

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-10-SE-092
)	
Nex-Tech, Inc.)	Acct. No. 201032100042
)	
)	FRN No. 0002320430

ORDER

Adopted: September 9, 2010

Released: September 9, 2010

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Nex-Tech, Inc. (“Nex-Tech”). The Consent Decree terminates the Bureau’s investigation into whether Nex-Tech failed to file timely applications to renew its broadband Personal Communications Services C-Block licenses, call signs WPOJ817 and WPOJ818, in the Great Bend and Hays, Kansas basic trading areas, in violation of section 1.949(a) of the Commission’s rules (“Rules”),¹ and operated the stations without Commission authorization in violation of section 301 of the Communications Act of 1934, as amended (the “Act”), and section 1.903(a) of the Rules.²

2. The Bureau and Nex-Tech have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Nex-Tech possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act³ and sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jeff Wick, Chief Operating Officer,

¹ 47 C.F.R. § 1.949(a).

² 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

Nex-Tech, Inc., 2418 Vine Street, Hays, KS 67601, and to Tony S. Lee, Esq., Venable LLP, 575 7th Street, N.W., Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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Nex-Tech, Inc.)	Acct. No. 201032100042
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)	FRN No. 0002320430

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission (“Bureau”) and Nex-Tech, Inc. (“Nex-Tech”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Nex-Tech failed to file timely applications to renew its broadband Personal Communications Services C-Block licenses, call signs WPOJ817 and WPOJ818, in the Great Bend and Hays, KS basic trading areas in violation of section 1.949(a) of the Commission’s Rules (“Rules”), and operated the stations without Commission authorization in violation of section 301 of the Communications Act of 1934, as amended (the “Act”), and section 1.903(a) of the Rules.¹

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the compliance obligations and compliance program described in this Consent Decree at Paragraph 8.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Investigation” means the investigation initiated by the Bureau in EB File No. EB-10-SE-092 regarding whether Nex-Tech violated section 301 of the Act and sections 1.903(a) and 1.949(a) of the Rules by failing to file timely applications to renew its broadband Personal Communications Services C-Block licenses and operating the stations without Commission authorization.

¹ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

- (h) “Licenses” means the broadband Personal Communications Services C-Block licenses for Stations WPOJ817 and WPOJ818, in the Great Bend and Hays, KS basic trading areas.
- (i) “Nex-Tech” means Nex-Tech, Inc. as well as its predecessors-in-interest and successors-in-interest.
- (j) “Parties” mean Nex-Tech and the Bureau, and each a “Party.”
- (k) “Rules” mean the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Section 301 of the Act and section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under and in accordance with a Commission granted authorization.² Section 1.949(a) of the Rules requires the licensee of a wireless radio station to file its renewal application “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”³ Absent a timely filed renewal application, a wireless radio station license automatically terminates on the expiration date specified in the authorization.⁴

3. Nex-Tech, a rural telephone company formerly known as RTSC Communications, Inc.,⁵ acquired the Licenses on June 30, 1999, with ten-year license terms ending June 30, 2009.⁶ Nex-Tech did not file applications for renewal of the Licenses by the June 30, 2009 deadline. On September 4, 2009, Nex-Tech filed renewal applications for the Licenses, along with requests for waivers of the filing deadlines.⁷ On September 9, 2009, Nex-Tech filed an application for Special Temporary Authority (“STA”) to continue operating on the frequencies under the Licenses.⁸ Because it appeared that Nex-Tech may have operated the stations without authority after expiration of the Licenses, the Wireless Telecommunications Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action.

² 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

³ 47 C.F.R. § 1.949(a).

⁴ 47 C.F.R. § 1.955(a)(1).

⁵ On January 23, 2002, RTSC Communications, Inc. filed an administrative update informing the Commission that it had, among other things, changed its name to “Nex-Tech, Inc.” File No. 00007743244 (Jan. 23, 2002).

⁶ File No. 0000012726 (granted June 30, 1999).

⁷ File Nos. 0003957435 (WPOJ817) and 0003957438 (WPOJ818) (Sept. 4, 2009) (Ex.A: Requests for Waiver and Reinstatement *Nunc Pro Tunc*).

⁸ File No. 0003960495 (Sept. 9, 2009). The STA was granted for a six-month period on September 11, 2009, under call signs WQKT936 and WQKT937, and extended for another six-month period on March 1, 2010.

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Nex-Tech agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Nex-Tech agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Nex-Tech concerning the matters that were the subject of the investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Nex-Tech with respect to Nex-Tech's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Nex-Tech agrees to (i) create within thirty (30) days after the Effective Date a Compliance Plan related to future compliance with the Act, the Rules, and the Commission's Orders, (ii) designate a Compliance Officer to oversee Nex-Tech's compliance with the Compliance Plan, and (iii) establish operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 301 of the Act and sections 1.903(a) and 1.949(a) of the Rules. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Nex-Tech will assign the business administration supervisor central responsibility as the Compliance Officer to oversee Nex-Tech's compliance with the Compliance Plan and to ensure the timely filing of applications to renew Nex-Tech's wireless licenses.
- (b) **Training Program.** Nex-Tech will implement and maintain a training program for all existing employees, as well as any new employees hired after the Effective Date, whose responsibilities include compliance with FCC license renewal policies.
- (c) **Compliance Reports.** Nex-Tech will file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each Compliance Report shall include a certification by an officer, as an agent of and on behalf of Nex-Tech, stating that the officer has personal knowledge that Nex-Tech (i) has established operating procedures

intended to ensure compliance with the terms and conditions of this Consent Decree and with section 301 of the Act and sections 1.903(a) and 1.949(a) of the Rules, together with an accompanying statement explaining the basis for the officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the officer cannot provide the requisite certification, the officer, as an agent of and on behalf of Nex-Tech, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree, the Act, and the Rules, and (ii) the steps that Nex-Tech has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All Compliance Reports shall also be submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov and Kathy Berthot at Kathy.Berthot@fcc.gov.

- (d) **Termination Date.** Unless stated otherwise, the requirements of this Paragraph 8 of the Consent Decree will expire twenty-four (24) months after the Effective Date.

9. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against Nex-Tech or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Nex-Tech with the Act, the Rules, or Commission Orders.

10. **Voluntary Contribution.** Nex-Tech agrees that it will make a voluntary contribution to the United States Treasury in the amount of eight thousand dollars (\$8,000). The payment will be made within thirty (30) days after the Effective Date. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Nex-Tech will also send electronic notification to Kathy.Harvey@fcc.gov and Kathy.Berthot@fcc.gov on the date said payment is made.

11. **Waivers.** Nex-Tech waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. Nex-Tech shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Nex-Tech nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Nex-Tech shall waive any statutory right to a trial *de novo*. Nex-Tech hereby

agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

12. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Nex-Tech does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** Nex-Tech agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters set forth herein. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Rules and orders.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Jeff Wick
Chief Operating Officer
Nex-Tech, Inc.

Date