

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 26, 2015
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Catherine S. Beard, Public Utility Analyst II, Office of Telecommunications *CSB*
Charles W. Murphy, Senior Attorney, Office of the General Counsel *CM*
RE: Docket No. 140026-TX – Petition for designation as eligible telecommunications carrier (ETC) by NetTALK, Inc. *CSB*

The petitioner in Docket No. 140026-TX has filed a request to withdraw the petition. The Commission has taken no action in this docket and there are no issues pending. Therefore, this docket should be closed administratively in accordance with APM 2.07-C.2.d.(4).

cc: Adam Teitzman (GCL)
Beth Salak; Bob Casey (TEL)



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March 24, 2015

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"), a Miami-headquartered competitive local exchange carrier, I am writing to withdraw the NetTALK Petition for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to section 364.10, F.S., and 47 C.F.R. § 54.201.

NetTALK is disappointed by the manner in which the Florida statutes have been interpreted to make it difficult if not impossible for NetTALK to become designated as an ETC in the same manner that other Florida local exchange carriers, including both large cable companies and large incumbent local exchange carriers, have been so designated by the Florida Commission.

As detailed in my previous letters dated May 20, 2014 and August 15, 2014, NetTALK demonstrated that it meets the definition of a "telecommunications company" as that term is defined in section 364.01(13), F.S., and that the Company therefore meets the requirements of section 364.10 to be designated by the Florida Commission as an ETC. NetTALK also indicated why the section 364.02(12) definition of "services" does not preclude NetTALK from being designated as an ETC, and that, as a certificated telecommunications services carrier, NetTALK was making the same arguments made by Cox when it obtained ETC designation from the Florida Commission in Dockets Nos. 120165-TP and 120175-TP. NetTALK has also provided additional information to demonstrate that it has facilities in Florida in order to meet the facilities requirement of Section 364.02(13). § 364.02(13), F.S.

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NetTALK has also demonstrated that section 364.013 is limited by other sections of the chapter. Section 364.013 provides that VoIP services are exempt from Commission jurisdiction “except as delineated in this chapter . . .” § 364.013, F.S. In fact, the ETC designation process *is* specifically delineated in Section 364.10 as a specific area in which the Commission retains jurisdiction and the Commission is therefore squarely within its jurisdiction to carry out that process so Section 364.013 does not apply here.

It has become increasingly clear that the Florida statute that was supposedly designed to encourage the development of VoIP services in Florida is in fact making it more difficult for innovative VoIP service providers such as NetTALK to compete on a nondiscriminatory basis with larger carriers. The result for Florida consumers, and particularly the underserved Florida ETC market, will be more limited choices, higher prices, and more conventional service offerings. More innovative, alternative and competitively priced services such as those offered by NetTALK will not be made available to ETC consumers and the Florida ETC market will continue to underserved. While NetTALK has been told that it can apply for ETC designation with the FCC, it is widely known that the FCC is not designating new ETCs and there is a significant backlog of federal ETC applications. As such, this is not a substitute that will help accelerate the delivery of Lifeline services to Florida consumers.

NetTALK respectfully requests that its Petition be considered withdrawn without prejudice to refile at an appropriate time. Thank you for the time and effort of the Commission staff in addressing this matter.

Sincerely,

/s/ James C. Falvey

James C. Falvey

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