

State of Florida



# Public Service Commission

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COMMISSION CLERK

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 8, 2011

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Regulatory Analysis (Kennedy) *RK*  
Office of the General Counsel (Robinson) *PER*

*Handwritten initials*

*Handwritten note: FNT for AJT*

**RE:** Docket No. 100373-TX – Request for transfer of and name change on CLEC Certificate No. 8467 held by New Talk, Inc. to Telecom Ventures, LLC d/b/a Dialtone Ventures, LLC, effective August 9, 2010.

**AGENDA:** 09/20/11 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\RAD\WP\100373.RCM.DOC

### Case Background

On January 24, 2011, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T) filed an opposition to New Talk, Inc.'s (New Talk) petition to transfer its competitive local exchange company (CLEC) certificate to Telecom Ventures, LLC d/b/a Dialtone Ventures, LLC (Telecom Ventures) and a request to defer staff's recommendation from the January 25, 2011 Agenda. The Commission granted AT&T's deferral request.

On February 9, 2011, Telecom Ventures filed its response to AT&T's opposition. Based on staff's further investigation, staff has changed their initial recommendation regarding New Talk's petition to transfer its CLEC certificate to Telecom Ventures.

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At the time AT&T filed its objection, Section 364.345(2), Florida Statutes (F.S.), provided that a telecommunications company may not sell, assign, or transfer its certificate or any portion thereof without: (1) a determination by the Commission that the proposed sale, assignment, or transfer is in the public interest, and (2) the approval of the Commission. Further, Section 364.337(1), F.S., provided that the Commission could only grant a certificate to provide competitive local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service.

In 2011, the Legislature, via the Regulatory Reform Act, repealed Sections 364.345 and 364.337, F.S., effective July 1, 2011. However, the Legislature maintained the same public interest considerations and certification requirements for telecommunications companies that offer two-way telecommunications service to the public in Florida. Specifically, effective July 1, 2011, Section 364.335(2), F.S., provides that the Commission shall grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

Section 364.33, F.S., allows the transfer of a certificate of necessity or authority from the holder to another person holding a certificate of necessity or authority, to its parent company, or to an affiliate, without prior approval of the Commission, by providing written notice of the transfer to the Commission within 60 days after the completion of the transfer. In the case at hand, Telecom Ventures does not currently: (1) hold a certificate of necessity or authority, (2) is not the parent company of New Talk, and (3) does not appear to be an affiliate of New Talk. Thus, the action requested by Telecom Ventures and New Talk still requires the Commission's approval.

The recommendations that follow address the transfer of New Talk's CLEC certificate to Telecom Ventures and whether New Talk should be allowed to retain its certificate of necessity to operate as a telephone services provider in Florida.

The Commission has jurisdiction over these matters pursuant to Sections 364.285, 364.33 and 364.335, F.S.

### Discussion of Issues

**Issue 1:** Should the Commission approve the request for transfer of and name change on CLEC Certificate No. 8467 held by New Talk, Inc., to Telecom Ventures, LLC d/b/a Dialtone Ventures, LLC?

**Recommendation:** No. Staff recommends that the Commission should deny the request for transfer of and name change on CLEC Certificate No. 8467 held by New Talk, Inc., to Telecom Ventures, LLC d/b/a Dialtone Ventures, LLC. **(Kennedy)**

**Staff Analysis:** Pursuant to Section 364.335(2), F.S., the Commission shall grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service. Because it does not currently have a certificate and is not a parent or affiliate of New Talk, Telecom Ventures is required to show that it has sufficient technical, financial, and managerial capability to provide telecommunications service in Florida. Therefore, New Talk's certificate cannot be transferred to Telecom Ventures without Commission approval.

#### AT&T's Objection

AT&T requests that the Commission deny the transfer of New Talk's CLEC certificate to Telecom Ventures as it is not in the public interest. AT&T alleges that Telecom Ventures does not have sufficient technical, financial, and managerial capability to provide competitive local exchange service in Florida. AT&T provides the following as the basis for its objection:

- Telecom Ventures lists its **President as Byron Young and its Vice-President as Brian Young**. Byron Young and Brian Young hold the same positions with New Talk.
- In response to Question 18(c) Financial Capability (in the application for transfer), Telecom Ventures' funding resources will be through loans from New Talk until such time as cash flow generated by Telecom Ventures funds all activities.
- Staff recommended New Talk not be granted Eligible Telecommunications Carrier (ETC) designation in Florida in Docket No. 070178-TX.<sup>1</sup> Staff indicated that New Talk did "not have the management capability necessary to be designated as an ETC in the State of Florida" and recommended that "it was not in the public interest to designate [New Talk] as an ETC in Florida." Subsequently, New Talk, Inc. withdrew its Petition (*staff notes that Connect Paging, Inc. had changed its name to New Talk, Inc. during the time Docket No. 070178-TX was being processed*). On November 14, 2008, New Talk re-filed its Petition<sup>2</sup> for designation as an ETC in the state of Florida and withdrew its request again on January 22, 2010. The following information was disclosed in staff's recommendation:

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<sup>1</sup> Docket No. 070178-TX, In Re: Petition for designation as eligible telecommunications carrier (ETC) by Connect Paging, Inc. d/b/a Get A Phone.

<sup>2</sup> Docket No. 080673-TX, In Re: Petition for designation as eligible telecommunications carrier (ETC) by New Talk, Inc.

1. New Talk did not timely pay its Florida Regulatory Assessment Fees for 2007.
  2. The Federal Communications Commission (FCC) issued a Notice of Apparent Liability for Forfeiture Order against New Talk on March 30, 2007, for failure to respond to a directive of the Enforcement Bureau and was fined \$4,000.
  3. The FCC issued a Notice of Apparent Liability for Forfeiture Order against New Talk on August 10, 2007, for failure to comply with Section 64.2009(e) of the FCC rules and the FCC proposed a monetary forfeiture of \$100,000 against New Talk.
  4. **Byron Young, President of New Talk, was President of Seven Bridges Communications, L.L.C.** whose Certificate No. 7608 was cancelled by the Commission and it was fined \$10,000.
  5. New Talk had “provided incomplete, inaccurate, and/or misleading information in response to staff’s data requests.”
- On August 11, 2006, Connect Paging, Inc. d/b/a Get A Phone (Connect Paging) filed for a Voluntary Petition for Bankruptcy in the United States Bankruptcy Court for the Western District of Texas. At the time of the filing, **Byron Young was the President of New Talk and Director of New Talk. Brian Young was listed as the Vice-President and Director of New Talk.**
  - New Talk owes AT&T Texas an outstanding past due and undisputed balance of \$2,169,533.27. **New Talk’s Chief Executive Officer (CEO) is Byron Young and Brian Young is its Vice-President.**
  - In a Petition for Amendment of Certificate of Public Convenience and Necessity in Alabama, New Talk advised the Alabama Public Service Commission that a name change from New Talk to Telecom Ventures was a result of internal corporate restructuring whereby Alabama operations would be conducted by a new company. The new company is owned by BBY, Limited and New Talk is owned by Ambient Ventures. The members of Ambient Ventures and the limited partners of BBY, Limited are the same individuals – Byron, Brandon, and Brian Young. The management team for Telecom Ventures will be the same as the management team of New Talk, Inc.

#### Telecom Ventures’ and New Talk’s Response to AT&T’s Objection

Telecom Ventures and New Talk request that AT&T’s alleged spurious Objection be disregarded and that the Commission proceed to grant the requested transfer. The companies provided the following:

- With no prior notice to Telecom Ventures and New Talk, AT&T filed an objection the day before the Commission was to have approved, by consent, the otherwise unopposed application. AT&T’s objection is untimely and should be completely disregarded for this reason alone.

- AT&T's objection is filled with half-truths, complete falsehoods and incomplete recitations of "facts."
- AT&T's pleading is prejudicial, anti-competitive, and filed only to harass and disparage Telecom Ventures and New Talk.
- New Talk's previous petitions for designation as an ETC are irrelevant to the pending application. New Talk withdrew those petitions and such withdrawals were allowed by the Commission.
- The staff recommendation (in Docket No. 070178-TX) was only a recommendation and has no binding effect as precedent on New Talk or the Commission. The Florida regulatory assessment fees have been paid, and the FCC enforcement action did not result in a fine against New Talk and instead was resolved by agreement resulting in a Consent Decree, wherein the Notices of Liability for Forfeiture were terminated and cancelled.
- The 2006 bankruptcy proceeding of New Talk's predecessor Connect Paging is irrelevant to this proceeding. The company had different ownership at that time and was purchased from bankruptcy by a company owned by the present management team. The purchase was approved by the bankruptcy court and the change of control of New Talk was approved by the Texas Public Utility Commission.
- AT&T misrepresents its pending billing dispute in Texas with New Talk. AT&T has failed to inform the Florida Commission that the Texas Public Utility Commission has issued a stay against AT&T in the proceeding. Instead of owing AT&T, New Talk is owed offsets and credits in the amount of \$2,781,050.89. The parties are not engaged in settlement negotiations and no hearing is scheduled.
- AT&T's recitation of the ownership of Telecom Ventures and New Talk is correct. Neither New Talk nor Telecom Ventures nor any of its managers have ever been penalized by any regulatory agency.

#### Staff's Analysis of AT&T's Objection and Telecom Ventures/New Talk's Response

Parts of AT&T's rationale used in its Objection may not be relevant to this case. For example, the billing issue in Texas has not been resolved so it remains to be seen which party's claim will endure.

The Telecom Ventures and New Talk explain Connect Paging's bankruptcy petition as irrelevant to this proceeding because the company had different ownership at that time and it was purchased from bankruptcy by a company owned by the present management team. While it may be true that another corporate entity owned Connect Paging, staff believes the bankruptcy is relevant because records show that Brian Young was an officer with Connect Paging before and after the bankruptcy. This is relevant regarding the assessment of management capability.

For the initial recommendation in this docket, staff reviewed Connect Paging's history at the Commission. Connect Paging first filed an application for a CLEC certificate in 2004. In

2008, Connect Paging's name was changed to New Talk, Inc. Staff supported the request for transfer of the CLEC certificate from New Talk to Telecom Ventures based on the applicant's assertion of truth concerning the information in its application.

Staff revisited and reviewed New Talk's and Telecom Ventures' management, technical, and financial capabilities, after AT&T filed its objection. Staff discovered other entities that were managed by the same personnel associated with Connect Paging, New Talk, and Telecom Ventures, namely Byron, Brandon, and Brian Young.

#### Results of Staff's Research

In reviewing the Commission's, Florida Secretary of State's and other agencies' records, staff found the current management of New Talk and Telecom Ventures were also officers of or associated with Seven Bridges Communications, LLC and ET Telephone, Inc. Both of these entities held CLEC certificates that were cancelled by the Commission for cause. Staff presents information for the various companies below.

#### ET Telephone, Inc. (ET Tel)

##### Docket No. 000189-TX – Application for CLEC Certificate

- The CLEC application identified **Bryon Young as the President** of ET Tel.
- Secretary of State documents identified **Brandon Young as the President** of ET Tel.
- The CLEC Certificate became active on May 30, 2000.

##### Docket No. 010012-TP – ET Tel and AT&T Resale Agreement

- Page 17 of the resale agreement lists **Byron Young as the point-of-contact for notices regarding the agreement**. Staff is not sure if Bryon and Byron are different individuals or if letters were just transposed in the names.
- Page 20 of the resale agreement shows **Brandon Young with the title "President"** of ET Tel. There is a conflict between the CLEC application and Secretary of State registration regarding which person is actually president of ET Tel.

##### Docket No. 011294-TX – Cancellation of ET's CLEC Certificate No. 7429

- ET Tel failed to respond to Order No. PSC-01-2408-PAA-TX<sup>3</sup>, thus its CLEC certificate was cancelled effective January 4, 2002, for non-payment of regulatory assessment fees, a violation of Rule 25-4.0161, F.A.C.

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<sup>3</sup> See Order No. PSC-01-2408-PAA-TX, issued on January 4, 2002, in Docket No. 011294-TX, In Re: Cancellation by Florida Public Service Commission of Alternative Local Exchange Telecommunications Certificate No. 7429

Other Comments Regarding ET Tel

- ET Tel's Registration with the Secretary of State was revoked on September 22, 2000, for failure to file an annual report.
- ET Tel owes the Commission regulatory fees for 2000, 2001, and 2002, plus statutory penalty and interest.
- ET Tel owes the Commission a \$500 penalty imposed in Docket No. 011294-TX.
- ET Tel never filed a regulatory assessment fee form, thus staff does not know if the company ever had sales in Florida.

Seven Bridges Communications, L.L.C. (Seven Bridges)

Docket No. 060624-TX – Compliance investigation of Seven Bridges for apparent violation of Section 364.183(1), F.S.

- Seven Bridges failed to respond to Order No. PSC-06-1013-TX, issued December 8, 2006, in Docket No. 060624-TX. Its CLEC certificate was cancelled effective January 2, 2007, upon issuance of the Consummating Order, for failure to respond to a staff data request. The request sought data for inclusion in the local competition report required by the Legislature. *(The Commission's master directory identifies **Byron Young as the President of Seven Bridges**. Staff does not know when the Commission's records regarding changes to the liaison, address, phone numbers, etc., were changed as this information is not tracked in the data base. Previously, Frank Evans was listed as the Manager of Seven Bridges.)*
- Order No. PSC-06-1013-TX was mailed to Bryon Young and the certified mail receipt was signed, indicating receipt of Order No. PSC-06-1013-TX. The same was true for the Consummating Order No. PSC-07-001-CO-TX, dated January 2, 2007.

Other Comments Regarding Seven Bridges

- The last annual report filed with the Florida Secretary of State for Seven Bridges on April 26, 2005, lists Frank Evans as the Manager of Seven Bridges. No changes in management were ever made with the Secretary of State.
- Seven Bridges registration with the Florida Secretary of State was revoked on September 15, 2006, for failure to file an annual report.

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issued to ET Telephone, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

- In a letter, dated August 19, 2005 from Nowalsky, Bronston & Gothard, the Commission was advised of the transfer of control of Seven Bridges to Pensacola Group, Inc.
- Nevada's Secretary of State records list **Byron Young as President, Treasurer, and Secretary of Pensacola Group, Inc.**, which was incorporated on August 22, 2003.
- In New Talk's Petition for ETC Designation, dated November 13, 2008, (Docket No. 080673-TX), it was provided that during its existence, Seven Bridges was a limited liability company, not a corporation. Mr. Byron Young was only a Member of this LLC, and at no time did he ever occupy the position of President, nor did he otherwise possess management control of Seven Bridges.
- In New Talk's response, dated January 7, 2009, to a staff data request in Docket No. 080673-TX, the following statement was provided. "Seven Bridges Communications was acquired by Pensacola Group, Inc. on August 1, 2005. Pensacola Group, a holding company, **was owned by Byron Young and Chris Watson. Mr. Young was listed as the President of Pensacola Group** when it was incorporated in August 2003. He sold 100% of his shares and interest to Chris Watson on March 15, 2007. After this date he was no longer affiliated with Pensacola Group or Seven Bridges Communications." Thus, it appears that **Byron Young held management control of Seven Bridges** from August 1, 2005 until March 15, 2007, during which period Seven Bridges' CLEC certificate was cancelled by the Commission.
- Seven Bridges owes the Commission regulatory fees for 2006 and 2007, plus statutory penalty and interest.
- Seven Bridges owes the Commission a \$10,000 penalty imposed in Docket No. 060624-TX.
- Seven Bridges has never reported any sales in Florida.

### **Connect Paging and New Talk**

#### **Docket No. 040224-TX – Connect Paging's CLEC Application**

- Florida Secretary of State records show Brian Young as President, **Byron Young as Vice-President, and Brandon Young as Secretary of Connect Paging.**

#### **Docket No. 070178-TX – Connect Paging's Petition for ETC Designation**

- Staff filed a recommendation on August 7, 2008, recommending the Commission deny the petition. The petition was withdrawn by the company on August 13, 2008.



Docket No. 080673-TX – New Talk's Petition for ETC Designation

- In a letter dated January 18, 2009, the company withdrew the petition. A recommendation was never filed and the docket was closed.

Conclusion

Telecom Ventures is managed by Byron Young, President, assisted by Brian Young, whose resume was provided as part of the application for transfer of and name change on CLEC Certificate No. 8467 held by New Talk. As discussed above, the Youngs (Byron, Brian, Brandon, and Bryon) have been associated either individually or collectively with other companies regulated by the Commission. Two of these companies, ET Tel's and Seven Bridges' CLEC certificates were cancelled by the Commission for cause. These companies owe the Commission regulatory fees and penalties, in violation of Commission rules.

Connect Paging and New Talk have previously attempted to acquire ETC authority from the Commission. Instead of resolving outstanding issues for companies with which they were associated with in the past, the Youngs withdrew the applications. Case in point is Seven Bridges, in which records clearly indicate that the Youngs were responsible for the management oversight. The same is true for ET Telephone. For the eleven plus years that the Youngs have managed CLEC companies in Florida, the total reported sales were \$1,046.96, representing \$600 in 2006 for Connect Paging, and \$167.96 in 2008 and \$279 in 2009 for New Talk. Based on New Talk's 2010 RAF filing, no revenues were reported. This indicates that New Talk serves no customers in Florida.

The companies managed by the Youngs have violated Commission rules and owe the Commission past due regulatory fees and penalties. The outstanding monies owed the Commission demonstrate that the applicant may not have the financial capability to operate a CLEC in Florida. Collectively, the companies owe the Commission approximately \$12,000 in outstanding regulatory fees, statutory late payment fees, and fines. The Youngs' management team has not been forthcoming with information and/or has withdrawn applications when questioned by the Commission staff, indicating a lack of management willingness to fulfill the Commission's regulatory requirements.

Based on the above, staff recommends that the Commission should deny the request for transfer of and name change on CLEC Certificate No. 8467 held by New Talk, Inc., to Telecom Ventures, LLC d/b/a Dialtone Ventures, LLC.

**Issue 2:** Should the Commission cancel CLEC Certificate No. 8467 held by New Talk, Inc.?

**Recommendation:** Yes. Staff recommends that the Commission should cancel CLEC Certificate No. 8467 currently held by New Talk, Inc. **(Kennedy)**

**Staff Analysis:** Section 364.285(1), Penalties, F.S., provides in part:

The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed, and collected by the commission; **or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it.**

Rule 25-24.820, Florida Administrative Code, Revocation of a Certificate, provides that the Commission may cancel a company's certificate for any of the following reasons:

- (a) Violation of a term or condition under which the authority was originally granted;
- (b) Violation of Commission rule or order;
- (c) Violation of Florida Statute; or
- (d) Violation of a price list standard.

If the Commission approves staff's recommendation in Issue 1, staff recommends that New Talk's CLEC certificate should be cancelled because Telecom Ventures share the same management. If the Commission determines that Telecom Ventures lacks the management, technical, and financial capabilities causing the denial of a certificate transfer, likewise, New Talk and its management would no longer meet the statutory requisites for holding a CLEC certificate.

The management team of the Youngs have changed their company names or transferred officers between companies in Florida several times. For all the CLECs managed during an eleven year span, there was only \$1,049.96 generated in sales. New Talk served no customers in Florida in 2010. Also, over a two-year time span, the Youngs attempted to obtain ETC designation once as Connect Paging and again as New Talk, but withdrew the applications after staff recommended denial or sought additional clarifying information. Staff believes that it is not in the public interest for New Talk to maintain its CLEC certificate. Therefore, staff recommends cancellation of CLEC Certificate No. 8467 held by New Talk, Inc.

Docket No. 100373-TX  
Date: September 8, 2011

**Issue 3:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. **(Robinson)**

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.