

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Susan K. Duffy

In the Matter of a General)
Investigation into Interconnection,) Docket No. 20-GIMT-387-GIT
Porting, Evolving Technology, and)
the Impacts on Consumer Choices in)
Kansas.)

ORDER ON COMMISSION JURISDICTION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records the Commission rules as follows:

BACKGROUND

1. On March 26, 2019, IdeaTek, LLC (IdeaTek) requested an order from the Commission requiring Wamego Telecommunications Company, Inc. (Wamego) to port¹ IdeaTek customers' phone numbers and ensure calls are completed between IdeaTek and Wamego's customers.² IdeaTek claimed the Federal Telecommunications Act, Kansas statutes, and the Federal Communications Commission (FCC) obligate Wamego to interconnect, provide local number portability, and complete calls to providers, including Voice over Internet Protocol (VoIP) providers.³

2. On March 29, 2019, Wamego filed a response contending IdeaTek's VoIP service is an information service, not a telecommunications service, and IdeaTek is not a

¹ Local number portability is a system that enables end users to keep their telephone numbers when switching from one communications service provider to another.

² Complaint and Request for Interim Emergency Relief and Expedited Review, Docket No. 19-WTCT-393-COM (Mar. 16, 2019).

³ *Id.* ¶ 15.

telecommunications provider. Further, Wamego claimed the Commission is pre-empted from adjudicating the substance of the complaint⁴ and Wamego is exempt from the interconnection requirements in 47 U.S.C. § 252.⁵

3. On April 4, 2019, Commission Staff (Staff) responded noting Kansas statutes mandate local number portability. Staff requested the Commission find it has jurisdiction to investigate the subject matter of IdeaTek's complaint.⁶

4. On April 9, 2019, IdeaTek replied stating its use of VoIP technology is not at issue, rather, the issue is Wamego's failure to port numbers and allow indirect interconnection.⁷ According to IdeaTek, Wamego's actions prevent customers from completing calls to IdeaTek's customers, violating Wamego's interconnection obligations to provide efficient and sufficient customer service and complete calls.⁸

5. On April 10, 2019, Wamego claimed: (1) VoIP service is an information service over which the Commission lacks jurisdiction; (2) IdeaTek is a VoIP service provider and not a telecommunications carrier; and (3) Wamego has no obligation to interconnect with IdeaTek. Wamego further stated its porting obligations will be resolved if IdeaTek directly exchanges local traffic with Wamego through a commercial agreement or indirectly exchanges local traffic with Wamego through another telecommunications carrier.⁹

6. On March 12, 2020, the Commission opened an investigation of/regarding evolving technology related to VoIP service providers, porting numbers for VoIP providers' customers, and

⁵ Wamego Telecommunications Company, Inc. Objection to Jurisdiction, Motion for Dismissal for Want of Jurisdiction and Contingent Initial Reply Addressing Request for Expedited Procedure, ¶¶ 7-9, 15-16 (March 29, 2019).

⁶ Staff's Response to Wamego's Objection to Jurisdiction and Motion for Dismissal for Want of Jurisdiction (Apr. 4, 2019).

⁷ IdeaTek Reply to Wamego Objection to Jurisdiction and Motion to Dismiss, ¶ 8 (Apr. 9, 2019).

⁸ *Id.* ¶ 8.

⁹ Wamego Response to IdeaTek Reply, ¶ 12 (Apr. 11, 2019).

interconnection for VoIP providers in rural exchanges, along with other issues noted by the Commission.¹⁰ To facilitate the investigation, the Commission directed parties to submit initial and reply comments regarding fourteen questions outlined in the order.¹¹

7. On June 15, 2020, the following parties submitted initial comments in the docket: INCOMPAS; Comcast Phone of Kansas, LLC; Time Warner Cable Information Services (Kansas), LLC; and Cox Kansas Telcom, LLC; AT&T; CenturyLink; IdeaTek; and the Rural Local Exchange Carriers (RLECs).

8. IdeaTek proposed one form of indirect interconnection which relies on the use of a third party tandem¹² that acts as a common source of interconnection for a variety of service providers using a variety of technologies.¹³

9. AT&T explained IdeaTek is directly connected with AT&T at one of its access tandems within its local exchange network.¹⁴ AT&T informed IdeaTek that obligations and services are governed by its interconnection agreement with AT&T.¹⁵ Where there is an AT&T interconnection agreement between parties, AT&T provides services for calls that originate and terminate within its service area.¹⁶ IdeaTek may use AT&T's transit service to reach other carriers interconnected at AT&T's tandem that serve end users located in AT&T's service area.¹⁷ AT&T explained the indirect connection methodology promoted by IdeaTek results in interexchange

¹⁰ Order Opening General Investigation Into Interconnection, Porting, Evolving Technology, and the Impact on Consumer Choices in Kansas, ¶ 23 (Mar. 12, 2020).

¹¹ *Id.*

¹² A tandem is an intermediate switch or connection between an originating telephone call location and the final destination of the call. (Verizon Partner Solutions Glossary of Telecom Terms).

¹³ Comments of IdeaTek, LLC, ¶ 34 (Jun. 15, 2020).

¹⁴ AT&T Reply Comments, ¶ 5.

¹⁵ AT&T Initial Comments, ¶ 2.

¹⁶ *Id.*

¹⁷ AT&T Reply Comments, ¶ 5.

traffic, and the FCC has determined interconnection arrangements may not solely be used for the transmission of interexchange traffic.¹⁸

10. AT&T also claimed it is not required to offer interconnection outside of its service area, and IdeaTek is attempting to use AT&T's facilities to interconnect with RLECs operating outside of AT&T's service area.¹⁹

11. The Commission ordered the parties to file briefs regarding the Commission's jurisdiction over VoIP interconnection under Sections 251 and 252 of the Federal Telecommunications Act (Act).²⁰

ANALYSIS

I. VoIP Interconnection Jurisdiction

12. Section 251(a)(1) of the Act states each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.²¹ The Act requires all local exchange carriers (LECs) to interconnect directly or indirectly with the facilities and equipment of other telecommunication carriers.²² The obligation to interconnect applies regardless of whether the party requesting interconnection is a wholesale or retail provider.²³

13. Under K.S.A. 66-2005(y), "a telecommunications carrier is entitled to interconnection with a local exchange carrier or an electing carrier to transmit and route voice

¹⁸ *Id.*, ¶ 9.

¹⁹ *Id.*, ¶ 10.

²⁰ Order on RLEC's Motion for Discovery Order, Protective Order, Procedural Schedule, and Hearing, ¶ 12 (Aug. 27, 2020).

²¹ 47 U.S.C. § 251(a)(1).

²² 47 U.S.C. § 251(c)(2).

²³ Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd. 3513 (WCB 2007) (TWC Order).

traffic between both the telecommunications carrier and the local exchange carrier or electing carrier regardless of the technology by which the voice traffic is originated by and terminated to a consumer.”

14. IdeaTek seeks the Commission’s assistance as a VoIP provider to interconnect with LECs, specifically Wamego. State and federal statutes address telecommunications carrier interconnection, but not VoIP interconnection. Commission Staff contends VoIP providers are telecommunications carriers as defined by Kansas statutes.²⁴ And because they are telecommunications carriers, they are entitled to interconnection under K.S.A. 66-2005(y).²⁵

15. Staff’s proposal conflicts with K.S.A. 66-2017(a), which limits Commission regulation of VoIP service. When examining statutory conflicts, the Commission notes the most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained.²⁶ The legislative intent in K.S.A. 66-2017(a) is clear; VoIP service is to remain free from Commission jurisdiction and regulation. Staff’s proposal undercuts this intention and subjects VoIP service to increased Commission jurisdiction and regulation. For example, finding VoIP providers are telecommunications carriers’ results in VoIP providers needing Commission approval of applications and certificates of convenience and necessity, a process which VoIP providers and VoIP service are currently not subject to.

16. Further, the Commission notes a specific statute controls over a general statute. Likewise, a specific provision within a statute controls over a more general provision within the statute.²⁷ Unlike K.S.A. 66-1,187, which generally defines what a telecommunications carrier is,

²⁴ Staff’s Brief Regarding Jurisdiction, ¶ 5 (Sep. 17, 2020).

²⁵ *Id.* ¶ 7

²⁶ *State ex rel. Schmidt v. City of Wichita*, 303 Kan. 650, 659, 367 P.3d 282 (2016); *Hoesli v. Triplett, Inc.*, 303 Kan. 358, 362, 361 P.3d 504 (2015).

²⁷ *Sierra Club v. Moser*, 298 Kan. 22, 54, 310 P.3d 360 (2013).

K.S.A. 66-2017(a) specifically declares that VoIP service is not to be subjected to Commission oversight. Again, Staff's proposal undercuts that mandate and brings improper supervision and regulation to VoIP service.

17. Because VoIP providers are not telecommunications carriers under Kansas law, the Commission looks to the FCC for guidance. In *Charter Advanced Servs. (MN), LLC v. Lange*, the Eighth Circuit Court of Appeals held VoIP is an information service not subject to state oversight or entitled to interconnection under Section 251 of the Act.²⁸ The FCC filed an amicus brief asserting state regulatory commissions with VoIP regulation concerns should raise them with the FCC, as this allows the FCC to offer a solution and avoid the risk that VoIP providers are subject to a patchwork of different and potentially conflicting rules across the states and local jurisdictions.²⁹

18. While the Eighth Circuit's holding is not binding on the Commission, the FCC's filing provides insight regarding how it believes VoIP regulation and interconnection issues should be handled. Were the Commission to determine VoIP providers are subject to increased Commission oversight and entitled to interconnection, it risks creating conflicting rules across various jurisdictions, specifically for those VoIP providers that serve more than one state. Based on the preceding, the Commission finds VoIP providers are not telecommunications carriers under Kansas law and are therefore not entitled to the interconnection provisions applicable to such entities.

19. Nothing prohibits the parties from resolving their interconnection issues amongst themselves or taking the matter to the FCC for determination. As Comcast, Charter, and Cox note, VoIP providers and LECs routinely negotiate and enter into agreements for interconnection.

²⁸ 259 F.3d 715 (8th Cir. 2018).

²⁹ *Id.*

Should the parties reach an interconnection agreement or an agreement to ensure numbers are ported and calls completed, the parties shall report back on the agreement reached.

II. Number Porting

20. Section 251(b)(2) of the Act imposes on all LECs a “duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC.”

21. In 2007, the FCC extended local number portability obligations to interconnected VoIP providers, with the mandate that no entity obligated to provide local number portability may obstruct or delay the porting process by demanding from the porting-in entity information in excess of the minimum information needed to validate the customer’s request.³⁰

22. In 2015, the FCC adopted an affirmative obligation requiring telecommunications receiving a valid porting request to or from an interconnected VoIP provider to take all steps necessary to initiate or allow a porting without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting.³¹

23. In addition to these mandates, the FCC codified the obligation to port to and from interconnected VoIP providers in 47 C.F.R. § 52.34(c), which states “telecommunications carriers must facilitate an end-user customer’s valid number portability request either to or from an interconnected VoIP[.]”

24. At the state level, “customers shall be accorded number portability and local dialing parity in conformance with national standards[.]”³²

³⁰ Telephone Number Requirements for IP-Enabled Services Providers, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd. 19531, ¶ 35 (2007).

³¹ Technology Transitions, Order, Report and Order, and Further Notice of Proposed Rulemaking, 29 FCC Red. 1433, ¶ 25 (2014) (noting that the FCC has not determined that “VoIP traffic is subject to interconnection obligations” under the Communications Act). *See also* Numbering Policies for Modern Communications; IP-Enabled Services; Telephone Number Requirements for IP-Enabled Services Providers, Report and Order, 30 FCC Rcd. 6839, ¶ 55 (2015).

³² K.S.A. 66-2003(e).

25. The Commission concludes telecommunications carriers operating in Kansas have a duty to provide number porting to and from interconnected VoIP providers, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting. Failure to properly port numbers shall result in fines and/or Commission interjection.³³

III. Call Completion/Blocking

26. The FCC has held “no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way.”³⁴ Additionally, “permitting blocking or the refusal to deliver voice telephone traffic, whether as a means of ‘self-help’ to address perceived unreasonable intercarrier compensation charges or otherwise, risks ‘degradation of the country’s telecommunications network.’”³⁵ This prohibition against call blocking remains regardless of the technology used to originate the call.

27. Telecommunications carriers who refuse to properly complete calls or exchange traffic shall be subject to fines and/or Commission interjection.³⁶

THEREFORE, THE COMMISSION ORDERS:

A. VoIP providers are not telecommunications carriers under Kansas law, therefore, VoIP providers are not entitled to interconnection and the Commission cannot compel interconnection between VoIP providers and LECs.

B. Telecommunications carriers, including local exchange carriers, are obligated to provide number porting to interconnected VoIP providers, without unreasonable delay or unreasonable procedures that have the effect of denying or delaying porting.

³³ See K.S.A. 66-138.

³⁴ Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers, Declaratory Ruling, WC Docket No. 07-135, 22 FCC Rcd. 11629, ¶ 1 (2007).

³⁵ *Id.*

³⁶ See K.S.A. 66-138.

C. Any attempt to block, choke, reduce or restrict traffic in any way is prohibited. Telecommunications carriers who fail to complete calls or exchange traffic shall be subject to fines and/or Commission interjection.

D. 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).³⁷

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy Commissioner.

Dated: 03/23/2021



Lynn M. Retz
Executive Director

PZA

³⁷ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-GIMT-387-GIT

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 03/23/2021.

BRUCE A. NEY, AVP -SENIOR LEGAL COUNSEL
AT&T SERVICES, INC.
816 CONGRESS AVE
SUITE 1100
AUSTIN, TX 78701-2471
Fax: 512-870-3420
bruce.ney@att.com

RICK WAGNER, CEO
BROLLY COMMUNICATIONS, INC.
1007 W. Amity
PO Box 806
Louisburg, KS 66053
ceo@gobrolly.com

ERIK CECIL, VP LAW - TELEPHONE REGULATORY
CHARTER COMMUNICATIONS
6399 South Fiddler's Green Circle
Greenwood Village, CO 80111
erik.cecil@charter.com

MARK JOHNSON, PARTNER, DENTONS FIRM
COMCAST PHONE OF KANSAS LLC
D/B/A COMCAST DIGITAL PHONE
ONE COMCAST CENTER
50TH FLOOR
PHILADELPHIA, PA 19102
mark.johnson@dentons.com

MARK P. JOHNSON, PARTNER
DENTONS US LLP
4520 MAIN STREET STE 1100
KANSAS CITY, MO 64111-7700
Fax: 816-531-7545
mark.johnson@dentons.com

KATHERINE K MUDGE, ATTORNEY
ENOCH KEVER, PLLC
7600 N CAPITAL OF TEXAS HWY
BLDG B SUITE 200
AUSTIN, TX 78731
kmudge@enochkever.com

VINCENT M PALADINI, ATTORNEY
ENOCH KEVER, PLLC
7600 N CAPITAL OF TEXAS HWY
BLDG B SUITE 200
AUSTIN, TX 78731
vpaladini@enochkever.com

SUSAN J. BERLIN, SENIOR COUNSEL
FRIEND, HUDAK & HARRIS, LLP
THREE RAVINIA DRIVE, SUITE 1700
ATLANTA, GA 30346-2117
Fax: 770-395-0000
sberlin@fh2.com

MARK DOTY
GLEASON & DOTY CHTD
401S MAIN ST STE 10
PO BOX 490
OTTAWA, KS 66067-0490
Fax: 785-842-6800
doty.mark@gmail.com

ETHAN KAPLAN, GENERAL COUNSEL
IDEATEK TELCOM, LLC
111 OLD MILL LN
BUHLER, KS 67522
Fax: 866-459-2829
ekaplan@ideatek.com

CERTIFICATE OF SERVICE

20-GIMT-387-GIT

COLLEEN JAMISON
JAMISON LAW, LLC
P O BOX 128
TECUMSEH, KS 66542
colleen.jamison@jamisonlaw.legal

PHOENIX ANSHUTZ, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
p.anshutz@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

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

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

PAUL H. GARDNER
D/B/A ATTORNEY AT LAW
801 NW VESPER
BLUE SPRINGS, MO 64015-3733
Fax: 816-229-9196
lkgardner@hotmail.com

RACHEL LIPMAN REIBER, ATTORNEY
REIBER LAW OFFICE, LLC
214 S CHESTNUT, SUITE 3
OLATHE, KS 66061
Fax: 913-782-4445
rlreiberlaw@gmail.com

WILLIAM A HAAS, PRINCIPAL CORPORATE COUNSEL
SPRINT COMMUNICATIONS COMPANY L.P.
KSOPHN0314-3A459
PO BOX 10076
CEDAR RAPIDS, IA 52410
Fax: 913-523-7721
william.haas@t-mobile.com

THOMAS E. GLEASON, JR., GLEASON & DOTY,
CHARTERED
WAMEGO TELECOMMUNICATIONS COMPANY, INC.
PO Box 6
Lawrence, KS 66044
Fax: 785-456-9903
gleason@sunflower.com

/S/ DeeAnn Shupe
DeeAnn Shupe
