telephone Company d/b/a AT&T Kansas' (AT&T Kansas) relinquishment of its ETC status in the Abilene exchange as requested in Docket No. 17-SWBT-158-MIS (17-158).⁶ The Staff did qualify its recommendation based on the Commission rejecting the AT&T relinquishment request for Abilene, and in this event, the Staff alternatively recommended Nex-Tech be granted ETC relinquishment for Abilene.⁷ Additionally, Nex-Tech indicated it inadvertently omitted the Almena exchange from its Application, but indicated it would file a separate Application seeking relinquishment of the Almena exchange, which would then present all of its eligible ETC exchanges for relinquishment.⁸

3. During the intervening period between the Staff Report and Recommendation of March 11, 2019, and the Nex-Tech Response of March 25, 2019, the Commission issued its Order in the 17-158 Docket granting AT&T Kansas ETC relinquishment in all of its requested areas,

³ Nex-Tech, LLC's Response to Staff's Report and Reconsideration, Docket No. 19-NTHT-244-ETC, March 25, 2019 (hereinafter "Nex-Tech Response").

⁴ Id. at 2.

⁵ Id. at 1 and 2.

⁶ Id. at 2.

⁷ Staff R&R at 9.

⁸ Nex-Tech Response at 2.

with the exception of 1,248 census blocks where it was determined that there was not a remaining ETC able to provide service.⁹ Among the exchanges where relinquishment was granted was the Abilene exchange, giving rise to the Staff recommendation not to grant Nex-Tech relinquishment because after granting AT&T ETC relinquishment, Nex-Tech would be the only remaining high-cost ETC in the Abilene exchange to continue to provide service.¹⁰

4. As part of its Response, Nex-Tech attached its Petition for Intervention and Limited Reconsideration in the 17-158 Docket, where it seeks to have the Commission deny AT&T ETC relinquishment in the Abilene exchange.¹¹ Nex-Tech's Petition is based on its inability to economically serve the entire Abilene exchange with ETC service in the absence of AT&T and its facilities and space within the wire center.¹² Nex-Tech also cites the rendition of service as a reseller in the Exchange and a changing industry structure within the state as reasons for reconsideration.¹³ Nex-Tech's Petition for Intervention was proceeded by Notice of Service of the Commission's Order of March 14, 2019, in Docket 17-158, which provided remaining affected ETCs, including Nex-Tech, with its decision to grant AT&T ETC relinquishment in various exchanges and census blocks. Should the relief requested by Nex-Tech be granted and AT&T's relinquishment in the Abilene exchange reversed, the Staff recommendation in this docket would then revert to the alternative recommendation and Nex-Tech would be supported by the Staff position to grant ETC relinquishment for Nex-Tech in the Abilene exchange, with AT&T remaining as the only high-cost ETC in the exchange.

⁹ Order on AT&T's Request to Relinquish Its Eligible Telecommunications Carrier (ETC) Designation, Docket No. 17-SWBT-158-MIS, March 14, 2019.

¹⁰ Staff R&R at 8.

¹¹ Nex-Tech, LLC Petition to Intervene and for Limited Reconsideration of March 14, 2019 Order, Docket No. 17-SWBT-158-MIS, March 25, 2019 (hereinafter "Nex-Tech PFR").

¹² Nex-Tech PFR at 5.

¹³ Id. at 7.

5. Given the fluid nature of the Staff recommendation in this docket based on the outcome of the 17-158 Docket, Staff proposes to have the Commission take administrative notice of its files and records and postpone a decision on the Abilene exchange until such time as the proceedings are concluded in the 17-158 Docket.¹⁴

6. With respect to the other Nex-Tech requests, the Staff would propose the Commission issuing an Order granting its request to cease participation in the KLSP effective May 31, 2019, and relinquishment in the previously recommended exchanges where there are remaining high-cost ETCs that are obligated and able to continue to serve remaining customers.

WHEREFORE, Staff submits its Reply and prays that the Commission proceed consistent with the Staff Report and Recommendation dated March 11, 2019, and a final determination relative to the Abilene exchange in the 17-158 Docket.

Respectfully Submitted,



Walker Hendrix, 08835
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3157
Fax: 785-271-3167

¹⁴ K.A.R. 82-1-230 (h).

CERTIFICATE OF SERVICE

19-NTHT-244-ETC

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff Reply To Nex-Tech, LLC'S Response To Staff's Report and Recommendation was served via electronic service this 29th day of March, 2019, to the following:

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
m.duenes@kcc.ks.gov

WALKER HENDRIX, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
w.hendrix@kcc.ks.gov

MARK E. CAPLINGER
MARK E. CAPLINGER, P.A.
7936 SW INDIAN WOODS PL
TOPEKA, KS 66615-1421
mark@caplingerlaw.net

Ann Murphy

