

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NEW TALK, INC. FOR)	
DESIGNATION AS AN ELIGIBLE)	CASE NO.
TELECOMMUNICATIONS CARRIER IN THE)	2008-00539
COMMONWEALTH OF KENTUCKY)	

O R D E R

On December 10, 2008, New Talk, Inc. ("New Talk"), a competitive local exchange carrier, filed a petition under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC") to receive federal universal service support for service offered throughout its service area in the state of Kentucky.¹ On February 2, 2008, New Talk filed an amended petition requesting only low-income support and stating that it is not seeking high-cost support.²

The Amended Petition states that: (1) New Talk meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;³ (2) New Talk requests designation throughout each of the designated areas within its service area;⁴ (3) in accordance with 47 U.S.C. § 214(e)(2), New Talk is entitled to be

¹ New Talk requests ETC designation in the service territory of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky. Petition at 1.

² Amended Petition at 1.

³ Id. at 1, 3.

⁴ Id.

designated as an ETC in non-rural wirecenters;⁵ and (4) designation of New Talk as an ETC for the designated areas served in Kentucky will serve the public interest.⁶

On February 12, 2009, the Commission set forth a procedural schedule that included opportunity for public comment, discovery, and opportunity to request a hearing. The procedural schedule is now complete. No request for a public hearing in this matter has been received by the Commission. For these reasons, the Commission finds that this matter is now ripe for a decision.

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), "only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific Federal universal service support." Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

⁵ Id. at 8.

⁶ Id.

As outlined in 47 C.F.R. § 54.201(d), an ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore using media of general distribution”; and (4) if the petitioner meets the definition of a “rural telephone company” pursuant to 47 U.S.C. § 153(37), the petitioner must identify its study area; or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

New Talk has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. New Talk certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in 47 C.F.R. § 54.101(a). New Talk has also certified that, in compliance with 47 C.F.R § 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

ADVERTISING SUPPORTED SERVICES

New Talk has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(b) to advertise the availability of the supported services and the charges therefor using media of general distribution. In its petition, New Talk states that it will

publicize the availability of Lifeline and Link-Up in a manner reasonably designed to reach those likely to qualify for those services, as required by 47 C.F.R. §§ 54.405(b) and 54.411(d). New Talk shall also be required to advertise each of the supported services on a regular basis in newspapers, magazines, television, and radio, in accordance with 47 C.F.R. § 54.201(d)(2).

NON-RURAL STUDY AREAS

The Federal Communications Commission (“FCC”) has previously found designation of additional ETCs in areas served by non-rural telephone companies to be in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of 47 U.S.C. § 214(e)(1).⁷

OFFERING THE SUPPORTED SERVICES USING A CARRIER’S OWN FACILITIES

New Talk’s petition contains a unique request in that this carrier states that it is only seeking support for the provision of Lifeline and Link-Up services and, specifically, is not requesting high-cost support. Typically, ETC petitions before this Commission state that a carrier is seeking an ETC designation so it may receive federal universal service support for a combination of both low-income and high-cost support. New Talk states that its target market is Lifeline and Link-up customers and it will offer all of the services outlined under 47 U.S.C. § 254(c) through facilities obtained as unbundled network elements (“UNEs”), or the equivalents thereof. New Talk does not have its own network infrastructure within the state of Kentucky. It provides services to its customers

⁷ See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

by reselling service purchased from other carriers and through UNEs, which allow for the end-to-end switching and delivery of telephone calls. New Talk contends that its use of UNEs, including loops, as defined in 47 U.S.C § 251, or the equivalents, commingled with 47 U.S.C. § 271 elements,⁸ meets the federal regulatory definition of “facilities”.⁹

As discussed previously in this Order, 47 C.F.R. § 54.201(d) defines the requirements that a carrier must fulfill in order to be granted ETC status. Under section (d), the carrier must provide the supported services by “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” The next section, 47 C.F.R. § 54.201(e), defines the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the service that are designated for support pursuant to subpart B of this part.” 47 C.F.R. § 54.201(f) provides that “the term ‘own facilities’ includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term ‘facilities’ under this subpart.”¹⁰

New Talk has requested to become an ETC but is only seeking authorization to receive low-income support and is not requesting high-cost support. The Commission has not found any evidence that the FCC, either by statute or regulation, restricts the certification and designation of ETC status to carriers who agree to multiple areas of

⁸ This combination of UNEs and loops would be provided pursuant to an agreement between New Talk and another carrier. See 47 U.S.C. § 271.

⁹ See footnote 9 of the Amended Petition at 7.

¹⁰ See, e.g., 47 C.F.R. §§ 51.307--51.318, which outline the requirements for carrier access to and use of unbundled network elements.

support. Although New Talk's petition is unique, there is no basis for denying the request for ETC designation simply on the basis that it seeks only one form of support. For the purposes of being designated with ETC status, the FCC explicitly prohibits a carrier from being designated as eligible to receive federal universal service funding if that carrier offers the supported services solely through resale.¹¹ New Talk has stated that it provides service, or will provide service upon ETC designation, to Kentucky telephone customers through resale and through the purchase or lease of UNEs owned by other carriers.¹² Since the FCC defines a carrier's purchase or lease of UNEs as a satisfactory method of having its "own facilities" under 47 C.F.R. § 54.201(f), and having considered all other requirements for the petition, the Commission finds that New Talk's request for an ETC designation should be granted. However, as New Talk has certified the use of universal service funding to one specific area, the Commission will only grant an ETC designation limited to low-income support. Should New Talk seek to receive high-cost funds, it will be required to file certification with this Commission under 47 U.S.C. § 254(e) in order to be granted an extension of its ETC designation.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. New Talk is designated as an ETC for the entire service area of AT&T Kentucky, a non-rural incumbent local exchange carrier.
2. During the current certification period, New Talk shall be eligible to receive federal Universal Service Fund support only for low-income support, as provided herein.

¹¹ 47 C.F.R. § 54.201(i).

¹² Amended Petition at 2, 3.

3. New Talk shall offer low-income universal support services to consumers in its service area.

4. New Talk shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

5. Pursuant to 47 C.F.R. § 54.201(i), New Talk shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

6. New Talk shall advertise the availability of and charges for these services using media of general distribution.

7. As provided herein, New Talk shall file a separate petition for the extension of its ETC designation for other areas of universal service support if it desires such additional support in the future.

8. If New Talk should ever request to receive high-cost support, then it must file by September 1 of the year of the request its annual certification filing in Administrative Case No. 381.¹³

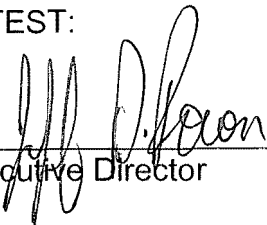
9. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

¹³ Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support (Ky. PSC Sept. 24, 2008).

By the Commission

ENTERED
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KENTUCKY PUBLIC
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