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**PUBLIC SERVICE  
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December 9, 2008

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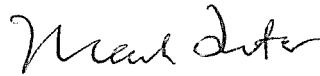
Stephanie Stumbo  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort KY, 40602-0615

RE: New Talk, Inc.

Dear Ms. Stumbo,

Enclosed please find the original plus ten copies of Application of New Talk, Inc. for Designation as an Eligible Telecommunications Carrier in the commonwealth of Kentucky. Also enclosed is one copy of Application of New Talk, Inc. for Designation as an Eligible Telecommunications Carrier in the commonwealth of Kentucky, plus one, postage paid return address marked envelope for receipt of a file-stamped copy.

Very truly yours,



Mark Foster

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**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of New Talk, Inc. for Designation as )  
An Eligible Telecommunications Carrier in the )  
Commonwealth of Kentucky )

PSC Case 2008-00539

**APPLICATION OF NEW TALK, INC. FOR  
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS  
CARRIER IN THE COMMONWEALTH OF KENTUCKY**

**RECEIVED**

**DEC 10 2008**

**PUBLIC SERVICE  
COMMISSION**

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**Its Counsel**

TABLE OF CONTENTS

	<u>Page</u>
I. NEW TALK, INC.'S UNIVERSAL SERVICE OFFERING.....	3
II. NEW TALK, INC. SATISFIES ALL OF THE REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER.....	4
A. New Talk, Inc. Offers Each of the Services Supported by the Federal High-Cost Universal Service Program.....	5
Voice-Grade Access To The Public Switched Network.....	6
1. Local Usage.....	7
2. Dual-Tone Multi-Frequency (“DTMF”) Signaling, or its Functional Equivalent.....	7
3. Single-Party Service Or Its Functional Equivalent.....	7
4. Access to Emergency Services.....	7
5. Access to Operator Services.....	8
6. Access to Interexchange Service.....	8
7. Access to Directory Assistance.....	8
8. Toll Limitation for Qualifying Low-Income.....	9
B. New Talk, Inc. Offers Supported Services Over Its Own Facilities.....	9
C. New Talk, Inc. Will Advertise Its Universal Service Offering.....	11
III. NEW TALK, INC. REQUESTS DESIGNATION THROUGHOUT THE AT&T SERVICE AREA IN KENTUCKY.....	12
IV. GRANTING THIS PETITION WILL SERVICE THE PUBLIC INTEREST.....	12
A. As AT&T is a Non-Rural ILEC, There is No Need to Conduct A Public Interest Analysis.....	12
V. HIGH-COST CERTIFICATION.....	11
VI. ANTI-DRUG ABUSE CERTIFICATION.....	15
CONCLUSION.....	16

## **SUMMARY**

New Talk, Inc. is seeking designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”), throughout the service area of AT&T, a non-rural ILEC, in Kentucky. As demonstrated below, New Talk, Inc. satisfies the prerequisites for ETC designation set forth in the Section 214 of the Act and in Part 54 of the FCC’s Rules, and New Talk, Inc.’s designation will service the public interest.

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of New Talk, Inc. for Designation as ) PSC Case \_\_\_\_\_  
An Eligible Telecommunications Carrier in the )  
Commonwealth of Kentucky )

**APPLICATION OF NEW TALK, INC. FOR  
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS  
CARRIER IN THE COMMONWEALTH OF KENTUCKY**

NEW TALK, INC., by its undersigned counsel and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”), hereby submits this Petition for Designation (“Petition”) as an Eligible Telecommunications Carrier (“ETC”) throughout its licensed service area in the State of Kentucky. New Talk, Inc. seeks designation as an ETC for the wire centers of AT&T, a non-rural incumbent LEC. As demonstrated below, New Talk, Inc. meets all of the requirements for designation as an ETC and New Talk, Inc.’s designation will service the public interest. As the Commission has found, designating competitive carriers like New Talk, Inc. as ETCs “will benefit consumers in rural areas of Kentucky by expanding the range of competitive choices and by providing an incentive for incumbent telephone companies to improve their existing networks.”<sup>1</sup>

**I. NEW TALK, INC., INC.’S UNIVERSAL SERVICE OFFERING.**

New Talk, Inc. is a competitive local exchange carrier (“CLEC”) headquartered in Fort Worth, Texas that offers a complete line of communications services and products to both businesses and residential customers in Kentucky, Texas, Florida, Georgia,

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<sup>1</sup> *Petition of SouthEast Telephone, Inc. for Designations as an Eligible Telecommunications Carrier*, Case No. 2002-00080 (Ky. PSC Sept. 17, 2002) (*SouthEast ETC Order*) at 3; *see also e-Tel Designation as an Eligible Telecommunications Carrier*, Order, Case No. 2002-00323 (Ky. PSC Nov. 26, 2002) (“*e-Tel ETC Order*”) at 2.

Oklahoma, California, Louisiana, Illinois, and Alabama. New Talk, Inc.'s offerings include local service, long distance, broadband, Internet access, web hosting and telephone equipment.

The Commission has authorized New Talk, Inc. to provide competitive local exchange services, intrastate interexchange service, and operator services throughout Kentucky. New Talk, Inc. intends to obtain high-cost universal service support funding throughout its licensed service area, including areas served by AT&T, to speed the delivery of communication services to the citizens of Kentucky. New Talk, Inc. is a common carrier, consistent with the definition in 47 U.S.C. §153(10) and the requirements of 47 U.S.C. § 214(e)(1).

New Talk, Inc. currently provides all the services and functionalities supported by the federal universal service program set forth in Section 54.101(a) of the Federal Communications Commission's ("FCC's") rules throughout its service area in Kentucky. New Talk, Inc. will provide universal service by utilizing various unbundled local elements in combination through lease agreements (also known as commercial agreements) with ILECs such as AT&T. Designation of New Talk, Inc. as an ETC will benefit Kentucky consumers by promoting New Talk, Inc.'s ability to construct and improve network facilities, facilitating local competition on a level playing field, and giving ILEC's incentives to improve their facilities and provide higher quality service due to the beneficial pressure of competition.

## **II. NEW TALK, INC. SATISFIES ALL OF THE REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER.**

The legal standards governing ETC designation proceedings are found in Section 214(e) of the federal Communications Act of 1934, as amended (the "Act"), 47

U.S.C. § 214(e); the FCC’s rules, principally 47 C.F.R. §§ 54.101 and 54.201; and the governing precedents of the federal courts and the FCC. Section 214(e) includes three requirements: a prospective ETC must show that, upon receiving designation, it will: (1) provide supported services throughout the services area for which it is designated, (2) do so using only its own facilities (including unbundled network elements (“UNEs”) and/or a combination of its own facilities and resale of another carrier’s facilities); and (3) advertise the availability of these offerings through the media. 47 U.S.C. § 214(e)(1)(A) and (B). The “supported services” are listed in 47 C.F.R. § 54.101(a).<sup>2</sup> Finally, when a carrier seeks ETC designation in an area served by a “rural telephone company” as defined in the Act, the Commission must find that the designation of an additional telephone company is in the public interest.<sup>3</sup> New Talk, Inc. satisfies each of the elements required for ETC designation pursuant to Section 214(e) of the Act.

**A. New Talk, Inc. Offers Each of the Services Supported By the Federal High-Cost Universal Service Programs.**

New Talk, Inc. currently provides (or will provide upon ETC designation) all the services and functionalities supported by the federal universal service program, as set forth in Section 214(e) of the Act and Section 54.101(a) of the FCC’s rules, on 100% of the lines it serves, throughout the AT&T service area in Kentucky, the area for which it seeks ETC designation.

In order to be designated as an ETC, a carrier must be a common carrier and both offer and advertise the supported services throughout the designated service area. 47 U.S.C. § 214(e)(1). The FCC has identified the following services and functionalities

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<sup>2</sup> See *infra* Section II.A

<sup>3</sup> 47 U.S.C. § 214(e)(2); see also 47 U.S.C. § 153(37) (definition of “rural telephone company”). However, this requirement does not apply to Cinergy’s instant petition, as the company is seeking ETC designation in the service area of BellSouth, a non-rural ILEC.

as the core services to be offered by an ETC and supported by federal universal service support mechanisms:

1. Voice-grade access to the public switched telephone network;
2. Local usage;
3. Dual-tone, mutli-frequency (“DTMF”) signaling, or its functional equivalent;
4. Single-party service or its functional equivalent;
5. Access to emergency services;
6. Access to operator services;
7. Access to interexchange service;
8. Access to directory assistance; and
9. Toll limitation for qualifying low-income consumers.

For purposes of ETC applications, carriers must certify that they provide each of the supported services, or where appropriate, its functional equivalent.<sup>4</sup> As shown below and in the Declaration attached as Exhibit A hereto, New Talk, Inc. currently provides, or will provide upon designation, each of the required services and functionalities on 100% of the lines it serves, throughout the area for which it seeks designation.

**1. Voice–Grade Access to The Public Switched Network.**

The FCC has concluded that voice-grade access means the ability to make and receive phone calls, within a specified bandwidth and frequency range.<sup>5</sup> New Talk, Inc. meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with ATT, each of New Talk, Inc.’s customers are able to make and receive calls on the public switched telephone network within the specified bandwidth.

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<sup>4</sup> See 47 C.F.R. § 54.101.

<sup>5</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 at 8810-11 (1997) (“*First Report and Order*”).



**2. Local usage.**

ETCs must include local usage beyond providing simple access to the public switched network as part of a universal service offering. New Talk, Inc. includes unlimited local usage in each of its local service rate plans, and thereby complies with the requirement that all ETCs offer local usage.

**3. Dual-Tone Multi-Frequency (“DTMF”) Signaling, or its Functional Equivalent.**

DTMF is a method of signaling that facilitates the transportation of call-set up and call detail information.<sup>6</sup> New Talk, Inc. provides DTMF signaling consistent with the rules.

**4. Single-Party Service Or Its Functional Equivalent.**

“Single-party service” means that only one party will be served by a subscriber loop or access line (in contrast to a multi-party line”).<sup>7</sup> New Talk, Inc. meets the requirement by providing single-party service throughout its service area.

**5. Access to Emergency Services.**

The ability to reach a public emergency service provider by dialing 911 is required in any universal service offering. New Talk, Inc. currently provides its subscribers with access to 911 emergency services in accord with this requirement, and consistent with FCC regulations throughout the service area for which designation is sought.

**6. Access to Operator Services.**

Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone

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<sup>6</sup> 47 C.F.R. § 54.101(a)(3).

<sup>7</sup> *First Report and Order*, 12 FCC Rcd at 8810.

call.<sup>8</sup> New Talk, Inc. meets these requirements by providing all of its customers with access to operator services, including customer service and call completion.

**7. Access to Interexchange Service.**

An ETC must offer consumers access to interexchange service to make and receive toll or interexchange calls. New Talk, Inc. meets this requirement by providing all of its customers with the ability to make and receive interexchange calls, including “equal access” enabling customers to reach their interexchange carrier of choice.

**8. Access to Directory Assistance.**

The ability to place a call to directory assistance is a required service offering.<sup>9</sup> New Talk, Inc. meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212”.

**9. Toll Limitation for Qualifying Low-Income Consumers.**

An ETC must offer either “toll control” or “toll blocking” services to qualifying Lifeline customers at no additional charge. 47 C.F.R. § 54.101 (a)(9). New Talk, Inc. currently has no Lifeline customers because only carriers designated as ETCs can participate in the provision of Lifeline service. *See* 47 C.F.R. §§ 54.400-415. Once designated as an ETC, New Talk, Inc. will participate in Lifeline as required, and will provide toll control and/or toll blocking capability in satisfaction of the Commission’s requirement. New Talk, Inc. currently has the technology to provide toll limitation and will utilize this technology to provide such functionality at no additional charge to Lifeline customers.<sup>10</sup>

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<sup>8</sup> Id. at 8817-18.

<sup>9</sup> Id. at 8821.

<sup>10</sup> *See Virginia Cellular ETC Order*, ¶ 22.

**B. New Talk, Inc. Offers Supported Services Over Its Own Facilities.**

A carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale another carrier’s services.”<sup>11</sup> New Talk, Inc. will provide universal service by utilizing various unbundled local elements in combination through lease agreements (also known as commercial agreements) with ILECs such as AT&T. The FCC has made it clear that purchase of UNEs satisfies the facilities requirement, and has specified certain high-cost funding limitations with respect to lines provided using UNEs<sup>12</sup> New Talk, Inc. is willing and able to service all customers throughout the area for which it has requested designation.

**C. New Talk, Inc. Will Advertise Its Universal Service Offering.**

New Talk, Inc. will advertise the availability of the supported service and the corresponding charges in a manner that informs the general public within the designated service area of both the services available and the corresponding charges. New Talk, Inc. will advertise its universal service offerings throughout the service area designated by the Commission through notices using media of general distribution. New Talk, Inc. also commits that, once it receives ETC designation, it will provide notices of its Lifeline and Link Up discounted services at local unemployment, social security, and welfare offices.<sup>13</sup>

**III. NEW TALK, INC. REQUESTS DESIGNATION THROUGHOUT THE AT&T SERVICE AREA IN KENTUCKY**

New Talk, Inc. requests ETC designation for the entire AT&T service area in Kentucky as depicted on the map attached hereto as Exhibit B. Pursuant to the Act, a

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<sup>11</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>12</sup> *First Report and Order*, 12 FCC Rcd at ¶¶ 154-68.

<sup>13</sup> *Virginia Cellular ETC Order*, ¶ 25.

“service area” is a “geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms.” 47 C.F.R. § 54.207(a). For service areas served by non-rural ILECs, there are no restrictions on how a state commission defines the “service area” for purposes of designating a competitive ETC. *Id.*

New Talk, Inc. is not applying for designation as an ETC in an area served by a rural telephone company.

#### **IV. GRANTING THIS PETITION WILL SERVICE THE PUBLIC INTEREST.**

##### **A. As AT&T is a Non-Rural ILEC, There is No Need to Conduct a Public Interest Analysis.**

New Talk, Inc. notes that ATT is not a “rural telephone company” under 47 U.S.C. § 153(37). Section 214(e)(2) of the Act expressly requires that a state commission conduct a public interest analysis “[b]efore designation an additional eligible telecommunications carrier for an area served by a rural telephone company...” As New Talk, Inc. is not petitioning for ETC designation in a service area served by a rural telephone company, there is no need for the Commission to determine whether or not designation of New Talk, Inc. is in the “public interest.”

#### **V. HIGH-COST CERTIFICATION.**

Under Sections 54.313, 54.314, 54.809, and 54.904 of the Commission’s rules, carriers seeking high-cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the FCC and the Universal Service Administrative Company as to their compliance with Section 254(e) of the Act. Therefore, New Talk, Inc. submits its high-cost certification with the Commission as part of this petition (*see* Exhibit A). New Talk, Inc. respectfully requests that the Commission issue a finding that New Talk, Inc. has met

the high-cost certification requirement and that New Talk, Inc. is, therefore, entitled to begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.

**VI. ANTI-DRUG ABUSE CERTIFICATION.**


New Talk, Inc. certifies that no party to this petition is the subject of a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862 (*See Exhibit A*).

## CONCLUSION

New Talk, Inc. respectfully requests that the Commission designate it as an ETC in Kentucky on an expedited basis.

Respectfully submitted,

New Talk, Inc.

By: 

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**December 9, 2008**

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**Its Counsel**

**Exhibit A**  
**Affidavit of Byron Young**

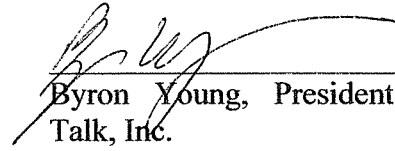
STATE OF TEXAS            )  
COUNTY OF TARRANT    )

Byron Young, being duly sworn upon oath, depose and states as follows:

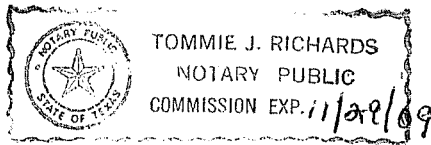
1. My name is Byron Young and I serve as President of New Talk, Inc. My business address is 112 East Seminary Drive, Suite B, Fort Worth, Texas 76115. I am an authorized representative of New Talk, Inc. with respect to the foregoing Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (“Application”).
2. I have read the foregoing Application, and all information therein is true to the best of my knowledge, information, and belief.
3. New Talk, Inc. is a common carrier and provides (or will provide upon designation) all the service and functionalities supported by the federal universal service program, as set forth in Section 214(e) of the Act and Section 54.101(a) of the FCC’s rules, throughout the service area for which is seeks ETC designation in Kentucky, *i.e.*, the areas served by AT&T, as depicted in Exhibit B. New Talk, Inc. also advertises the availability of the supported services and the corresponding charges throughout several different media of general distribution, throughout the service areas for which designation is requested. As an ETC, New Talk, Inc. will also offer a universal service at reduced rates package to subscribers who are eligible for Lifeline and Link-Up support. The manner in which New Talk, Inc. satisfies these requirements is described in greater detail in the Application.
4. A grant of New Talk, Inc.’s application will service the public interest by promoting additional deployment of facilities and services to the high-cost areas served by AT&T in Kentucky, and bringing consumers in those areas the benefits of additional competitive universal service offerings. Designation of New Talk, Inc. as an ETC will enable New Talk, Inc. to increase its deployment of network facilities that support provision of both basic telecommunications services and higher-bandwidth and enhanced services to consumers in Kentucky.
5. High-Cost Certification. New Talk, Inc. certifies that all high-cost universal service support funding that it receives for Kentucky will be used only for the provision, maintenance, and upgrading of the services and facilities for which the support is intended.
6. Anti-Drug Abuse Certification: To the best of my knowledge, the applicant referred to in the foregoing Application, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of the applicant as specified by Section 1.2002(b) of the FCC’s


rules, are not subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

Further Affiant sayeth not.

  
Byron Young, President of New  
Talk, Inc.

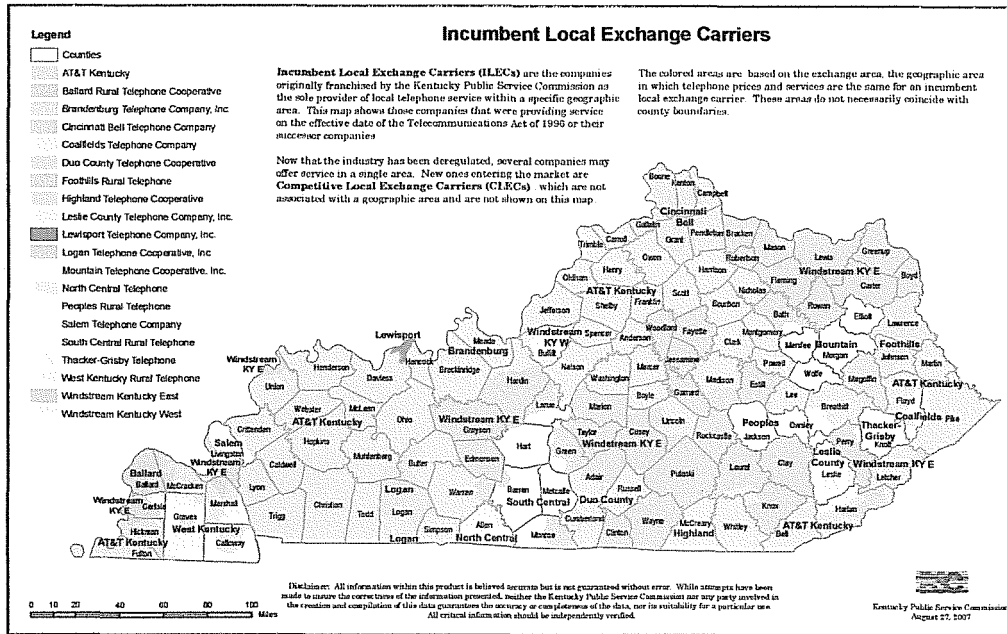
Sworn and subscribed to before me this 6<sup>th</sup> day of October, 2008, under penalties of perjury.



  
Tommie Richards  
Notary Public, State of Texas



## Exhibit B Map of New Talk, Inc.'s Service Area



In the above graphic, the AT&T service area in Kentucky – the area for which New Talk, Inc. seeks ETC designation – is denoted in blue.

This image is also available at <http://psc.ky.gov/agencies/psc/images/lecbycounty.pdf>.