

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE PETITION OF IAT)
COMMUNICATIONS, INC. DBA NTCH-IDAHO,) CASE NO. GNR-T-03-8
INC. OR CLEAR TALK FOR DESIGNATION AS)
AN ELIGIBLE TELECOMMUNICATIONS)
CARRIER.) ORDER NO. 29261
_____)**

On February 3, 2003, IAT Communications, Inc. dba NTCH-Idaho, Inc. or Clear Talk filed its Petition requesting that the Commission designate it as an eligible telecommunications carrier (“ETC”) in several areas in southeastern Idaho. On May 5, 2003, Clear Talk filed an Amendment to its Petition stating that it was not seeking designation as an ETC for purposes of receiving support from the Idaho Universal Service Fund pursuant to *Idaho Code* § 62-610. In addition, the Company requested that the Commission enter an interim Order granting the Company ETC status in areas that are not contested. In other words, the Company seeks ETC designation in non-rural areas, or more specifically, in areas that are served by Qwest Corporation.

In this Order the Commission shall separate Clear Talk’s request for an interim Order from the question of whether Clear Talk should be designated as an ETC in areas served by rural telephone companies. Accordingly, Clear Talk’s interim request for ETC status in non-rural areas is addressed by this final Order. The remaining issues shall be processed as directed by Order No. 29240 in the joint proceeding involving Clear Talk’s filings and a similar Application filed by NPCR, Inc. dba Nextel Partners.

CLEAR TALK’S REQUEST FOR AN INTERIM ORDER

Clear Talk states that it provides Personal Communications Service also referred to as Commercial Mobile Radio Service (“CMRS”) or wireless service in southeast Idaho as evidenced by the map attached as Exhibit 2 to its Petition. Clear Talk contends it serves these areas in accordance with licenses granted to IAT Communications by the Federal Communications Commission (“FCC”). These licenses are PCS Basic Trading Area (“BTA”) Nos. 202 (Idaho Falls), 353 (Pocatello) and 451 (Twin Falls).

Clear Talk maintains it meets the requirements to be designated as an ETC by the Commission in Qwest service areas in southeastern Idaho.¹ Specifically, in compliance with federal and state authorities, the Company states that it offers or will offer the following services through its wireless product: 1) voice-grade access to the public switched network; 2) local usage; 3) the functional equivalent of dual-tone multi-frequency signaling; 4) single party service; 5) access to emergency service where available; 6) access to operator services; 7) access to interexchange service; 8) access to directory assistance; and 9) toll limitation for qualifying low-income customers. Clear Talk contends that upon designation as an ETC in the designated Qwest service areas it will make available a “universal service” offering that includes all of the supported services above for consumers as required by the FCC and this Commission. In addition, the Company states it will provide service to any requesting customer within the Qwest designated service area. The Company states it will provide this service through its existing network infrastructure and spectrum, including the same antennae, cell sites, towers, trunking, mobile switching and interconnection facilities currently used by Clear Talk to serve its customers.

Clear Talk also alleges it will advertise and promote the availability and price of its universal service offering in Qwest service areas in southeastern Idaho by using media of general distribution, including radio, newspaper and billboard advertising. The Company also states it will use specially targeted advertising and possibly television advertising. Clear Talk states it will expand upon this advertising plan in the designated areas, as necessary, to ensure consumers are fully informed of Clear Talk’s universal service offering.

Clear Talk has attached the Declaration of Larry Curry in support of its Application. Curry states that he is the operations manager for IAT communications, Inc. and president of NTCH-Idaho, Inc., the wholly owned subsidiary of IAT, which operates IAT’s wireless licenses in Idaho and does business as Clear Talk. Curry makes the following representations in support of the Company’s Application:

I declare and certify as follows, . . . that: (i) Clear Talk offers wireless telecommunications service in the areas shown on the map attached as Exhibit 2 to Clear Talk’s Petition; (ii) as set forth in the Petition, Clear Talk

¹ Clear Talk contends it will provide these services in the Qwest southern Idaho telephone exchanges of American Falls, Blackfoot, Bliss, Buhl, Burley, Gooding, Idaho Falls, Jerome, Kimberly, Lava Hot Springs, McCammon, Pocatello, Rexburg, Rigby, Shelley, Twin Falls and Wendell.

offers, or will offer, all of the services designated by the Commission for support. . .; (iii) Clear offers, or will offer, the supported services using its own facilities and the facilities of other carriers with whom Clear Talk contracts for services; and (iv) Clear Talk advertises, and will advertise, the availability of the support services and the charges therefore using media of general distribution, including radio, newspaper and billboard advertising, specially targeted advertising, and potentially television as well.

Petition and Declaration at 12-13. Based on the foregoing, Clear Talk requests that the Commission grant it ETC status in the Qwest southeastern Idaho service areas.

LEGAL STANDARD

The Telecommunications Act of 1996 was Congress's response to the dramatic technological advances in the communications field in recent decades and was meant to reduce overall regulation and to enhance competition. 47 U.S.C. §§ 151-614. One of the Act's fundamental goals is the promotion of universal service, that is to ensure that all Americans have access to affordable phone service. *See e.g.* 47 U.S.C. §§ 151 and 254(b)(2) ("Access to advanced telecommunications and information services should be provided in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas[.]") To further this goal, federal and state subsidies, universal service funds, are available to encourage providers of telecommunications services to provide service to rural areas and low-income consumers. 47 U.S.C. § 214(e). The subsidized telecommunications services are known as universal service offerings. Only carriers that are common carriers, provide or can provide specified universal services, and have been designated as ETCs by a state commission or the FCC are eligible to receive these subsidies.² *See* 47 U.S.C. §§ 214(e)(2) and 254(e). Through the Act state commissions are given the authority to designate common carriers as ETCs. 47 U.S.C. §§ 214(e)(2) and 254.

Applications for ETC status are governed by both federal and state law. Because Clear Talk is only seeking ETC designation for purposes of seeking federal subsidies, the Commission's review will employ the federal requirements that must be satisfied rather than this

² The FCC has adopted the principle that ETC status and federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, 46-48 (1997) (*First Report and Order*). *See also* First Report and Order, 12 FCC Rcd at 8932-8934, ¶¶ 286-290, 8944-8945, ¶¶ 311-313. Thus, wireless carriers are also eligible to be designated as an ETC under § 214(e) criteria and to receive federal subsidies. *Id.*

State's requirements. *See Idaho Code* § 62-610 *et seq.* and Order No. 27715, (Case No. GNR-T-98-7).

In order to be designated as an ETC, Section 214(e) of the Act requires a common carrier to offer the services that are supported by the federal universal service support mechanisms under 47 U.S.C § 254(c) throughout its ETC-designated service area, use at least some of its own facilities in providing these services, and to advertise the availability and price of these services. 47 U.S.C. § 214(e)(1)(A) and (B). *See also* 47 C.F.R. § 54.201(d). The list of designated services a telecommunications carrier must be able to provide after designation as an ETC are as follows:

- (1) Voice grade access to the public switched network;
- (3) Dual tone multi-frequency signaling or its functional equivalent;
- (4) Single-party service or its functional equivalent;
- (5) Access to emergency services where available;
- (6) Access to operator services;
- (7) Access to interexchange service;
- (8) Access to directory assistance; and
- (9) Toll limitation.

See 47 C.F.R. § 54.101(a).³ The FCC has stated that a common carrier does not have to actually provide the supported services in a service area prior to its designation as an ETC. *Report and Order, In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC. Rcd. 15168, 15169 at ¶ 2 (2000).

This Commission must grant ETC status to any qualified applicant, provided that the Company is not seeking to serve exchanges where the incumbent telephone company is a rural telephone Company. For companies seeking ETC status in areas served by rural telephone companies, the Commission must first make a finding that designating more than one carrier in that area is in the public interest. 47 U.S.C. § 214(e)(2).

³ In order to receive federal universal funds an ETC is obligated to make available Lifeline and Link Up services to qualifying low-income customers. 47 C.F.R. §§ 54.405 and 54.411.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction pursuant to 47 U.S.C. §§ 214(e)(2) and 254 and *Idaho Code* § 62-610 *et seq.* to review and rule upon applications filed by telecommunications carriers to be designated as ETCs in the State of Idaho.

Based on the Company's filings, the Commission finds that Clear Talk is a wireless common carrier that has licenses granted by the FCC to provide service in southeastern Idaho. The Commission further finds that Clear Talk has met the requirements for ETC designation in Qwest exchanges in southeastern Idaho as it will offer the supported services to all customers in its designation areas through its own facilities or those of other carriers and will advertise these services.⁴ Specifically, the Commission finds that: 1) Clear Talk will provide voice-grade access to the public switched network through an interconnection agreement with Qwest; 2) Clear Talk currently offers unlimited local usage in its monthly service plan at no additional charge; 3) Clear Talk offers the functional equivalent of dual-tone multi-frequency signaling by using out-of-band signaling and in-band multi-frequency signaling; 4) Clear Talk provides Single Party Service by providing a dedicated message path for the length of all customer calls; 5) Clear Talk currently provides 911 access to emergency service and will be able to provide E911 service upon request; 6) Clear Talk offers its customers access to operator services and will continue to make them available; 7) Clear Talk will provide access to an interexchange service through direct interconnection arrangements with MCI; 8) Clear Talk will provide access to directory

⁴ In regard to the manner by which a common carrier demonstrates that it can provide universal services to a state Commission the FCC has stated:

A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services. We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.

In the Matter of Federal-State Joint Board on Universal Service, 15 F.C.C.R. 15168, 15178 at ¶ 24 (2000). Clear Talk has provided the Declaration of Larry Curry in support of its Petition.

service by dialing “411” or “555-1212”; and, 9) Clear Talk will provide toll limitation for qualifying low-income customers.

The Commission also finds based on the Company’s representations that it has the capability to provide these services throughout the Qwest southern Idaho telephone exchanges of American Falls, Blackfoot, Bliss, Buhl, Burley, Gooding, Idaho Falls, Jerome, Kimberly, Lava Hot Springs, McCammon, Pocatello, Rexburg, Rigby, Shelley, Twin Falls and Wendell.

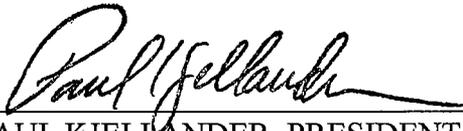
The Commission concludes that Clear Talk’s Petition and supporting materials demonstrate that the Company has the ability and commitment to provide all the services required for ETC designation throughout the Qwest exchanges in southeastern Idaho. Consequently, pursuant to 47 U.S.C. § 214(e), the Commission grants Clear Talk’s request for an interim Order. However, this Order is limited only to Clear Talk’s request to be designated as an ETC in the above Qwest service areas. This Order does not grant Clear Talk eligibility to seek State of Idaho Universal Service Funds nor does it grant Clear Talk ETC designation in areas served by rural telephone companies. In the case of the later issue it will be decided after further proceedings. *See* Order No. 29240.

ORDER

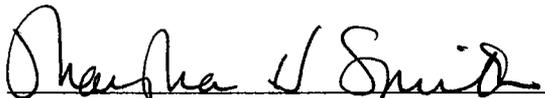
IT IS HEREBY ORDERED that IAT Communications, Inc. dba as NTCH-Idaho, Inc. or Clear Talk is granted status as an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e) for the following non-rural Qwest service areas in southeastern Idaho: American Falls, Blackfoot, Bliss, Buhl, Burley, Gooding, Idaho Falls, Jerome, Kimberly, Lava Hot Springs, McCammon, Pocatello, Rexburg, Rigby, Shelley, Twin Falls and Wendell.

THIS IS A FINAL ORDER as to this issue. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-T-03-8 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GNR-T-03-8. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

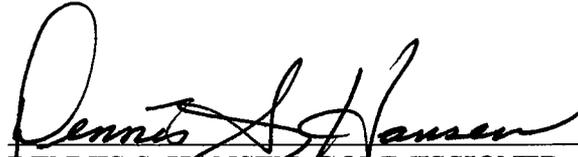
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th
day of June 2003.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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