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**Via Electronic Filing**

Ms. Ann Cole  
Director  
Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

**Re: Docket No. 140026 - Petition for Designation as  
Eligible Telecommunications Carrier (ETC) by  
NetTALK.COM, Inc.**

Dear Ms. Cole:

On behalf of NetTALK.COM, Inc. ("NetTALK"), I am writing in response to a recent Staff inquiry at an informal conference in this proceeding that took place on March 3, 2014.<sup>1</sup> At the conference, Staff inquired whether NetTALK thought that the Florida Public Service Commission had jurisdiction to grant Eligible Telecommunications Carrier ("ETC") designation to NetTALK under current Florida law in light of the fact that NetTALK offers services that could be classified as Voice over Internet Protocol ("VoIP") services under Florida law. *See* § 364.10, F.S.

NetTALK provides the following response to Staff's request and submits that the Florida Commission does in fact have jurisdiction and authority to grant NetTALK's application for designation as an ETC under Florida law. By way of background, NetTALK provides services in Florida that rely on VoIP transmission. However, unlike many VoIP providers that have resisted the jurisdiction of the Florida Public Service Commission, NetTALK has submitted to the Commission's jurisdiction by applying for and becoming a certificated telecommunications service provider throughout the State of Florida. *Application for certificate to provide local telecommunications service by NetTALK.COM, Inc.*, Order Granting Certificate of Authority, Docket No. 130252-TX (Dec. 18, 2013) ("NetTALK Certification Order") (issuing Certificate 8854).

NetTALK believes the law is clear that a provider such as NetTALK is entitled to be designated as an ETC, even in light of recent statutory changes limiting the Commission's

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<sup>1</sup> *See* Memo from Charles W. Murphy, Senior Attorney, Office of the General Counsel, to All Parties of Record & Interested Persons (Feb. 27, 2014).

jurisdiction over rate regulation of VoIP services. Pursuant to Florida statute, a provider must be a “telecommunications company” in order to become an eligible telecommunications carrier:

364.10 Lifeline service.—

(1)(a) An eligible telecommunications carrier shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in the eligible telecommunications carrier’s published schedules. For the purposes of this section, *the term “eligible telecommunications carrier” means a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. § 54.201.*

§ 364.10, F.S (emphasis added).

Section 364.02(13), Florida Statutes, in turn, defines a “telecommunications company” as follows:

(13) “Telecommunications company” includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility.

§ 364.02(13), F.S. NetTALK meets the definition of “telecommunications company” because it offers “two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility.” NetTALK offers these services “using its own facilities and resale,” as indicated in NetTALK’s ETC application. *Petition for designation as eligible telecommunications carrier (ETC) by NetTALK.COM, Inc., Application of NetTALK.com, Inc. for Certification as an Eligible Telecommunications Carrier, Docket No. 140026, at 2-3 (Feb. 4, 2013).* In addition, the statutory definition of “telecommunications company” explicitly provides a series of exceptions of services that are *not* included within the definition (*e.g.*, CMRS providers, fax transmission services, private computer data network company, a cable tv company, and an operator services provider). § 364.02(13)(a)-(i), F.S. The fact that VoIP provider or service is not listed as one of the types of providers or services categorically excluded from the definition of “telecommunications company” leads to the conclusion that VoIP providers can be telecommunications companies under Florida law.

Moreover, it is not a valid argument that NetTALK’s VoIP services do not constitute a “service” under Florida law. Pursuant to Florida law, “service” is construed “in its broadest and most inclusive sense.” § 364.02(12), F.S. The term “service” “does not include broadband service or voice-over-Internet protocol service *for purposes of regulation by the commission.*” *Id.* (emphasis added). Reading section 364.02(12) as a whole, the limitation on the Commission’s jurisdiction can only be read as a limitation on the Commission’s jurisdiction to

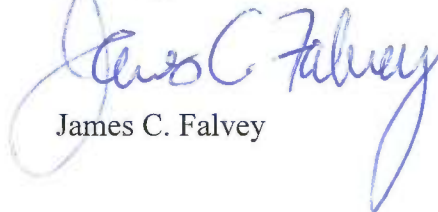
regulate VoIP rates or service quality, and cannot be extended to preclude the designation of a carrier such as NetTALK as an ETC.

This reading of Florida statutes is consistent with other Florida law and Commission orders. NetTALK is a certificated to provide “telecommunications service” throughout the state of Florida. NetTALK Certification Order at 1. NetTALK’s service also meets the definition of “basic telecommunications service” under Section 364.02(2). *See* § 364.02(2), F.S. In addition, the Commission has previously granted ETC certification to at least one other provider that offers services that rely on VoIP transmission. *See Application for designation as an eligible telecommunications carrier (ETC) by Cox Florida Telecom, LP.*, Notice of Proposed Agency Action, Order Granting Eligible Telecommunications Carrier Status, Docket No. 120165-P (Sept. 28, 2012).

Finally, this interpretation of Florida law is also consistent with the intent of federal statutes, rules, and orders, which merely require that a provider offer “voice telephony service” in order to be designated as an ETC, service which “may be provisioned over broadband (IP-enabled) networks.” *Lifeline and Link Up Reform and Modernization*, Report And Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42, ¶ 47 (rel. Feb. 6, 2012) (citing *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, ¶ 63 (rel. Nov. 18, 2011) (explaining how consumers are increasingly obtaining voice services over broadband networks as well as over traditional circuit switched telephone networks). As the FCC found, by “updating the definition, we allow carriers to provide service using new technologies that will result in additional options and benefits to Lifeline consumers.” *Id.* In the same vein, the Commission, by continuing to permit providers that offer telecommunications services reliant on VoIP transmission to be designated as ETCs, will expedite the delivery of expanded technological options to Florida Lifeline consumers.

Please do not hesitate to contact me with any questions or concerns relating to this response. NetTALK is also prepared to respond to any additional requests the Commission Staff may have in connection with its ETC application.

Sincerely,



James C. Falvey

cc: Adam Teizman (via e-mail)  
Charles W. Murphy (via e-mail)  
Beth Salak (via e-mail)  
Bob Casey (e-mail)  
Catherine Beard (via e-mail)  
Kenneth Hosfeld (via e-mail)  
Patrick Hardy (via e-mail)