

Decision 10-11-024 November 19, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Net Talk.com, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Local Exchange Telecommunications Services in the State of California.

Application 10-07-028  
(Filed July 29, 2010)

**DECISION GRANTING NET TALK.COM, INC. A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE RESOLD AND LIMITED-FACILITIES BASED LOCAL EXCHANGE SERVICE**

**1. Summary**

Net Talk.com, Inc. filed an application for a certificate of public convenience and necessity for authority to provide resold and limited facilities-based local exchange telecommunications services in the service territories of Pacific Bell Telephone d/b/a AT&T California and Qwest Communications International, Inc.

By this decision, we grant Net Talk.com, Inc. a certificate of public convenience and necessity to provide resold and limited facilities-based local exchange telecommunications services on the terms and conditions set forth in the Ordering Paragraphs.

**2. Background**

On July 29, 2010, Net Talk.com, Inc. (Net Talk), (a Florida corporation authorized to operate in California as a foreign corporation), filed an application for a certificate of public convenience and necessity (CPCN) to provide resold

and limited facilities-based telecommunications services in the service territories of Pacific Bell Telephone d/b/a AT&T California (AT&T) and Qwest Communications International, Inc. (Qwest). Notice of Application (A.) 10-07-028 appeared on the Commission's Daily Calendar on August 6, 2010.

On August 30, 2010, the assigned Administrative Law Judge (ALJ) issued *Administrative Law Judge Ruling Requiring Applicant to File a Response to Information Request Within 10 Days* (Ruling) to which Net Talk filed a response on September 9, 2010. Net Talk's principal place of business is located at 1100 NW 163<sup>rd</sup> Drive, Suite B-4, Miami, Florida 33169. Net Talk proposes to provide a variety of exchange services to enterprise customers through the resale of local exchange carrier services as well as through the use of unbundled network elements purchased from the local exchange carriers.

### **3. California Environmental Quality Act (CEQA)**

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Net Talk states that it does not intend to construct any facilities, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, Net Talk must file for additional authority, and submit to any necessary CEQA review.

### **4. Financial Qualifications**

Pursuant to Rule 4.B of D.95-12-056, an applicant for a CPCN for authority to provide facilities-based local exchange service must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. Applicant

must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.

In Exhibit D to the application and in Exhibit B to its response to the Ruling, Net Talk provided its Securities and Exchange Commission Form 10-K for fiscal year ended September 30, 2009 and a bank statement, showing that \$100,000 plus an amount equal to any deposits required by service providers would be available to Net Talk. Net Talk stated that Qwest required no deposit and AT&T required a deposit of \$10,000 which has already been paid. Net Talk has therefore demonstrated that it has sufficient funds to meet its start-up expenses and any deposits required by service providers, and has fulfilled this requirement.

## **5. Technical Qualifications**

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.<sup>1</sup> Net Talk supplied biographical information on its management in Exhibit H to its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

Except as noted below, Net Talk also verified that no one associated with or employed by Net Talk as an affiliate, officer, director, partner, or owner of more than 10% of Net Talk was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications

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<sup>1</sup> D. 95-12-056 at Appendix C, Rule 4.A.

Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

During our review, we discovered that one of Net Talk's management staff appeared to have two social security numbers. In its response to the Ruling, Net Talk stated that it believes the two social security numbers separately belong to the father and son (Senior and Junior) of the same name. This explanation resolves our concern.

Since Net Talk has resolved the issues in question, we find that Net Talk is in compliance with the managerial and technical requirements of D.95-12-056.

## **6. Tariffs**

Commission staff reviewed Net Talk's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Net Talk must correct these deficiencies as a condition of our approval of its application.

## **7. Map of Service Territory**

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.<sup>2</sup> In Exhibit F to the application, Net Talk provided a map of the location of its proposed service territory, in compliance with this requirement.

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<sup>2</sup> D.95-12-056 at Appendix C, Rule 4.E.

## **8. Expected Customer Base**

Net Talk provided its estimated customer base for the first and fifth years of operation in Section V.j. of its application. Therefore, Net Talk has complied with this requirement.

## **9. Conclusion**

We conclude that the application conforms to our rules for certification as a competitive local exchange carrier. Accordingly, we grant Net Talk a CPCN to provide resold and limited facilities-based local exchange telecommunications service in the service territories of AT&T and Qwest, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

## **10. Request to File Under Seal**

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Net Talk has filed a motion for leave to file Exhibit B to its response to the Ruling, as confidential materials under seal, which includes a Net Talk bank statement. Net Talk represents that this information is highly sensitive and confidential in nature. We have granted similar requests in the past and do so here.

## **11. Categorization and Need for Hearing**

In Resolution ALJ 176-3259, dated August 12, 2010, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

## **12. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

## **13. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on August 6, 2010. No protests have been filed. A hearing is not required.
2. Net Talk has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
3. Net Talk has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.
4. Net Talk's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
5. No one associated with or employed by Net Talk as an affiliate, officer, director, partner, or owner of more than 10% of Net Talk was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or

for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

6. Except for the deficiencies identified in Attachment A to this decision, Net Talk's draft tariffs comply with the Commission's requirements.

7. Net Talk provided a map of the location of its proposed service territory.

8. Net Talk provided an estimate of its customer base for the first and fifth years of operation.

9. Pursuant to Rule 11.4, Net Talk filed a motion for leave to file confidential materials under seal, including Exhibit B to its response to the Ruling.

### **Conclusions of Law**

1. Net Talk should be granted a CPCN to provide resold and limited facilities based local exchange telecommunications service in the service territories of AT&T and Qwest, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Net Talk, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

3. Net Talk's initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.

4. Net Talk's motion to file under seal its Exhibit B in its response to the Ruling should be granted for two years.

## **O R D E R**

**IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to Net Talk.com, Inc. to provide resold and limited facilities-based local exchange

telecommunications services in the territories of Pacific Bell Telephone d/b/a AT&T California and Qwest Communications International, Inc., subject to the terms and conditions set forth below.

2. Net Talk.com, Inc. may not offer competitive local exchange services until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B and as corrected for deficiencies set forth in Exhibit A.

3. The corporate identification number assigned to Net Talk.com, Inc., U7205C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

4. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Net Talk.com, Inc. is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

5. Net Talk.com, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

6. Net Talk.com, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers should report user fees even if the amount due is \$0.

7. Prior to initiating service, Net Talk.com, Inc. must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

8. Net Talk.com, Inc. must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Net Talk.com, Inc. must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D to this decision.

10. Net Talk.com, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. Net Talk.com, Inc. must file a tariff within 12 months of the effective date of this order, or its certificate will be cancelled.

12. Net Talk.com, Inc.'s motion to file under seal its Attachment B to its response to *Administrative Law Judge Ruling Requiring Applicant to File a Response to Information Request Within 10 Days* is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by Net Talk.com, Inc. or as ordered by a court of competent jurisdiction. If Net Talk.com, Inc.

believes that it is necessary for this information to remain under seal for longer than two years, Net Talk.com, Inc. may file a new motion at least 30 days before the expiration of this limited protective order.

13. Application 10-07-028 is closed.

This order is effective today.

Dated November 19, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners

## ATTACHMENT A

List of deficiencies in draft tariff submitted by Net Talk.com, Inc., in A.10-07-028 to be corrected in its initial tariff compliance filing.

1. Rules – Each Rule must have a number, a descriptive title, and its own sheet or series of sheets (GO96B, Section 8.5.7).
2. Tariff Sheet Format: CPUC assigned utility ID number (U7205C) should be included on each sheet in the upper left header along with Company name and address (General Order 96B, Section 8.4.1).
3. Provide a Rule for Description of Service; if residential service is to be provided, a LifeLine Telephone Service offer must be provided.
4. Provide a Rule for Contracts if contracts are to be used.
5. Provide a Rule for Special Information Required on Forms consistent with D.05-07-054, Appendix B, Rule 3.
6. Provide a Rule for Establishment and Re-establishment of Credit consistent with D.05-07-054, Appendix B, Rule 4.
7. Provide a Rule on Deposits consistent with D.05-07-054, Appendix B, Rule 5.
8. Provide a Rule for Disputed Bills consistent with D.95-07-054, Appendix B, Rule 8.
9. Rule on Limitation of Liability – Utility must adopt either AT&T California's or Verizon California Inc.'s limits of liability (D.95-12-056).
10. Add a procedure for proration of bills (D.05-07-054, Appendix B, Rule 7).
11. Provide Company address in California where tariffs and cancelled sheets can be inspected (GO96B, Section 8.1.3) or a web URL where tariffs are posted.
12. Add a procedure by which a customer may request amortization of unpaid charges (D.05-07-054, Appendix B, Rule 6.B.(2).5).
13. Add a description and rule for Caller ID and Customer Proprietary Network Information Restrictions (D.05-07-054, Appendix B, Rule 14).
14. Add Rule for Change of Service Provider (D.95-07-054, Appendix B, Rule 11).
15. Include information on legal requirements for refusal of service (D.91188, January 8, 1980).

16. Provide information on how customers can request blocking of 976/900 pay-per-call telephone information service (D.95-07-054, Appendix B, Rule 15).
17. Fees and Surcharges: Your tariff must concur with the tariff provision for fees and surcharges in AT&T California tariffs pursuant to Resolution T-16901.

**(END OF ATTACHMENT A)**

## ATTACHMENT B

### REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant must file, in this docket with reference to this decision number,<sup>3</sup> a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The current 1.150% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);
- b. The current 0.200% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.180% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;
- d. The current 0.110% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost

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<sup>3</sup> Written acceptance filed in this docket does not reopen the proceeding.

- Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-17259, dated April 8, 2010, effective May 1, 2010);
- e. The current 0.450% surcharge (effective December 1, 2009) applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.; D.07-12-054, Resolution T-17215, dated October 15, 2009, effective December 1, 2009.);
  - f. The current 0.000% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Advanced Services Fund (D.07-12-054); Resolution T-17248, dated December 17, 2009, effective January 1, 2010; and
  - g. The current 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G; Resolution T-17142, dated April 29, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check the joint tariff for surcharges and fees filed by Pacific Bell Telephone (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised.

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.
6. Applicant must file a service area map as part of its initial tariff.
7. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.
8. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.
9. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.
10. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.
11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.
12. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.
13. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

14. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

15. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

16. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

17. Applicant is exempt from Rule 3.1(b) of the Commission's Rules of Practice and Procedure

18. Applicant is exempt from Pub. Util. Code §§ 816-830.

19. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

20. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Director of Communications Division.

21. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

## **ATTACHMENT C ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.
12. Cash Flow statement as of December 31<sup>st</sup> of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

**(END OF ATTACHMENT C)**

**ATTACHMENT D  
CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

**An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.**

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the

requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

**(END OF ATTACHMENT D)**