

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: August 7, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Beard, Casey, Mann)
Office of the General Counsel (Tan)

RE: Docket No. 070178-TX – Petition for designation as eligible telecommunications carrier (ETC) by Connect Paging, Inc. d/b/a Get A Phone.

AGENDA: 08/19/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\070178.RCM.DOC

Case Background

On March 20, 2007, the Florida Public Service Commission (FPSC) received a petition for designation as an Eligible Telecommunications Carrier (ETC), by Connect Paging, Inc., d/b/a Get A Phone (Connect Paging). Specifically, Connect Paging requested that it be granted ETC designation in certain BellSouth Telecommunications, Inc. (AT&T), Embarq-Florida, Inc. (Embarq), and Verizon Florida (Verizon) exchanges, for the purpose of receiving federal universal service support. Connect Paging states that it is only seeking low income support, and that it is not requesting high-cost support from the federal Universal Service Fund (USF).

On July 11, 2008, Connect Paging requested that Embarq's territory be deleted from the original request.¹ In a July 18, 2008 response to a staff data request, Connect Paging stated "Connect Paging would like to request ETC status in the AT&T territories only." Connect Paging currently has agreements for resale services with AT&T, Embarq, and Verizon, and an interconnection agreement with Verizon.

Connect Paging is a Texas corporation, incorporated on September 2, 1997, and is authorized to do business in the state of Florida as a foreign corporation. Connect Paging is certificated as a competitive local exchange carrier (CLEC)² in Florida, providing local exchange and exchange access services in the AT&T, Embarq, and Verizon exchanges. Connect Paging has been designated an ETC in Texas. Since April 2007, Connect Paging has received \$1,420,656 in low-income funds from the Universal Service Administrative Company for the state of Texas.

Staff drafted an affidavit for ETC applicants to sign attesting that the ETC applicant will follow all Florida Statutes, Florida Administrative Rules, Florida PSC Orders, Federal Communications Commission (FCC) rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up and Lifeline, and toll limitation service. Connect Paging signed, and returned the affidavit (See Attachment A).

If its request for designation as an ETC is approved in Florida, Connect Paging indicates that it will participate in and offer Lifeline and Link-Up to qualified low income consumers in Florida. Additionally, Connect Paging has committed to publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those consumers who would be likely to qualify for Lifeline and Link-Up services.³ Connect Paging indicated that it could have Lifeline available to Florida customers within 90 days of ETC designation.

The Commission has authority under Section 364.10(2), Florida Statutes, to decide a petition by a CLEC seeking designation as an ETC pursuant to 47 C.F.R. §54.201.

¹ Document No. 06010-08, filed July 11, 2008.

² PSC-04-0480-PAA-TX, issued May 11, 2004, in PSC Docket 040224-TX

³ 47 C.F.R. §§ 54.401-54.417 – Universal Service Support for Low Income-Consumers

Discussion of Issues

Issue 1: Should Connect Paging be granted ETC designation in the state of Florida?

Recommendation: No. Staff recommends that Connect Paging's petition for ETC designation in the state of Florida be denied. (Beard, Casey)

Staff Analysis: Under FCC rules, state commissions have the primary responsibility to designate providers as ETCs.⁴ Designation as an ETC is required in order for a provider to be eligible to receive monies direct from the USF. Section 254(e) of the Act⁵ provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal Universal Service support."⁶ According to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal Universal Service mechanisms throughout a designated service area.

ETC Certification Requirements

CFR Rule 54.201(c), addresses a state commission's responsibilities related to ETC designation, stating:

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

To qualify as an ETC, telecommunications carriers must provide nine services identified in CFR Rule 54.201(d)(1).

- (1) Voice grade access to the public switched network Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call;
- (2) Local Usage Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users;

⁴ 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).

⁵ 47 U.S.C. § 254 of the 1996 Telecom Act

⁶ 47 U.S.C. § 254(e)(2).

- (3) Dual tone multi-frequency signaling or its functional equivalent Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, thus shortening call set-up time;
- (4) Single-party service or its functional equivalent Single party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;
- (5) Access to emergency services Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations;
- (6) Access to operator services Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion, of a telephone call;
- (7) Access to interexchange service Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
- (8) Access to directory assistance Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and
- (9) Toll limitation for qualifying low-income consumers Toll limitation or blocking restricts all direct dial toll access.

In addition to providing the above services, ETC's must advertise the availability of such services and the associated charges using media of general distribution.

Additional ETC Certification Requirements

In addition to requiring the above services, the FCC, on March 17, 2005, issued a Report and Order that established additional criteria that all ETC applicants must satisfy in order to be granted ETC status by the FCC. In this Order, the FCC determined that an ETC applicant must also demonstrate:

- 1) a commitment and ability to provide the supported services throughout the designated area;
- 2) the ability to remain functional in emergency situations;
- 3) the ability to satisfy consumer protection and service quality standards;
- 4) a provision of local usage comparable to that offered by the incumbent LEC; and

- 5) an acknowledgement that the applicant may be required by the FCC to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.

The FCC encouraged states to also adopt these criteria, and the FPSC has done so in Docket No. 010977-TL, by Order No. PSC-05-0824-TL, issued August 15, 2005.

Public Interest Determinations

Under Section 214 of the Act, the FCC and state commissions must determine that an ETC designation is consistent with the public interest, convenience, and necessity for rural areas. They also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act. Congress did not establish specific criteria to be applied under the public interest tests in Section 214 or Section 254. The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.⁷ Staff believes that before designating a carrier as an ETC, the FPSC should make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.

Connect Paging's Petition

Connect Paging is requesting that it be granted ETC designation throughout the non-rural AT&T territory for the purpose of receiving federal universal service support. The company maintains that it will only be seeking low-income support, and is not requesting high-cost support from the federal USF. Connect Paging's primary purpose in requesting ETC status in Florida is to provide Lifeline and Link-Up services. While analyzing Connect Paging's petition and history, staff determined the following:

1. Connect Paging has only a Resale agreement with AT&T, not an interconnection agreement - C.F.R. §54.201(d), provides that carriers designated as ETCs shall, throughout the designated service area: (1) offer the services that are supported by federal universal support mechanisms either using their own facilities or a combination of their own facilities and the resale of another carrier's services, and (2) advertise the availability of such services and the related charges therefore using media of general distribution. C.F.R. §54.201(f) states that the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements (UNE).
2. Connect Paging is not a legal corporation in the state of Florida – A check of the Florida Division of Corporation's database shows that Connect Paging, Inc. changed its name to

⁷ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46 (¶40), Adopted: February 25, 2005 Released: March 17, 2005.

New Talk, Inc. on May 30, 2008. The Commission has received no notification of the name change.

3. Connect Paging has not paid its Florida Regulatory Assessment Fees (RAF) for 2007 - On July 9, 2008, staff opened Docket No. 080465-TX⁸ to address Connect Paging's apparent violation of Rule 25-4.0161, F.A.C. Connect Paging (TX776) has not paid its 2007 RAF, which was due by January 30, 2008. The delinquent notice was sent via certified mail and delivered on February 26, 2008. The notice stated that in order to avoid an automatic fine of \$500, payment had to be postmarked within 15 days of receipt of the notice, meaning the last day to postmark payment to avoid the automatic fine was March 12, 2008. No response was received from the company. Pursuant to Rule 25.40161(10) a proposed agency action (PAA) order imposing the fine is scheduled to be issued August 25, 2008.
4. The FCC issued a Notice of Apparent Liability (NAL) for Forfeiture Order against Connect Paging on March 30, 2007, for failure to respond to a directive of the Enforcement Bureau.⁹ The FCC found that Connect Paging apparently willfully or repeatedly violated an FCC order by failing to respond to a directive of the Enforcement Bureau to provide certain information and documents related to the Bureau's investigations into carrier protection of customer proprietary network information (CPNI). The FCC found that Connect is apparently liable for a forfeiture in the amount of \$4,000.

The NAL gave Connect Paging the option of paying the proposed forfeiture or of filing a response to the NAL stating why the proposed forfeiture should either not be assessed or should be reduced. Connect filed a response to the NAL on April 27, 2007. Based on the information contained in the response, the FCC affirmed the forfeiture through Order DA 07-3581, issued August 10, 2007.

5. The FCC issued a Notice of Apparent Liability (NAL) for Forfeiture Order against Connect Paging on August 10, 2007, for failure to comply with Section 64.2009(e) of the FCC rules.¹⁰ The FCC found that Connect Paging apparently willfully or repeatedly violated Section 64.2009(e) of the FCC rules by failing to have a corporate officer with personal knowledge execute an annual certificate stating that the company has established operating procedures adequate to ensure compliance with the FCC's rules governing protection and use of CPNI. The FCC proposed a monetary forfeiture of \$100,000 against Connect Paging. This NAL is still an open proceeding at the FCC.
6. Brandon Young, Secretary of Connect Paging, was Vice President/Secretary of ET Telephone, Inc. whose Certificate No. 7429 was cancelled by the Florida Commission – By Order PSC-01-2408-PAA-TX, issued December 12, 2001, in Docket No. 011294-TX, the Commission cancelled ET Telephone's Certificate No. 7429 for non-payment of regulatory

⁸ Compliance investigation of CLEC Certificate No. 8467, issued to Connect Paging, d/b/a Get A Phone, for apparent first-time violation of Rule 25-4.0161, F.A.C.. Regulatory Assessment Fees.

⁹ In the Matter of Connect Paging, Inc. d/b/a Get A Phone, Apparent Liability for Forfeiture, File No. EB-06-TC-4731, NAL/Acct. No. 200732170054, FRN: 0013394028, DA 07-1420.

¹⁰ In the Matter of Connect Paging, Inc. d/b/a Get A Phone, Apparent Liability for Forfeiture, File No. EB-06-TC-4731, NAL/Acct. No. 200732170054, FRN: 0013394028, DA 07-1420.

assessment fees. No response was filed by ET Telephone to the Commission's PAA order. Order PSC -02-0041-CO-TX, issued January 4, 2002, made Order PSC-01-2408-PAA-TX final and effective.

7. Byron Young, President of Connect Paging, was President of Seven Bridges Communications, Inc. (Seven Bridges) whose Certificate No. 7608 was cancelled by the Commission - By Order No. PSC-06-1013-PAA-TX, issued December 8, 2006, the Commission imposed a \$10,000 fine on Seven Bridges for violation of Section 364.183(1), Florida Statutes, failure to respond to staff's data request effectively denying staff access to its records. On January 2, 2007, the FPSC cancelled Seven Bridges CLEC certificate for failure to respond to orders PSC-06-1013-PAA-TX, and PSC 07-0011-CO-TX.

Connect Paging currently has only a resale agreement with AT&T. It has no facilities of its own, and it cannot at this time offer supported services through the leasing of UNEs to meet the facilities requirement. Since Connect Paging can presently only offer services through resale, it is ineligible to become an ETC. C.F.R. §54.201(d) provides that, "A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services."

Conclusion

As mentioned previously, before designating a carrier as an ETC, the FPSC should make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier. Staff's investigation shows that Connect Paging has not paid its 2007 regulatory assessment fees, and that it has provided incomplete, inaccurate, and/or misleading information in response to staff's data requests. Staff believes that Connect Paging does not have the management capability necessary to be designated as an ETC in the state of Florida. Staff recommends that it is not in the public interest to designate Connect Paging as an ETC in Florida. Staff will be following up on issues brought forth in this docket which may affect the company's CLEC certificate. Denying ETC status to Connect Paging will not prevent the company from providing Link-Up and Lifeline services to its customers. Connect Paging can purchase Link-Up and Lifeline through its resale agreement(s) with its underlying carrier(s). Therefore, staff recommends that Connect Paging's petition for ETC status in the in the state of Florida be denied.

Docket No. 070178-TX

Date: August 7, 2008

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a consummating order. (Tan)

Staff Analysis: If no person whose substantial interests are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a consummating order.

AFFIDAVIT

State of Texas
County of Tarrant

BEFORE ME, the undersigned authority, appeared Byron Young,
who deposed and said:

My name is Byron Young. I am employed by Connect Paging, Inc. located at 112 E. Seminary Drive, Suite B, Ft. Worth, Texas 76115 as its President. I am an officer of the Company and am authorized to give this affidavit on behalf of the Company. This affidavit is being given to support the Eligible Telecommunications Carrier petition filed by my Company with the Florida Public Service Commission (PSC).

Company hereby certifies the following:

1. Company will follow all Florida Statutes, Florida Administrative Rules, and Florida PSC Orders relating to Universal Service, Eligible Telecommunications Carriers, and the Florida Link-Up and Lifeline Program.
2. Company will follow all FCC rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up and Lifeline, and toll limitation service.
3. Company agrees that the Florida PSC may revoke a carrier's ETC status for good cause after notice and opportunity for hearing, for violations of any applicable Florida Statutes, Florida Administrative Rules, Florida PSC Orders, failure to fulfill requirements of Sections 214 or 254 of the Telecommunications Act of 1996, or if the PSC determines that it is no longer in the public interest for the company to retain ETC status.
4. Company understands that if its petition for ETC status is approved, it will be for limited ETC status to provide Link-Up, Lifeline, and toll-limitation service only, and the Company will be eligible only to receive low-income support from the Universal Service Fund.
5. Company understands that it may only receive reimbursement from the Universal Service Administrative company (USAC) for active customer Link-Up and Lifeline access lines which are provided using its own facilities or using access lines obtained as wholesale local platform lines (formerly UNE lines) from another carrier. The Company shall not apply to USAC for reimbursement of Link-Up and Lifeline access lines obtained from an underlying carrier which already receive a Lifeline and/or Link-Up credit provided by the underlying carrier.
6. Company understands that the PSC shall have access to all books of account, records and property of all eligible telecommunications carriers.
7. Company understands that low income support reimbursed by USAC for toll limitation service is available only for the incremental costs that are associated exclusively with toll limitation service.

- 8. Company agrees that upon request, it will submit to the PSC a copy of Form 497 forms filed with USAC to:
Florida Public Service Commission
Division of Regulatory Compliance, Market Practices Section
2540 Shumard Oak Drive
Tallahassee, Florida 32303
- 9. Company understands that in accordance with the Florida Lifeline program, eligible customers will receive a \$13.50 monthly discount on their phone bill, \$3.50 of which is provided by the ETC, and \$10.00 of which is reimbursable from the Federal Universal Service Fund.

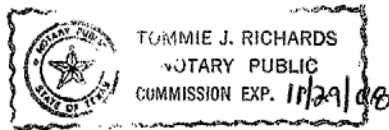
FURTHER AFFIANT SAYETH NOT.



 Signature _____ Date July 3, 2008
 Byron Young
 Printed Name _____

Business Address:
112 E. Seminary Dr., Suite B
Ft. Worth, Texas 76115

State of Texas
 County of Tarrant

Acknowledged before me this 3rd day of July, 2008, by Byron Young, as President of Company, who is personally known to me or produced identification and who did take an oath.




 NOTARY PUBLIC
Tommy Richards
 Printed Name of Notary _____

Personally Known XX
 Produced Identification _____
 Type of Identification Produced _____