

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: MAY 20, 2009

SUBJECT: APPLICATION OF NET TALK.COM, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; CASE NO. NTA-T-08-01

On November 18, 2008, NET TALK.COM, INC. (“Net Talk” or “Company”) filed an Application for a Certificate of Public Convenience and Necessity (CPCN) pursuant to *Idaho Code* §§ 61-526 through 528, IDAPA 31.01.01.111 and Commission Order No. 26665 to provide facilities-based local exchange and resold interexchange telecommunications services throughout Idaho. On March 6, 2009, Net Talk filed a revised Application and proposed Local Exchange Telecommunications Tariffs, in accordance with Staff’s recommendations.

On April 15, 2009, the Commission issued a Notice of Application and Modified Procedure establishing a 21-day comment period for interested parties to submit comments regarding Net Talk’s Application for a CPCN. *See* Order No. 30781. Thereafter, Commission Staff was the only party to submit comments regarding Net Talk’s Application.

THE APPLICATION

Net Talk is a Florida corporation and lists its principal place of business as North Miami Beach, Florida. *Application* at 2-3. Net Talk is registered with the Idaho Secretary of State as a foreign limited liability company and lists Incorp Services, Inc., 921 S. Orchard, Suite G, Boise, Idaho 83705, as its Idaho registered agent for service. *Id.* at 3. Net Talk is a newly formed company with a Class V switching facility data center located in North Miami Beach, Florida. *Id.* at 7. Net Talk states that it will compete with other Voice over Internet Protocol (VoIP) providers and local incumbent local exchange carriers (ILECs) to provide facilities-based

local exchange and resold interexchange services. *Id.* at 6. The Company's service area will encompass the "geographic areas currently served by Qwest Communications." *Id.* Net Talk intends to "offer its services immediately upon certification utilizing its own and/or leased facilities and the resale of other carrier's facilities and network elements." *Id.*

Net Talk has not negotiated an interconnection agreement with an ILEC in the State of Idaho "but is planning on doing so in the very near future." *Id.* at 9.

In its Application, Net Talk states that it has "reviewed all of the Commission's Rules applicable to competitive local exchange service and interexchange service providers and agrees to comply with those rules except to the extent the rules are explicitly waived for Net Talk or for all carriers in the same class." *Id.* Net Talk has requested a waiver of any reporting requirements "not applicable to competitive providers like Net Talk . . ." because they "(1) are not consistent with the demands of a competitive market; and (2) they constitute an undue burden on a competitive provider. . . ." *Id.* Net Talk declared that it has reserved the right to seek any regulatory waivers it deems necessary in order to "compete effectively in the Idaho local exchange services market." *Id.* Finally, the Company requests a waiver of the escrow account requirements because it will not require advanced payments or deposits from its customers. *Id.*

STAFF COMMENTS

Staff has reviewed Net Talk's Application and recommends that the Company be granted a CPCN subject to the following conditions: (1) compliance with the Number Pool Administrator and Order No. 30425 mandating NRUF and Utilization reporting; (2) contribution to the Idaho Universal Service Fund, Idaho Telecommunications Relay System, ITSAP and any future reporting requirements deemed appropriate for competitive telecommunication providers; and (3) upon CPCN issuance, filing a final and complete price list with the Commission containing all of its rates, terms and conditions. Staff Comments at 3.

Staff stated that it has "worked closely with the Company to bring its Application and illustrative price lists into compliance with Idaho Code and the Commission's Customer Relations Rules." *Id.* at 2. In addition to competing in "the Basic Local Service market," Net Talk will offer other services such as VoIP. *Id.* In order to offer its VoIP service, Net Talk must obtain telephone numbers from the Number Pool Administrator and interconnect with local exchange providers. *Id.* Prior to obtaining an initial block of telephone numbers, industry

numbering standards and FCC rules require that a “provider has either: (1) a license or authority issued by the FCC; or (2) . . . a CPCN issued by the appropriate state regulatory body, such as a public utilities commission.” *Id.*

“To date, the FCC has not made a determination of the regulatory status of interconnected VOIP services.” *Id.* The FCC could either classify the nature of interconnected VoIP offerings, such as those offered by Net Talk, as information services or preempt state regulation of all VoIP services. *Id.* at 2-3. In either case, the Commission would no longer be authorized to regulate these services. *Id.* at 3.

Because Net Talk must obtain a CPCN in order to obtain numbering resources, “denying the Application for a CPCN could have the practical effect of denying Net Talk entry into the Idaho telecommunications market.” *Id.* Staff believes that “approval of this Application would be consistent with the Commission’s obligation, under state and federal statutes, to promote competition for telecommunications services, including basic local exchange service.” *Id.* The type of service offered by Net Talk, “interconnected VoIP service [,] is the functional equivalent of circuit switched local exchange services. . . .” *Id.* Thus, granting the Application would “afford Net Talk the same numbering resources that are currently used by Idaho LECs without question or restriction of the services they are offering.” *Id.*

Staff’s initial concerns with Net Talk’s Application regarding the approaching 208 area code exhaust were alleviated once the Company filed an amended Application wherein it formally agreed to “comply with all federal and state guidelines that regulate and monitor Idaho telephone numbers.” *Id.*

COMMISSION DECISION

Does the Commission wish to approve Net Talk’s Application for a Certificate of Public Convenience and Necessity? If so, does the Commission wish to issue a CPCN subject to the conditions set forth in Staff’s comments?



Neil Price
Deputy Attorney General