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January 30, 2009

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FEB 2 2009

PUBLIC SERVICE
COMMISSION

Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

**RE: Amended Application of New Talk, Inc. for Designation as an Eligible
Telecommunications Carrier
Case No. 2008-00539**

Dear Mr. Derouen:

Enclosed please find an amended, verified application for designation as an Eligible Telecommunications Carrier we are filing for New Talk, Inc. This filing replaces in its entirety the application filed on December 10, 2008.

Please acknowledge receipt of this filing by placing your file-stamp on the extra copy and returning to me via the enclosed self-addressed, postage paid envelope. Thank you.

Sincerely yours,

STOLL KEENON OGDEN, PLLC

Douglas F. Brent

DFB: jms
Enclosures
cc: Mark Foster

RECEIVED

FEB 02 2009

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Petition of New Talk, Inc. for)	
Designation as An Eligible)	Case No. 2008-00539
Telecommunications Carrier in the)	
Commonwealth of Kentucky)	

**AMENDED 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 service area (the "Designated Service Area") in the Commonwealth of Kentucky for the purpose of receiving federal universal service support.¹ New Talk, Inc. seeks designation as an ETC for the wire centers of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T"), a non-rural incumbent LEC. The Applicant is seeking only low income support, and is not requesting high cost support. 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.

¹ A list of each wire center which the Applicant is requesting ETC status in the Commonwealth of Kentucky is attached hereto as Exhibit A.

All correspondence, communications, pleadings, notices, orders and decisions relating to this Application should be addressed to:

Mark Foster (KBA Out-of-State Certification obtained)
Attorney at Law
702 Rio Grande Street
Austin, TX, 78701

With a copy to Applicant's local counsel:

Douglas F. Brent
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

I. NEW TALK, INC., INC.'S UNIVERSAL SERVICE OFFERING.

New Talk, Inc. is a competitive local exchange carrier (“CLEC”) headquartered in Fort Worth, Texas and is authorized to conduct business as a foreign corporation in the Commonwealth of Kentucky. New Talk, Inc. provides service to both businesses and residential customers in Kentucky, Texas, Florida, Georgia, Oklahoma, California, Louisiana, Illinois, and Alabama.

New Talk, Inc. is authorized to provide competitive local exchange services (Utility ID No. 5054630), throughout Kentucky. 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 the Designated Service Area. New Talk, Inc. provides local exchange and exchange access services in the Designated Service Area using a combination of resale and unbundled network elements, or unbundled network equivalents obtained through agreements (“UNEs”) that allows end-to-end switching and delivery of calls.

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 its own facilities (including unbundled network elements (“UNEs”)) and/or a combination of its own facilities and resale of another carrier’s services); 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).

A. New Talk, Inc. Offers Each of the Services Supported By the Federal 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 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, multi-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.² 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 Designated Service Area.

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.³ New Talk, Inc. meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with AT&T, each of New Talk, Inc.’s customers are able to make and receive calls on the public switched telephone network within the specified bandwidth.

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

² See 47 C.F.R. § 54.101.

³ *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*”).

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.⁴ 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”).⁵ 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 Designated Service Area.

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 call.⁶ New Talk, Inc. meets these requirements by providing all of its customers with access to operator services, including customer service and call completion.

⁴ 47 C.F.R. § 54.101(a)(3).

⁵ *First Report and Order*, 12 FCC Rcd at 8810.

⁶ *Id.* at 8817-18.

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.⁷ 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 and offer Lifeline service and will provide toll control and/or toll blocking capability in satisfaction of the FCC’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.

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 of another

⁷ Id. at 8821.

carrier's services.”⁸ According to FCC Rules, facilities obtained as UNEs satisfy the requirement that an ETC provide the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.⁹ Accordingly, the Applicant satisfies the requirement set forth in Section 214(e)(1)(A). Moreover, the FCC has concluded that even pure resellers may qualify as an ETC and properly use universal service support for the purposes for which it was intended by offering reduced price Lifeline service.¹⁰ Thus, the Commission should specify that all qualified New Talk, Inc. customers may receive Lifeline support, regardless of how their carrier may have arranged to provide their service

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

Upon certification as an ETC, New Talk, Inc. will participate in, and offer LifeLine and Link-Up programs to qualifying low-income consumers and publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for those services, as required by FCC Rules.¹¹

⁸ 47 U.S.C. § 214(e)(1)(A).

⁹ Section 54.201(f) of the FCC's Rules states, “[f]or the purposes of this section, 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.” 47 C.F.R. § 54.201(f). The term “facilities” under Section 54.201 is defined as “any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.” 47 C.F.R. § 54.201(e). New Talk Inc.'s use of UNEs, including § 251 loops, or equivalents thereof, commingled with § 271 elements provided pursuant to an agreement filed with the Commission pursuant to § 252, meets this definition of “facilities.”

¹⁰ See *Federal-State Joint Board on Universal Service, Petition of Tracfone Wireless, Inc.*, 20 FCC Rcd 15095 (2005) (finding that because Lifeline support is customer-specific and is directly reflected in the price that the eligible customer pays, it is impossible for any carrier to receive a double recovery of the support).

¹¹ See 47 C.F.R. §§ 54.401-54.417; 54.405(b) & 54.411(d).

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. Pursuant to the Act, a “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 SERVE THE PUBLIC INTEREST.

Congress requires that the Commission grant competitive ETC applications in non-rural areas.¹² No specific public interest test is mentioned, as is the case for areas served by rural telephone companies.¹³ Thus, the Act provides that the Commission “shall” designate New Talk, Inc. as an ETC upon finding that the company meets the nine-point list of services and that it agrees to advertise the supported services throughout the Designated Service Area. Notwithstanding, the designation of New Talk, Inc. as an ETC will serve the public interest. New Talk, Inc. will announce and advertise telecommunications services as an ETC where it provides service in its Designated Service Area in Kentucky and will publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for those services. A representative advertisement is attached as Exhibit A. Accordingly, more

¹² See 47 U.S.C. 214(e)(2).

¹³ See *Id.*

low-income Kentucky residents will be made aware of the opportunities afforded to them under the Lifeline and Link-Up programs and will be able to take advantage of those opportunities by subscribing to these services.

V. 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 B*).

CONCLUSION

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

Respectfully submitted,

Mark Foster
Attorney at Law
702 Rio Grande Street
Austin, Texas 78701
Ph: (512) 708-8700
Fax: (512) 708-_____

Douglas F. Brent
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Ph: (502) 568-5734
Fax: (502) 568-0934
douglas.brent@skofirm.com

Counsel for New Talk, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that this 30th day of January, 2009 I have served the foregoing document by United States First Class Mail.

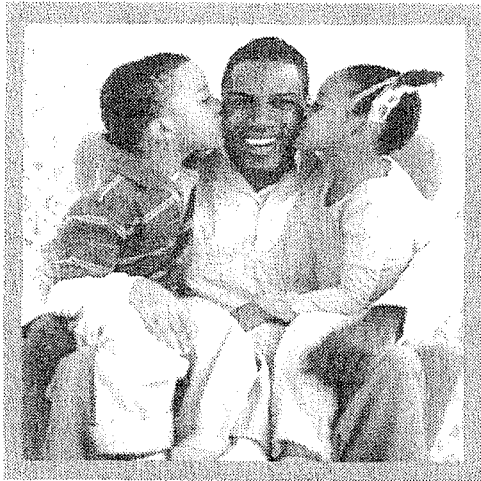
Counsel for New Talk, Inc.

EXHIBIT A—SAMPLE ADVERTISING FOR LIFELINE SERVICE

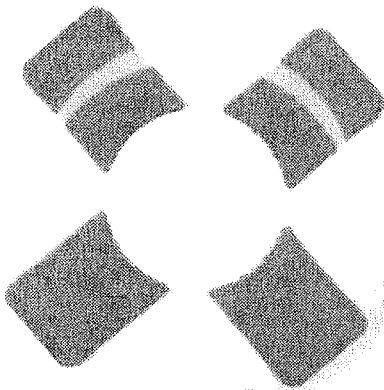
Lifeline —

Lifeline is available to our customers who qualify — for as little as \$12.99 per Month.*

* Excluding taxes and surcharges. Not all customers will qualify. Must meet eligibility requirements. Restrictions apply. Speak to one of our agents for more details.



Customers must meet the requirements for eligibility under one of the following programs:



Lifeline is a telecommunications service assistance program designed to provide eligible subscriber with a credit to their phone service. Customers cannot receive more than one Lifeline Service credit regardless of the number of lines or locations where the customer receives service within the State of Texas. Additionally, if a customer requests other available services, either recurring or nonrecurring, they will be billed at the applicable rate. The applicant cannot be a dependent as defined by the Federal Income Tax Code, under the age of 60.

Ask a Sales Representative for more details or call
1 (888) 871-0321

www.newtalkonline.com

NEW TALK
112 East Seminary Drive, Suite B
Fort Worth, TX 76115

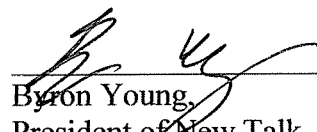
EXHIBIT B
Affidavit of Byron Young

STATE OF TEXAS)
COUNTY OF TARRANT)

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

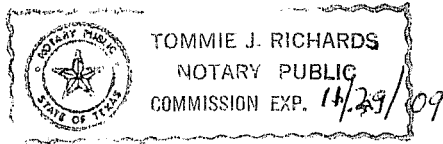
1. My name is Byron Young and I serve as President of New Talk, Inc. My business address is 112 East Seminary Drive, Suite B, Fort Worth, Texas 76115. I am an authorized representative of New Talk, Inc. with respect to the foregoing Application for Designation as an Eligible Telecommunications Carrier 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. New Talk, Inc. will advertise 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. 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 29th day of January,
2009, under penalties of perjury.





Notary Public, State of Texas