

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS
-Request for Expedited Review-

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.)

**COMPLAINT AND REQUEST FOR INTERIM EMERGENCY
ORDER AND EXPEDITED REVIEW
AND
MOTION TO ASSESS COSTS PURSUANT TO K.S.A. 66-1502**

COMES NOW Ideatek Telcom, LLC (“Ideatek”), and brings this Complaint pursuant to the provisions of K.S.A. 66-2003, K.A.R. 82-1-220, K.A.R. 82-1-220a, and K.S.A. 77-536, requesting the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) issue an order mandating that Wamego Telecommunications Company, Inc. (“Wamego”) port Ideatek’s customers and prevent Wamego from taking any action intended to, or that could, block or otherwise prevent calls between Wamego and Ideatek customers.

This Complaint details the failure of Wamego to port out customer numbers and its threat to not route telephone calls to Ideatek subscribers in Wamego’s exchange areas, in an apparent effort to force Ideatek to accept unfavorable interconnection terms, extract undue and nonpermitted interconnection fees, and create unlawful barriers to telecommunications competition. Wamego’s actions in this regard pose an immediate danger to the public health, safety and welfare, as it isolates Ideatek customers by denying them the ability to receive local

calls from Wamego's customers. Wamego's actions are clearly unlawful, are harming consumers, and can easily be stopped.

Wamego's actions are particularly egregious because they violate its legal obligations as a Local Exchange Carrier ("LEC"); obligations that it attempts to avoid based upon an unfounded argument that the means of delivery of its customer's originating traffic is an obligation of IdeaTek. There is no authority supporting Wamego's attempt to side-step its obligations to its customers on the basis that the receiving carrier (Ideatek) is employing *indirect* interconnection to meet its own obligations to its own customers.

For these reasons, as more fully explained below, Ideatek is requesting expedited review of this Complaint pursuant to K.A.R. 82-1-220a and/or emergency proceedings pursuant to K.S.A. 77-536. In addition, Ideatek is requesting the Commission assess its costs for this docket to Wamego, pursuant to K.S.A. 66-1502. In support of this Complaint and the requests herein, Ideatek states as follows:

I. PARTIES AND JURISDICTION

1. Ideatek is a Kansas limited liability company, registered to do business in Kansas and in good standing with the Kansas Secretary of State. Ideatek's principle place of business is 111 Old Mill Lane, Buhler, Kansas 67522.

2. Ideatek has operated a facilities-based fiber optic telecommunications network since 2005. In March of 2006, Ideatek, under its former name, "Wildflower Telecommunications"¹, applied for and was subsequently approved for a Certificate of Convenience as a Competitive Local Exchange Carrier in Kansas in Docket No. 06-WLDT-1005-

¹ The name on Wildflower's certificates and ETC designations was changed to Ideatek Telcom, LLC in Dockets No. 14-WLDT-587-CCN and 16-WLDT-487-CCN.

COC (“06-1005 Docket”) and a Certificate to provide interexchange and operator services in Docket No. 08-WLDT-1077-COC (“08-1077 Docket”).

3. Ideatek also provides service in Kansas using Voice over Internet Protocol (“VoIP”), thus operating as an interconnected VoIP carrier as defined under K.S.A. 66-2017.

4. Copies of all orders, pleadings or other documents concerning this proceeding should be served upon the following individual, in addition to undersigned counsel:

Daniel P. Friesen
Ideatek Telcom, LLC
CIO / Managing Partner
111 Old Mill Ln
Buhler, KS 67522-0407
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(620) 543-5003

5. Wamego is a local exchange carrier as defined by K.S.A. 66-1,187(h) and is subject to this Commission’s jurisdiction as a telecommunications public utility certified by the Commission. Wamego is an incumbent local exchange carrier (“ILEC”) pursuant to 47 U.S.C. §251(h) and is subject to the requirements set forth in 47 U.S.C. §51.100, §251 and §252, as well as all regulations promulgated by the Federal Communications Commission (“FCC”) thereunder.

6. The Commission has jurisdiction over this Complaint pursuant to K.S.A. 66-1,188; 66-1,189; 66-1,191; 66-1,192; 66-1,193; 66-1,194 and 66-2003. Under K.S.A. 66-1,192, the Commission has specific authority to hear complaints against telecommunications public utilities to determine if any:

... practice or act whatsoever affecting or relating to any service performed or to be performed by such telecommunications public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, ***or that any service performed or to be performed by such telecommunications public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained,*** the commission may proceed, with or without notice, to make such investigation as it deems necessary... [and further possesses the] power to require

telecommunications public utilities to make such improvements and do such acts as are or may be required by law to be done by any such telecommunications public utility. [emphasis added.]

II. FACTS AND NATURE OF DISPUTE

7. Ideatek files this Complaint on two charges: (1) Wamego has failed to perform obligatory port-out requests to IdeaTek of customer telephone numbers, and (2) Wamego is threatening to refuse to perform fundamental and routine tasks related to the routing of telephone calls over the Public Switched Telephone Network (“PSTN”). These failures and threats adversely affect not only Ideatek and its subscribers, but also Wamego’s subscribers and potentially other members of the public.

8. Ideatek competes for customers in a number of areas in Kansas, including Wamego’s local exchange territory. Ideatek is interconnected with AT&T facilities as a telecommunications carrier in the Kansas 534 LATA. Ideatek’s interconnection provides connectivity to the AT&T Topeka, Salina, and Hays tandem switches, each of which provide intraLATA or LATA-wide transit service for local and toll traffic to other directly connected carriers. Tandem transit services are the switching and transport services that enable the delivery of calls between customers of carriers that are not directly connected with each other within a common LATA. Transit services are the means by which an originating carrier may pass traffic

to a terminating carrier indirectly via a third-party tandem. The ILEC is obligated to provide transit services.²

9. For many years Ideatek has traded non-toll traffic with multiple rural ILECs in Kansas via indirect interconnection using AT&T intraLATA tandem trunks. None of these arrangements required an interconnection agreement with the indirect parties or any significant coordination prior to an initial port. In nearly all of these instances, porting and traffic exchange have occurred without incident.

10. Wamego is already indirectly interconnected to IdeaTek, as demonstrated by the fact that IdeaTek is able to indirectly transmit traffic to Wamego today. Thus, no other connection is necessary from a technological standpoint in order for Wamego to complete calls to IdeaTek. Further, Wamego has interconnection agreements on file with this Commission with other telecommunications carriers which permit indirect interconnection methods, again proving that Wamego has the capability to perform indirect interconnection.³

² Harrington, John R.; Gavillet, Ronald W.; Basil, Matt D.; and Dickey, Melissa L. (2009) “An Evaluation of the Proposals in the FCC’s Intercarrier Compensation Reform Docket Related to Tandem Transit Services,” *Federal Communications Law Journal*: Vol. 61: Iss. 2, Article 3. “These services were historically provided, though not always willingly, by incumbent local exchange carriers (ILECs) such as AT&T, Verizon, and Qwest to enable competitive local exchange carriers (CLECs), cable telephone providers and wireless carriers, to complete calls to and from each other’s networks. ... The state commissions also generally recognized that the originating carrier – not the transiting provider – should continue to maintain responsibility for paying the costs necessary to deliver the call to the terminating carrier’s point of interconnection.” (Pp. 327-28.)

Available at: <http://www.repository.law.indiana.edu/fclj/vol61/iss2/3>.

See also *In the Matter of Arbitration Between Level 3 Communications, LLC and SBC Communications, Inc.* KCC docket 04-L3CT-1046-ARB, “Arbitrator's Order 10: Decision”, issued February 7, 2005, beginning on page 116, paragraph 438..

³ *In the Matter of the Application of Wamego Telecommunications Co., Inc. for Approval of an Interconnection Agreement with T-Mobile Central LLC*, KCC Docket No. 14-WTCT-198-IAT, “Application For Approval of an Amended Interconnection Agreement”, filed October 22, 2013, *see* interconnection agreement section 5.1 – “As an alternative to routing Local Traffic covered by this agreement through a Direct Interconnection, either Party may choose to route traffic from its network through a Third Party Provider to the terminating Party's POI with the Third Party Provider [...]”

11. Additionally, on information and belief, Wamego is technically capable of delivering its originating local traffic to IdeaTek in other indirect methods as well. For example, Wamego sells an unlimited long distance package to its residential voice customers for \$20.00 per month⁴ which indicates that it has the ability to terminate traffic across the United States. It is likely that Wamego has one or more additional means of transmitting its originating traffic to Ideatek, including the use of Interexchange trunking, bulk long-distance trunking through TDM or VoIP, or use of Wamego's affiliate competitive local exchange carrier ("CLEC") for termination of the traffic.

12. On Feb 25, 2019, Wamego proposed to Ideatek a "commercial agreement" as an absolute prerequisite to porting and traffic exchange. This document is substantially in the form of an interconnection agreement ("ICA") with terms and conditions that would contractually strip Ideatek of its rights as a telecommunications carrier.

13. IdeaTek has had pending and valid porting requests with Wamego since January 25, 2019. These port requests involve service for a regional agricultural machinery and services operator which operates 13 sites across multiple incumbent telephone territories. IdeaTek has provided an innovative and ubiquitous VoIP system that connects all of this company's sites under a single telephony platform. Yet, as a result of Wamego's refusal to act, currently that platform is sitting idle and unused at the customer's Wamego site while other sites (some in other RLEC territories) have been able to realize the operational efficiencies and upgraded technical capabilities of the platform.

⁴ <https://www.wtcks.com/residential/voice/2/voice-packages>

14. Both IdeaTek and its customer are now realizing actual economic harm. IdeaTek's customer has stated that the lack of number portability at their Wamego site is creating a negative impact to the company's operations and resolution is very important.

III. DISCUSSION OF FEDERAL AND STATE LAW

15. Wamego's actions violate federal law requiring all telecommunications carriers to provide number portability [47 U.S.C. §251(b)(2)], to interconnect their networks [47 U.S.C. §251(a)], and to provide non-discriminatory services to customers [47 U.S.C. §202(a)]. These are some of the most fundamental of all requirements of the Federal Telecommunications Act of 1996 ("Federal Act")⁵ and are the foundation of a competitive and functioning PSTN. In addition to its authority granted by Kansas law, the Federal Act expressly grants this Commission the authority to arbitrate interconnection disputes⁶ and explicitly preserves the rights of state commissions to enforce state law to the extent it is not inconsistent with the Act.⁷

A. Porting Obligations of All Carriers

16. All Kansas carriers have an obligation to port out numbers upon a valid port request under 47 CFR 52.34(c), 47 U.S.C. 251(b)(2) and K.S.A. 66-2003(e).

47 CFR §52.34(c) states:

Telecommunications carriers must facilitate an end-user customer's valid number portability request either to or from an interconnected VoIP or VRS or IP Relay provider. "Facilitate" is defined as the telecommunication carrier's *affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself*, subject to a valid port request, *without unreasonable delay or unreasonable procedures* that have the effect of delaying or

⁵ Pub. L. 104-104, 110 Stat. 56 (1996).

⁶ 47 U.S.C. §252.

⁷ 47 U.S.C. §261.

denying porting of the NANP-based telephone number. (emphasis added)

17. A valid number portability request is completed by providing the former (porting) carrier with four pieces of information.⁸ Once Ideatek provides those four pieces of information and Wamego has confirmed that it is a valid request (i.e., not a carrier trying to slam a customer), then Wamego must port the number. The porting rules and the FCC impose no further prerequisite requirements in order to port a number. Specifically, the FCC has found there is no obligation to first obtain an interconnection agreement prior to porting because the process “can be discharged with a minimal exchange of information.”⁹ Likewise, the KCC has also previously found that an indirect interconnection does not require an interconnection agreement.¹⁰ Thus, an ILEC like Wamego **must** facilitate an end-user customer’s valid number portability request either to or from a carrier **without delay** and without further obligation.

18. By its very nature, universal number portability requires all telecommunications carriers ensure their networks are prepared to complete calls to all ported numbers. While this regulation does not require Ideatek to have direct facilities or numbers in a Wamego wire center, it does require both IdeaTek and Wamego to have the facilities necessary “to *receive* calls that originate on the public switched telephone network and to *terminate* calls to the public switched

⁸ The four fields are (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code, and (4) pass code (if applicable). FCC Order in Docket No. 07-188, issued November 8, 2007, ¶16.

⁹ *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, rel. November 10, 2003, ¶ 34 (“2003 Telephone Number Portability”).

¹⁰ *In the Matter of the Complaint Regarding the Failure of Rural Telecommunications Company to Provide Interconnection Pursuant to K.S.A. 66-2003 and 47 U.S.C. Section 251(a)*, KCC Docket No. 10-NECZ-515-COM (“10-515 Docket”), “Examiner’s Findings of Fact and Recommendations to the Commission”, filed March 31, 2010 (“Examiner’s Findings”), adopted by the Commission in its “Order Adopting Examiner’s Finding of Jurisdiction, Findings of Fact and Recommendations to the Commission” issued June 22, 2010 (“10-515 Order”); see 10-515 Order at ¶ 21.

telephone network.”¹¹ IdeaTek has this ability today for all Wamego exchanges via indirect interconnection.

B. Requirement to Route All Calls (no blocking)

19. The FCC has made it clear that all carriers have an obligation to make every effort to complete all calls when technically capable of doing so, even if completing such calls causes the ILEC to incur termination charges. As declared by the Wireline Competition Bureau of the FCC,¹²

Parties also proposed that the Commission allow selective call blocking, which would permit carriers in the call path to block traffic that is unidentified or for which parties refuse to accept financial responsibility. We decline to adopt any remedy that would condone, let alone expressly permit, call blocking. The Commission has a longstanding prohibition on call blocking. In the 2007 *Call Blocking Order*, the Wireline Competition Bureau emphasized that the *“the ubiquity and reliability of the nation’s telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended”* and that *“Commission precedent provides that no carrier, including interexchange carriers, may block, choke, reduce or restrict traffic in any way.”* We find no reason to depart from this conclusion. We continue to believe that call blocking has the potential to degrade the reliability of the nation’s telecommunications network. Further, as NASUCA highlights in its reply comments, *call blocking ultimately harms the consumer, “whose only error may be relying on an originating carrier that does not fulfill its signaling duties.”*

In the same order, the FCC also specifically addressed VoIP calls:

... we also find that **carriers’ blocking of VoIP calls is a violation of the Communications Act and, therefore, is prohibited just as with the blocking of**

¹¹ *In the Matter of Numbering Policies for Modern Communications*, WC Docket No. 13-97, rel. June 22, 2015, ¶37 (“Numbering Policies Order”) “The interconnected VoIP provider need not demonstrate that the point where it delivers traffic to or accepts traffic from the PSTN is in any particular geographic location so long as it demonstrates that it is ready to provide interconnected VoIP service, which is by definition service that “[p]ermits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.”

¹² *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform-Mobility Fund*, FCC 11-161, “Report and Order and Further Notice of Proposed Rulemaking”, Adopted October 27, 2011, Released November 28, 2011, ¶734 & ¶ 973.

other traffic. As such, it is appropriate to discuss the Commission’s general policy against the blocking of such traffic. As the Commission has long recognized, 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.” Consequently, “the Commission, except in rare circumstances[,] . . . does not allow carriers to engage in call blocking” and “previously has found that call blocking is an unjust and unreasonable practice under section 201(b) of the Act.” Although the Commission generally has not classified VoIP services, as discussed above, the exchange of VoIP-PSTN traffic implicating intercarrier compensation rules typically involves two carriers. As a result, those carriers are directly bound by the Commission’s general prohibition on call blocking with respect to VoIP-PSTN traffic, as with other traffic.”

20. To the extent Wamego’s threat to block calls is somehow related to technical reasons, Ideatek has suggested Wamego use its intraLATA tandem trunk designed for local and toll traffic or alternatively use its interexchange carrier trunks. The United States Court of Appeals, 8th Circuit performed significant analysis on a case similar to this one in *WWC License, LLC v. Boyle*, 459 F.3d 880, 890 (8th Cir. 2006) (“*WWC License*”), where the competing carrier sought to indirectly transport local calls to the incumbent via IXC tandem trunking. The court held the practice of using an IXC trunk to be a viable and permitted means to indirectly interconnect, going as far as stating that:

“the technical impediments and factual issues specific to [the parties’ interconnection] could only be material if, as a matter of law, expense, inconvenience, or technical difficulty are recognized exceptions to the duties under 47 U.S.C. § 251(a) and (b)”¹³

21. In *Atlas Telephone Company v. Oklahoma Corporation Commission*, 400 F.3d 1256 (10th Cir. 2005) (“*Atlas Telephone*”), rural ILECs raised the issue of whether CMRS carriers were required to establish a **physical** point of interconnection with requesting rural ILECs. The 10th Circuit said no, rejecting the ILEC’s argument that, since the traffic exchanged with the CLEC

¹³ *WWC License* at 890.

transits the AT&T network, the ILEC could not identify it and rate it, which thereby would deny the ILEC the opportunity to assess termination charges, stating,

The [Rural ILECs] assert that the Telecommunications Act requires competing carriers to establish a physical connection within an ILEC's network for the exchange of local traffic. While distinct from the assertion that traffic must be exchanged at a point of interconnection within the [Rural ILECs'] network, an analysis of this issue nonetheless touches on many aspects of our foregoing discussion.

The [Rural ILECs] interpret 47 U.S.C. ¶251(c) as imposing a requirement of direct connection on a competing carrier. We disagree. As detailed above, the affirmative duty established in ¶251(c) runs solely to the ILEC, and is only triggered on request for direct connection. The physical interconnection contemplated by ¶251(c) in no way undermines telecommunications carriers' obligation under ¶251(a) to interconnect "directly or indirectly." In full accord with our previous analysis, we hold that the [Rural ILECs'] obligation to establish reciprocal compensation arrangements with the CMRS provider in the instant case is not impacted by the presence or absence of a direct connection.¹⁴

22. Given Wamego's obligations under Sections 251 (a) and (b), it is clear that Wamego has an affirmative obligation to interconnect indirectly with Ideatek no matter its objections of "expense, inconvenience, or technical difficulty." The alternative scenario where Wamego could refuse to participate in indirect interconnection would deny IdeaTek's its rights of indirect interconnection in 251(a) and is why the court in *Atlas Telephone* found that only the competing carrier may elect *direct* interconnection.

23. One of the primary foundations of the Federal Act is prohibiting ILEC's from imposing unnecessary obstacles to competition. Unnecessary obstacles would include onerous interconnection terms or leveraging interconnection negotiations with threats of blocking calls to or from the customers of competitive carriers. This foundation is apparent in the requirements

¹⁴ *Atlas Telephone*, at 1268 (emphasis added.).

placed upon ILECs to interconnect for traffic exchange, as set forth in 47 U.S.C §251(a) which reads,

(a) General duty of telecommunications carriers

Each telecommunications carrier has the duty –

- (1) to interconnect *directly or indirectly* with the facilities and equipment of other telecommunications carriers; and

C. Classification of VoIP

24. Ideatek anticipates that Wamego will raise issues in this Complaint regarding the ongoing lack of clarity on the disposition of VoIP as a telecommunications service or an information service. This question and its implications are not germane to these complaint proceedings for the reasons discussed more fully below.¹⁵

25. First, this Complaint relates to the failure by Wamego to port and Wamego's threat to block originating traffic destined for Ideatek customers. In both instances, Wamego's obligations are based on *Wamego's* status as a telecommunications carrier; the classification of VoIP as a telecommunications service or an information service is irrelevant. Further, the law does not exempt Wamego from these obligations because of the ultimate choice of technology used by Ideatek to terminate such traffic.¹⁶ Ideatek respectfully urges the Commission to use extreme caution in any decision which would have the effect of reducing competition merely due to the continued ambiguous regulatory status of VoIP. The FCC's ongoing discussion over the

¹⁵ As long as an interconnecting carrier is using the section 251(c)(2) interconnection arrangement to exchange some telephone exchange service and/or exchange access traffic, section 251(c)(2) does not preclude that carrier from relying on that same functionality to exchange other traffic with the incumbent LEC, as well. This interpretation of section 251(c)(2) is consistent with the FCC's prior holding that carriers that otherwise have section 251(c)(2) interconnection arrangements are free to use them to deliver information services traffic, as well. *In the Matter of the Connect America Fund*, WC Docket No. 10-90, FCC 11-161, rel. November 18, 2011, ¶972.

¹⁶ The relevance, if any, of the disposition of IdeaTek's services or use of VoIP should be solely focused on matters which involve *IdeaTek's* rights and whether such rights are somehow different when Ideatek provides direct and wholesale VoIP services.

definition of VoIP should not allow incumbents such as Wamego to refuse to comply with the Federal Act's purpose of eliminating monopolies and increasing competition. Rather, the FCC's careful approach reflects the FCC's effort to ensure its decisions fully cover the complexity and importance of the inevitable transition of the industry from TDM to IP based networks.¹⁷

26. Second, the ongoing debate at the FCC on the disposition of VoIP lends itself to a myriad of other implications that go far beyond the very simple, straight-forward issues presented in this Complaint. To the extent this Commission wants to extend its inquiry into other VoIP-related questions, Ideatek respectfully requests that such matters be taken up in a general investigation which would allow for a more robust record of industry-wide participation for the Commission to use in its determinations, but should not delay the emergency relief sought herein, so comprehensive service may be provided to Wamego's customers.

27. Additionally, in *In the Matter of Time Warner Request for Declaratory Ruling*, WC Docket No. 06-55, rel. March 1, 2007, ¶1 ("TWC"), the FCC granted a petition for declaratory ruling filed by Time Warner Cable ("Time Warner") asking the Commission to declare that wholesale telecommunications carriers are entitled to interconnect and exchange traffic with ILECs when providing services to other service providers, including VoIP service providers pursuant to sections 251(a) and (b) of the Federal Act. Similar to Ideatek's Complaint in this case, Time Warner was having issues providing telecommunications services in certain rural service areas. The FCC concluded that carriers that utilize existing §251 interconnection to provide telecommunications services to their customers may also use the services for wholesale PSTN services provided to VoIP operators. The FCC cited, among other things, 47 C.F.R. § 51.100(b) which allows carriers to offer non-251 services in a 251 arrangement. In *TWC*, the FCC also made

¹⁷ "Our actions in this Order neither rely on, nor require, the Commission to address the many issues surrounding VoIP interconnection..." Numbering Policies Order, ¶63.

it clear that “the statutory classification of the end-user service, and the classification of VoIP specifically, is not dispositive of the wholesale carrier’s rights under section 251.”¹⁸

28. Finally, the potential for ambiguity in these types of matters lends itself to the original intention of the Federal Act, which is to eliminate monopolies and promote competition in the telecommunications marketplace. Indeed, the 8th Circuit Court of Appeals has previously stated:

... if a provision of the Act is vague we are inclined to interpret the provision in a manner that promotes competition. It is undisputed that Congress passed the Act with the intention of eliminating monopolies and fostering competition.¹⁹

29. Ideatek is a telecommunications carrier as defined under K.S.A. 66-1,187(m) and 47 C.F.R. 51.5. To the extent Wamego may be assuming that Ideatek requires some further certification or authorization before Wamego’s porting and interconnection obligations are triggered, that is incorrect. Wamego’s obligation to interconnect is a duty of all providers, and the functions of interconnection and the provision of exchange access are separate and distinct functions. In its communications with IdeaTek, Wamego has yet to provide any legal support for a claim that its duty to “interconnect directly or indirectly” under 47 C.F.R. 50.100 and 47 U.S.C. 251(a) and provide non-discriminatory service under 47 C.F.R. 202(a) is exempted.

D. The Kansas Telecommunications Act of 1996 – Policy and Priorities

30. K.S.A. 66-2003 reads, in part:

...
(d) As provided in the federal act, in order for telecommunications carriers to provide local exchange service and exchange access service, local exchange carriers and electing carriers shall provide the means to interconnect their respective customers, including, but not limited to, toll access, access to operator services, access to directory listings and assistance, and access to E-911 service.

¹⁸ TWC, ¶9.

¹⁹ WWC License at 891.

(e) Customers shall be accorded number portability and local dialing parity in conformance with national standards to the extent economically and technically feasible. ...

31. Kansas courts have previously found guidance in the general policy directive of K.S.A. 66-2001, where the Kansas legislature made clear that telecommunications access, competition, and protection of the customer are priorities of the state. K.S.A. 66-2001 reads:

It is hereby declared to be the public policy of the state to:

- (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;
- (b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;
- (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;
- (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and
- (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.²⁰

E. KCC Precedent

32. Previous KCC decisions have addressed situations like the present one where an ILEC was wrongfully refusing to port customers and was blocking calls. In the 10-515 Docket²¹, NE Colorado Cellular, Inc. d/b/a Viaero Wireless (“Viaero”) filed a complaint against Rural Telephone Service Company, Inc. (“Rural Telephone”) for Rural Telephone’s failure to route

²⁰ K.S.A. 66-2001.

²¹ Referenced above in Footnote 10. *See also* KCC Docket No. 11-NTWZ-867-COM where Nex-Tech Wireless filed a complaint against Wilson Telephone Company for failing to route local calls to Nex-Tech’s customers, similar to Viaero’s position in the 10-515 Docket.

telephone calls to Viaero subscribers, in an apparent effort to force Viaero to accept unfavorable interconnection terms.²² The Commission found in favor of Viaero, rejecting Rural Telephone's argument that Viaero was required to be designated an eligible telecommunications carrier ("ETC") before it could operate in Rural Telephone's service area.²³ The Commission also rejected Rural Telephone's argument that Viaero must first negotiate and complete an ICA before filing a complaint. Viaero explained why indirect connections were sufficient, and negotiations and/or arbitrations for ICAs were not germane to the complaint as the issue in the docket was only Rural Telephone's failure to properly route local calls to Viaero's customers.²⁴ The Commission found that "Viaero's Complaint is valid as it stands because Viaero's indirect connection with Rural Telephone does not require a negotiated, or arbitrated, interconnection agreement with Rural Telephone prior to filing its Complaint."²⁵

33. Finally, and importantly, citing to Section 251(a) of the Telecom Act, the Commission found in the 10-515 Docket that Viaero had a right to indirectly connect to Rural Telephone, and that Rural Telephone's efforts to force Viaero to directly connect were inconsistent with the law.²⁶ The Commission disagreed with Rural Telephone's characterization of Viaero's indirect connection as "unconventional", citing to an 8th Circuit decision that stated, "In fact, cell-phone companies usually do not choose to connect directly with rural local exchange carriers,

²² 10-515 Docket, "Verified Complaint of NE Colorado Cellular, Inc., dba Viaero Wireless, and Request for Interim Relief and/or Expedited Treatment Pursuant to K.S.A. 82-1-220(a)", filed Feb. 10, 2010, p. 1.

²³ "Rural Telephone's ETC argument is without merit and its citation to only a portion (sic) K.S.A. 66-2004(c) demonstrates its unfaithfulness to the law." Examiner's Findings, p. 3, ¶17.

²⁴ Examiner's Findings, pp. 4-5, ¶20. Viaero's position relied upon, in part, *WWC License*.

²⁵ Examiner's Findings, pp. 5-7, ¶21-23, stating, "In the Examiner's opinion, Rural Telephone's argument is misleading.... Further, none of the federal Circuit Courts, whose determinations have been discussed herein, have been concerned by the fact that a wireless carrier did not have an interconnection agreement with an ILEC prior to providing service in the ILEC's territory."

²⁶ Examiner's Findings, p. 10, ¶30; p. 11, ¶34.

because the volume of business does not make it economically advantageous for the cell-phone company to do so.”²⁷ The Commission noted that in *Atlas Telephone*, the court’s description of routing local calls between wireless customers and rural telephone company (“RTC”) customers made the process seem quite simple²⁸,

Under the terms of the interconnection agreements, the CMRS providers were not required to establish physical connection with the RTC network...Rather, telecommunications traffic could be routed through an (sic) interexchange carrier (“IXC”), Southwestern Bell Telephone Company (“SWBT”). When an RTC customer places a call to a CMRS customer, the call must first pass from the RTC network through a point of interconnection with the SWBT network. SWBT then routes the call to a second point of interconnection between its network and the CMRS network. The call is then delivered to the CMRS customer (fn2. The converse is true for calls originated by a CMRS customer and delivered to an RTC customer.). In contrast, were the RTC and CMRS networks directly connected, the call would pass only through a single point of interconnection.

The Commission found that the *Atlas Telephone* decision described the same indirect interconnection as the Viaero indirect connection with no report of technical difficulties, concluding that Rural Telephone could properly route local calls to Viaero customers when Viaero is indirectly connected with Rural Telephone.²⁹

IV. COMPLAINT

COUNT 1 – Failure to Port Out

34. Ideatek incorporates its allegations contained in paragraphs 1 through 33 herein.

35. Ideatek has submitted a valid number portability request to Wamego and Wamego is refusing to port Ideatek’s customers. This is a violation of Wamego’s obligations under 47 CFR 52.34(c), 47 U.S.C. 251(b)(2) and K.S.A. 66-2003(e).

²⁷ Examiner’s Findings, p. 10, ¶31, citing to *Alma Communications Company v. Missouri PSC*, 490 F.3d 619, 622 (8th Cir. 2007).

²⁸ Examiner’s Findings, p.10, ¶32.

²⁹ Examiner’s Findings, p. 11, ¶36.

COUNT 2 – Failure to Exchange Traffic

36. Ideatek incorporates its allegations contained in paragraphs 1 through 33 herein.

37. Wamego is threatening to violate Kansas and federal law by refusing to route traffic from their customers to Ideatek's customers which will cause Wamego customers to receive incomplete, non-functional, and discriminatory service. The violation is blatant since the physical facilities to complete calls between these customers already exist; Wamego merely refuses to update its switch with the routing information to comply with Kansas law.

38. Wamego has indicated to Ideatek that it will not complete calls from its customers to Ideatek's customers unless Ideatek executes a written interconnection agreement and either directly interconnects with Wamego's network or negotiates with a third party such as AT&T to provide Wamego the capability it claims it lacks to exchange traffic with Ideatek. There is a technically feasible means for Wamego to terminate local calls to Ideatek customers. Wamego's demand for IdeaTek to resolve its interconnection obligations, and its unilateral threat of disconnection of calls from its customers to Ideatek's customers, constitutes the establishment of a competitive barrier to entry and an attempt to extract inappropriate charges from Ideatek for interconnection trunks not necessary for purposes of completing these calls.

39. Such practices by Wamego will harm Kansas consumers by blocking or removing technically feasible calling routes and preventing local calls from being completed. Wamego's actions are an attempt to leverage a competitive carrier into seeking an unnecessary direct interconnection and paying inappropriate charges for completing local calls. Wamego's actions are inconsistent with or violate 47 U.S.C. §251 and the following Kansas laws:

K.S.A. 66-1,189 – Failing to furnish reasonably efficient and sufficient service; engaging in unjust and unreasonably discriminatory behavior; and charging unjust and unreasonable rates.

K.S.A. 66-2001(e) – Engaging in business practices that are inconsistent with the public interest, convenience and necessity.

K.S.A. 66-2003(d) – Contrary to the requirements of the federal act, (1) attempting to limit interconnection by a competing carrier that results in Wamego’s failure to complete the calls of its customers;

K.S.A. 66-2005(y) – The mandate that a telecommunications carrier is entitled to interconnection with a local exchange carrier to transmit and route voice traffic between both the telecommunications carrier and the local exchange carrier regardless of the technology by which the voice traffic is originated by and terminated to a consumer.

40. Ideatek has made every effort to resolve this matter informally with Wamego but such efforts have been unsuccessful. Commission intervention is necessary in order to assure continued service to Kansas customers and prevent an incumbent carrier from erecting barriers to competition in its territory.

V. MOTION FOR ASSESSMENT PURSUANT TO K.S.A. 66-1502

41. The Commission’s assessment statute, K.S.A. 66-1502, provides that the Commission shall assess its expenses in a docket “against the public utility or common carrier investigated”, which in this case is Wamego. Assessing all costs to Wamego would be equitable since Ideatek has made every effort to resolve this matter with Wamego directly, but Wamego has refused to port and refrain from blocking customer calls and has not provided any authority

supporting its actions. This Complaint is necessary only because of Wamego's non-compliance with its legal obligations under state and federal law.

42. In the alternative, Ideatek requests that the Commission hold in abeyance any assessment decision until a final order on the substantive matters in this Complaint is rendered. The issue of proper assessment can be addressed in conjunction with the other issues involved in the docket and, in fact, the resolution of the other issues may impact the assessment determination.

VI. RELIEF REQUESTED

43. Ideatek respectfully requests that his Commission;
- (a) Make findings that Wamego has violated the federal and state laws set forth above;
 - (b) Order Wamego to release telephone numbers that Wamego customer are requesting to port to Ideatek;
 - (c) Order Wamego to take all actions necessary to complete its subscribers' calls to Ideatek as soon as possible;
 - (d) Impose penalties upon Wamego pursuant to K.S.A. 66-138 for the violations set forth herein;
 - (e) Assess the costs of this docket to Wamego; and
 - (f) Take any further action the Commission deems appropriate and necessary to address the violations set forth herein.

VII. REQUEST FOR AN INTERIM ORDER AND EXPEDITED TREATMENT

44. Ideatek respectfully requests that the Commission either immediately order Wamego to route calls to Ideatek's network pending the outcome of this proceeding or, in the

alternative, schedule a hearing in this matter on an expedited basis. Ideatek believes expedited treatment of this issue is well within the Commission's authority and is proper given the circumstances.

45. First, Wamego's refusal to port customer numbers who have requested that their numbers be ported to Ideatek is causing economic harm to the business operations of a Kansas business. Wamego's behavior has the potential to further directly impact customers of both carriers, in the event that Wamego does not route calls to IdeaTek. While the scope of the problem is presently limited to a few customers, the problem is so fundamental that it undermines the concept of the PSTN and denies citizens their right to an open and interconnected telecommunication network.

46. Second, the issue is easily resolved. As explained in the Affidavit of Daniel Friesen (**Attachment A** to this Complaint), the problem can be resolved through simple updating steps within Wamego's switch. These are routine activities that carriers typically conduct on a periodic basis in the normal course of business. Wamego's refusal to perform them stems not from their difficulty, but instead from the leverage it perceives it can create by its refusal and/or from a fundamental misunderstanding of its obligations to route its customers' traffic; obligations it is required to understand as a LEC. In essence, it will be impossible for Ideatek to effectively provide service to its customers located in Wamego's home markets until Wamego is compelled to meet its interconnection and non-discriminatory service access obligations.

47. Third, granting Ideatek interim relief will prevent further competitive harm which may be irreparable and/or difficult to quantify. Ideatek cannot effectively compete with Wamego until the issue is resolved, stranding substantial investment in network facilities, sales, and marketing activities. If Ideatek subscribers or prospective subscribers are unable to receive calls

from Wamego subscribers, Ideatek cannot offer a service that meets basic customer needs, harming its reputation in the marketplace.

48. Finally, granting this Complaint expedited treatment is consistent with K.S.A. 82-1-220a, which provides for expedited treatment of interconnection disputes between competing telecommunications providers. Ideatek respectfully requests that the Commission proceed under this rule to resolve this matter, which falls within the parameters of the Commission's rule.

49. The Commission can also expedite this matter pursuant to the emergency procedures of K.S.A. 77-536. This is a situation involving an immediate danger to the public health, safety and welfare that requires immediate state agency action to remedy. Blocking the completion of local calls to some customers potentially isolates those customers from hospitals, public services, schools and other important facilities and services. Additionally, when an incumbent company refuses to port customers upon request to a competing carrier or blocks calls involving the customers of a competing carrier, it significantly undermines competition and irreparably harms the competing carrier.

WHEREFORE, Ideatek respectfully requests the Commission issue an interim emergency order, an assessment order, and a final order as stated above for the reasons set forth herein.

Respectfully submitted,

Glenda Cafer

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COUNSEL FOR IDEATEK TELCOM, LLC

AFFIDAVIT OF DANIEL FRIESEN

I, Daniel Friesen, do hereby testify as to the following to be true based on my own personal knowledge:

My name is Daniel Friesen, I am entrepreneur and the co-founder and chief innovative officer of IdeaTek Telcom, LLC. I have been involved in one part or another of telecommunications and the deployment of Internet services for at least 20 years.

My background comes from building both a broadband company and a competitive telecommunications company (Ideatek) from the ground up in rural Kansas. I have been either directly involved or supervised at some level the planning, development, deployment, and operations of much of IdeaTek's technical operations. IdeaTek has a few thousand customers and over the years has serviced a range of customers from residential to Fortune 100 enterprises.

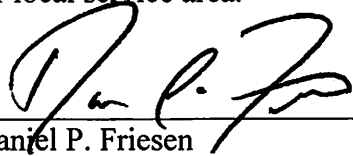
I have previously and continue from time to time to be involved with the configuration and operations of our voice switches including the routing, trunk design, and translation rules that our switches follow to route traffic to and from our voice customers.

I can say with quite certainty that Wamego Telecommunications Company, Inc. has the capabilities via one route or another to deliver its originating traffic to IdeaTek for termination. In my discussions with other rural ILECs they mentioned they often use their AT&T tandem trunks to exchange traffic to carriers such as smaller CLECs and wireless carriers they are not directly interconnected with, and I have not been provided any information as to why Wamego is different.

Regardless, in the event that Wamego does not want to use their AT&T trunking like so many other smaller ILECs do, there are many other technical ways to terminate traffic to IdeaTek. Perhaps the most simplistic alternative way to deliver the traffic indirectly to IdeaTek is for Wamego to send its traffic to one of the dozens of VoIP service carriers who can terminate the traffic indirectly for them. These services typically cost fractions of a cent per minute and often take just days to turn up.

Using bulk VoIP terminating services to terminate to carriers not otherwise directly connected is an extremely common practice among smaller carriers. We do this all the time as it is our obligation to deliver our customers' traffic to its destination. Waiting for the terminating carrier (the called party) to interconnect to us seems contrary to the fundamentals of how voice traffic delivery works. While I realize using a third party provider to terminate traffic may not be a common practice for Wamego, I do believe

they are readily familiar with the practice, use the practice at least for their own affiliated CLEC operations, and simply do not want to employ the practice because it will cost them money and/or enable a competitor in their local service area.

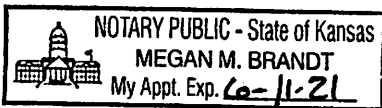


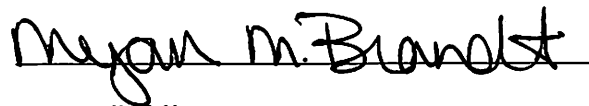
Daniel P. Friesen

STATE OF KANSAS)
) ss
COUNTY OF Reno)

On this 26th day of March, 2019, Daniel Friesen appeared before me personally and executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and Commonwealth aforesaid, the day and year first above written.





Notary Public

My appointment expires: 06-11-21