

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Request for Approval of Transfer and Name  
Change on a Competitive Local Exchange  
Telecommunication Certificate

Docket No. 100373-TX

Filed: February 9, 2011

**APPLICANT'S RESPONSE TO AT&T'S OBJECTION**

Telecom Ventures, LLC d/b/a Dialtone Ventures, LLC ("Telecom Ventures") and New Talk Inc. ("New Talk") respond to AT&T Florida's January 24, 2011 Objection as follows:

1. The pending application was filed on August 9, 2011. With no prior notice to Applicant, much less any attempt to discuss this case with Applicant, AT&T Florida waited until the day before this otherwise unopposed application was to have been approved by consent of the Commission. AT&T's objection is untimely and should be completely disregarded for such reason alone. Moreover, as shown below, 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 for the purpose to harass and disparage Telecom Ventures and New Talk.

2. New Talk's previous petitions for designation as an Eligible Telecommunications Carrier are irrelevant to the pending application. New Talk withdrew those petitions without prejudice to re-filing same, and such withdrawals were allowed by the Commission. The staff recommendation dated August 7, 2008, was only a recommendation, and has no binding effect as precedent on New Talk or the Commission. However, so that the Commission is presently advised of some of the staff determinations made in that recommendation, New Talk hereby represents that the Florida Regulatory Assessment Fees of 2007 have long since been paid. Also, the FCC enforcement action referenced did not result in a fine against New Talk and instead was resolved by agreement resulting in a Consent Decree wherein the Notices of Apparent Liability

**Diamond Williams**

100373-TX

**From:** Bruette Davis [bdavis@kagmlaw.com]  
**Sent:** Wednesday, February 09, 2011 9:28 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Beth Salak; Ray Kennedy; Pauline Evans; ke2722@att.com; th9467@att.com; mg2708@att.com  
**Subject:** 100373-TX: Request for Approval of Transfer and Name Change on a Competitive Local Exchange Telecommunication Certificate

**Attachments:** Applicant's Response to AT&T's Objection with attachments A-F 2.9.11.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman  
 Keefe Anchors Gordon & Moyle  
 118 North Gadsden Street  
 Tallahassee, FL 32301  
 (850) 681-3828  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)

b. This filing is made in Docket No. 100373-TX.

c. The document is filed on behalf of Telecom Ventures, LLC d/b/a Dialtone Ventures, LLC and New Talk Inc.

d. The total pages in the document are 50 pages.

e. The attached document is Applicant's Response to AT&T's Objections.

Bruette Davis  
[bdavis@kagmlaw.com](mailto:bdavis@kagmlaw.com)



Keefe, Anchors, Gordon and Moyle, P.A.  
 The Perkins House  
 118 N. Gadsden St.  
 Tallahassee, FL 32301  
 850-681-3828 (Voice)  
 850-681-8788 (Fax)  
[www.kagmlaw.com](http://www.kagmlaw.com)

The information contained in this e-mail is confidential and may be subject to the attorney client privilege or may constitute privileged work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the agent or employee responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you receive this e-mail in error, please notify us by telephone or return e-mail immediately. Thank you.

*Added to Keefe law  
 Paul's 5/11  
 Add'l team*

DOCUMENT RECEIVED

00931 FEB -9 =

FPSC-COMMISSION CLERK

for Forfeiture (NAL) of \$4,000 and \$100,000 were terminated and cancelled. New Talk agreed to a make a voluntary contribution of \$3,000. The FCC Order approving the Consent Decree was released on September 3, 2010, and can be viewed online at: ([http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db0903/DA-10-1663A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0903/DA-10-1663A1.pdf)). It contains the following paragraph:

In the absence of new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether New Talk possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

See Exhibit A attached.

3. Similarly, the 2006 bankruptcy proceeding of New Talk's predecessor Connect Paging, Inc. d/b/a Get A Phone is also 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. This purchase was approved by the bankruptcy court and the change of control of New Talk was also approved by the Texas Public Utility Commission where New Talk conducts the vast majority of its telecommunication business. See Exhibits B and C. Rather than being disparaged by AT&T, New Talk's management team should be congratulated for turning around a business and providing a competitive telecommunication service to consumers.

4. AT&T completely misrepresents its pending Texas billing dispute with New Talk. AT&T fails to inform this Commission that the Texas PUC has issued a stay against AT&T in the proceeding. See Exhibit D. AT&T, furthermore, fails to disclose that New Talk contends that rather than owing AT&T any money, AT&T instead *owes New Talk* and should apply, offset and credit New Talk's account in the amount of \$2,781,050.89 for disputes relating to certain

promotions, credit \$300,492.30 for late charges, and return a \$260,000.00 security deposit. The presiding arbitrators have twice found that New Talk is likely to succeed on the merits of its complaint against AT&T. See Exhibits E and F. The parties are not engaged in settlement negotiations at present, and no hearing is scheduled.

5. The recitation of the ownership interests made by AT&T in paragraph 30 of its Objections is correct. Telecom Ventures is owned by BBY, Ltd. which, in turn is owned by Byron, Brandon and Brian Young. New Talk is owned by Ambient Ventures LLC whose members are the same individuals: Byron, Brandon and Brian Young. Neither New Talk nor Telecom Ventures nor any of its managers have ever been penalized by any regulatory agency. New Talk is a certificated CLEC in several states. Telecom Ventures is certificated in New York. Neither company has had any certification application denied. Aside from the bankruptcy proceeding mentioned above, none of the companies or members of the management team have been involved in bankruptcies.

**WHEREFORE,** Telecom Ventures and New Talk request that AT&T's spurious Objection be disregarded and that the Commission proceed to grant the requested transfer.

Respectfully submitted,

**Mark Foster**

Attorney at Law  
707 West Tenth Street  
Austin, Texas 78701  
(512) 708-8700  
[mark@mfoosterlaw.com](mailto:mark@mfoosterlaw.com)

**Vicki Gordon Kaufman**

Keefe, Anchors, Gordon and Moyle, P.A.  
The Perkins House, 118 N. Gadsden St.  
Tallahassee, FL 32301  
(850) 681-3828  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)

By: s/Vicki Gordon Kaufman  
Vicki Gordon Kaufman

Attorneys for Telecom Ventures, LLC d/b/a  
Dialtone Ventures, LLC and New Talk Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of February, 2011, a true and correct copy of the foregoing Applicant's Response to AT&T's Objection is being served via first class mail and email transmittal to the following:

E. Earl Edenfield, Jr.  
AT&T Florida  
150 South Monroe Street, Ste. 400  
Tallahassee, FL 32301  
(305) 347-5558  
(305) 577-4491 (fax)  
[ke2722@att.com](mailto:ke2722@att.com)

Tracy W. Hatch  
AT&T Florida  
150 South Monroe Street, Ste. 400  
Tallahassee, FL 32301  
(305) 347-5558  
(305) 577-4491 (fax)  
[th9467@att.com](mailto:th9467@att.com)

Manuel A. Gurdian  
AT&T Florida  
150 South Monroe Street, Ste. 400  
Tallahassee, FL 32301  
(305) 347-5558  
(305) 577-4491 (fax)  
[mg2708@att.com](mailto:mg2708@att.com)

Pauline Evans  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
(850) 413-6183  
[pevans@psc.state.fl.us](mailto:pevans@psc.state.fl.us)

Ray Kennedy  
Division of Regulatory Analysis  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
(850) 413-6584  
[rkennedy@psc.state.fl.us](mailto:rkennedy@psc.state.fl.us)

Beth Salak  
Division of Regulatory Analysis  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
(850) 413-6408  
[bsalak@psc.state.fl.us](mailto:bsalak@psc.state.fl.us)

s/Vicki Gordon Kaufman  
Vicki Gordon Kaufman

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No. EB-06-TC-4731
	)	
New Talk, Inc. f/k/a Connect Paging, Inc. d/b/a	)	NAL/Acct. No. 200732170054
Get A Phone	)	FRN: 0013394028

**ORDER**

**Adopted: September 3, 2010**

**Released: September 3, 2010**

By the Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") and New Talk, Inc. (formerly known as Connect Paging, Inc. d/b/a Get a Phone) (collectively "New Talk"). The Consent Decree terminates an investigation and Notice of Apparent Liability for Forfeiture ("NAL") by the Bureau against New Talk for possible violation of section 222 of the Communications Act of 1934, as amended ("Communications Act" or "Act"), 47 U.S.C. § 222, and section 64.2009(e) of the Commission's rules, 47 C.F.R. § 64.2009(e), regarding New Talk's apparent failure to file a compliant annual customer proprietary network information ("CPNI") certification pursuant to 64.2009(e).

2. The Bureau and New Talk have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, terminating the investigation and cancelling the NAL.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether New Talk possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Communications Act of 1934, as amended,<sup>1</sup> and sections 0.111 and 0.311 of the Commission's Rules,<sup>2</sup> the Consent Decree attached to this Order **IS ADOPTED**.

---

<sup>1</sup> 47 U.S.C. § 154(i), 503(b).

<sup>2</sup> 47 C.F.R. §§ 0.111, 0.311.

**Exhibit "A"**

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED** and the Notice of Apparent Liability for Forfeiture **IS CANCELLED**.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Wild  
Assistant Division Chief  
Telecommunications Consumers Division  
Enforcement Bureau



**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-06-TC-4731
	)	
	)	NAL/Acct. No. 200732170054
New Talk, Inc. f/k/a/ Connect Paging, Inc.	)	
d/b/a Get A Phone	)	FRN: 0013394028

**CONSENT DECREE**

1. The Enforcement Bureau ("Bureau") and New Talk, Inc. (formerly known as Connect Paging, Inc. d/b/a Get A Phone) (collectively known as "New Talk" or the "Company"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into New Talk's possible noncompliance with the requirements of section 222 of the Communications Act of 1934, as amended ("Communications Act" or "Act"), 47 U.S.C. § 222, and section 64.2009(e) of the Commission's rules, 47 C.F.R. § 64.2009(e).

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) "Adopting Order" means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) "Compliance Plan" means the program described in this Consent Decree at paragraph 10.
  - (f) "Effective Date" means the date on which the Commission releases the Adopting Order.
  - (g) "Investigation" means the investigation commenced by the Bureau's December 8, 2006, letter of inquiry<sup>1</sup> regarding whether New Talk violated the requirements of section 222 of the Communications Act and section 64.2009(e) of the Commission's rules by failing to maintain a compliant customer proprietary network information ("CPNI") certification.<sup>2</sup>

<sup>1</sup>See Letter from Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Mr. Byron Young, President, Connect Paging, Inc. d/b/a Get A Phone (December 8, 2006) ("December 8 LOP").

<sup>2</sup> 47 C.F.R. 64.2009(e).

- (h) "New Talk" means New Talk, Inc. (formerly known as Connect Paging, Inc. d/b/a Get A Phone) and its predecessors-in-interest and successors-in-interest (collectively "New Talk").
- (i) "NAL" means Notice of Apparent Liability for Forfeiture.
- (j) "Parties" means New Talk and the Bureau.
- (k) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

## II BACKGROUND

3. Section 222 imposes the general duty on all telecommunications carriers to protect the confidentiality of their subscribers' proprietary information.<sup>3</sup> The Commission has issued rules implementing section 222 of the Act.<sup>4</sup> The Commission required carriers to establish and maintain a system designed to ensure that carriers adequately protected their subscribers' CPNI. Section 64.2009(e) is one such requirement. Pursuant to section 64.2009(e):

A telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart.<sup>5</sup>

---

<sup>3</sup> Section 222 of the Communications Act provides that: "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier." 47 U.S.C. § 222.

<sup>4</sup> *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) ("CPNI Order"); *see also In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999); *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; 2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002).

<sup>5</sup> 47 C.F.R. § 64.2009(e). This rule has been amended since issuance of the NAL against New Talk. The quoted rule is cited as it was at the time of the alleged violation.

4. The Bureau has been investigating the adequacy of procedures implemented by telecommunications carriers to ensure confidentiality of their subscribers' CPNI, based on concerns regarding the apparent availability to third parties of sensitive, personal subscriber information. For example, some companies, known as "data brokers," have advertised the availability of records of wireless subscribers' incoming and outgoing telephone calls for a fee.<sup>6</sup> Data brokers have also advertised the availability of call information that relates to certain landline toll calls.<sup>7</sup>

5. As part of its inquiry into these issues, the Bureau sent a LOI to New Talk on December 8, 2006, directing it to produce the compliance certificates for the previous five (5) years that it had prepared pursuant to section 64.2009(e) of the Commission's rules.<sup>8</sup> On March 30, 2007, the Commission issued an NAL against New Talk in the amount of \$4,000 for its apparent failure to respond to a directive of the Enforcement Bureau.<sup>9</sup> On April 27, 2007, New Talk submitted several documents in response to the LOI and Failure to Respond NAL.<sup>10</sup> The Bureau concluded that the documents submitted by New Talk did not satisfy the requirements set forth in section 64.2009(e) of the Commission's rules and that New Talk had apparently failed to comply with the requirement that it have an officer certify on an annual basis that the officer has personal knowledge that New Talk has established operating procedures adequate to ensure compliance with the CPNI rules.<sup>11</sup> Finally, the Bureau concluded that New Talk failed to provide any compliance certificates for the previous five years. Accordingly, on August 10, 2007, the Bureau released an NAL against New Talk proposing a monetary forfeiture of \$100,000 for its apparent failure to comply with section 64.2009(e) of the Commission's rules,<sup>12</sup> and ordered the Company either to pay the proposed forfeiture or file a written response within thirty (30) days of the NAL release date stating why the proposed forfeiture should be reduced or canceled. Subsequently, New Talk and the Bureau entered into settlement discussions.

### III. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

7. **Jurisdiction.** New Talk agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

---

<sup>6</sup> See, e.g. <http://www.epic.org/privacy/iei/>.

<sup>7</sup> See *id.*

<sup>8</sup> See note 1, *supra*.

<sup>9</sup> *In the Matter of Connect Paging, Inc., d/b/a Get A Phone*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 6303 (March 30, 2007) ("Failure to Respond NAL").

<sup>10</sup> See Letter from Byron T. Young, President, Connect Paging, Inc. d/b/a Get A Phone, to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (April 27, 2007) ("response to LOI").

<sup>11</sup> *In the Matter of Connect Paging, Inc., d/b/a Get A Phone*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd. 15,150 (Enf. Bur. rel. August 10, 2007) ("NAL").

<sup>12</sup> *Id.*

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Bureau Order.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation and to cancel the NAL. In consideration for the termination of said investigation and cancellation of the NAL, New Talk agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against New Talk concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against New Talk with respect to New Talk's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

10. **Compliance Plan.** For purposes of settling the matters set forth herein and to help ensure compliance with the Commission's CPNI rules, New Talk agrees to take all measures necessary to achieve full compliance with Section 64.2009(e) of the Commission's rules. New Talk agrees that, within thirty (30) days, its personnel will be trained as to when they are and are not authorized to use CPNI. New Talk further agrees to have an express disciplinary process in place for the unauthorized use of CPNI, within thirty (30) days. Additionally, New Talk agrees to send a copy, either electronically or by regular mail, of its annual 64.2009(e) compliance certificate for each of two years following the effective date of this Consent Decree to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W. Room 4-C244, Washington, D.C., 20554, and must include the file number listed above. New Talk will also send an electronic copy of its certification to other Telecommunications Consumers Division staff as directed by the Bureau Chief. This Consent Decree will expire two (2) years after the Effective Date or upon the termination of the certification requirement set forth in sections 64.2009(e) of the Commission's rules, 47 C.F.R. § 64.2009(e), whichever is earlier.

11. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against New Talk or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by New Talk of the Act, the rules, or the Order.

12. **Voluntary Contribution.** New Talk agrees that it will make a voluntary contribution to the United States Treasury in the amount of three thousand dollars (\$3,000). The contribution will be made within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the

caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). New Talk will also send electronic notification on the date said payment is made to Johnny.Drake@fcc.gov.

13. **Waivers.** New Talk waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Commission issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. New Talk shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither New Talk nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and New Talk shall waive any statutory right to a trial *de novo*. New Talk hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

14. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which New Talk does not expressly consent) that provision will be superseded by such Commission rule or Order.

16. **Successors and Assigns.** New Talk agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

\_\_\_\_\_  
Kimberly A. Wild  
Assistant Division Chief  
Telecommunications Consumers Division  
Enforcement Bureau

\_\_\_\_\_  
Date

\_\_\_\_\_  
Byron Young  
President  
New Talk, Inc. (formerly known as Connect  
Paging, Inc. d/b/a Get A Phone)

\_\_\_\_\_  
Date

DOCKET NO. 36081



APPLICATION OF GET A PHONE TO § PUBLIC UTILITY COMMISSION  
AMEND ITS SERVICE PROVIDER §  
CERTIFICATE OF OPERATING § OF TEXAS  
AUTHORITY §

**SUPPLEMENT TO APPLICATION FOR AMENDMENT TO SERVICE  
PROVIDER CERTIFICATE OF OPERATING AUTHORITY**

COMES NOW Get A Phone ("Applicant") and hereby files this supplement to Questions #23 and #24 of its Application for Amendment to Service Provider Certificate of Operating Authority.

Pursuant to Commission Staff's Recommendation on Deficiency/Completeness of Application filed September 10, 2008, along with Commission Staff's accompanying memorandum dated September 3, 2008, please find attached the following documents: "Debtor's Immaterially Modified Plan of Reorganization" ("plan of reorganization") and "Amended Order Confirming Connect Paging, Inc.'s Joint First Amended Liquidating Plan of Reorganization" ("amended order"). In the plan of reorganization, note particularly Paragraph 2.1(a) discussing the sale to Ambient Ventures; furthermore, in the amended order, note Page 4 approving the plan of reorganization.

Also, Applicant points out that since the bankruptcy and sale to Ambient Ventures, Applicant has been profitable. See financial statements confidentially filed with the original application.

WHEREFORE PREMISES CONSIDERED, Applicant prays that this application be processed expeditiously and granted as submitted.

Respectfully submitted,

Foster Malish & Cowan, LLP  
1403 W. Sixth Street  
Austin, TX 78703  
(512) 476-8591  
(512) 477-8657/fax

By: Mark Foster  
Mark Foster  
Texas Bar No. 07293850  
Christopher Malish  
Texas Bar No. 00791164

Attorneys for Applicant

Exhibit "B"

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the above and foregoing document was served on the following individuals on this the 15<sup>th</sup> day of September, 2008.

Shelah J. Cisneros, Attorney  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, TX 78701

*Via E-mail: [shelah.cisneros@puc.state.tx.us](mailto:shelah.cisneros@puc.state.tx.us)*

Neal Frederick, Financial Analysis  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, TX 78701

*Via E-mail: [neal.frederick@puc.state.tx.us](mailto:neal.frederick@puc.state.tx.us)*



---

Mark Foster



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

IN RE:

CONNECT PAGING, INC.,

DEBTOR

§  
§  
§  
§  
§

CASE NO. 06-51519  
CHAPTER 11

---

DEBTOR'S IMMATERIALLY MODIFIED  
PLAN OF REORGANIZATION

---

Connect Paging, Inc. ("Debtor") proposes the following Immaterially Modified Plan of Reorganization dated November 2, 2006, under Section 1121(a) of Title 11 of the United States Code:

ARTICLE I

DEFINITIONS AND CONSTRUCTION OF TERMS

Definitions. As used herein, the following terms have the respective meanings specified below, unless the context otherwise requires:

1.1 Administrative Expense Claim means any right to payment constituting a cost or expense of administration of the Chapter 11 Case under Sections 503(b) and 507(a)(1) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses, of preserving the estate of the Debtor, all compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under Sections 330 or 503 of the Bankruptcy Code.

1.2 Allowed means where referenced to any Claim or Equity Interest, (a) any Claim against or Equity Interest in the Debtor which has been listed by the Debtor in their Schedules, as such Schedules may be amended by the Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of Claim or Equity Interest has been filed, (b) any Claim or Equity Interest Allowed hereunder or Allowed under the Bankruptcy Code, or (c) any Claim or Equity Interest which is not Disputed, or any Claim or Equity Interest which, if Disputed, (i) as to which, pursuant to the, Plan or a Final Order of the Bankruptcy Court, the liability of the Debtor and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court, or (ii) has been Allowed by Final Order; provided, however, that any Claim or Equity Interest allowed solely for the purpose of voting to accept or reject the Plan pursuant to a Final Order of the Bankruptcy Court shall not be considered an "Allowed Claim" or "Allowed Equity Interest" hereunder. Unless otherwise specified herein or by Final Order of the Bankruptcy Court, "Allowed Administrative Expenses Claim," "Allowed Claim," or "Allowed Equity Interest" shall not for purposes of computation of distributions under the Plan, include interest on such Administrative Expense Claim, Claim or Equity Interest from and after the Commencement Date.

1.3 Ballot means the form distributed to each holder of an impaired Claim or Equity Interest which indicates acceptance or rejection of the Plan.

1.4 Bankruptcy Code means Title 11 of the United States Code, as amended from time to time; as applicable to the Chapter 11 Cases.

1.5 Bankruptcy Court means the United States Bankruptcy Court for the Western District of Texas having jurisdiction over the Chapter 11 Case.

1.6 Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of Title 28 of the United States Code, and any Local Rules of the Bankruptcy Court.

1.7 Business Day means any day of the week exclusive of Saturdays, Sundays, and "legal holidays." As used herein, "legal holidays" shall have the same meaning as used in Federal Bankruptcy Rule 9006.

1.8 Cause of Action means, without limitation, any and all actions, causes of action, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, claims and demands whatsoever, whether known or unknown, in law, equity or otherwise.

1.9 Claim has the meaning set forth in Section 101 of the Bankruptcy Code.

1.10 Claimant means the holder of a Claim against either of the Debtor.

1.11 Claims Register shall mean the list of proofs of Claim prepared and maintained by the Clerk of the Bankruptcy Court.

1.12 Class means a category of holder of Claims or Equity Interests as set forth in Article III of the Plan.

1.13 Collateral means any property or interest in property of the estate of the Debtor subject to a Lien or Security Interest to secure the payment or performance of a Claim, which Lien or Security Interest is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable non-bankruptcy law.

1.14 Commencement Date or Petition Date means the date the original Chapter 11 voluntary petition was filed, August 11, 2006.

1.15 Confirmation or Confirmation Date means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

1.16 Confirmation Hearing means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

1.17 Confirmation Order means the Final Order of the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.

1.18 Contingent Claim means any Claim which has not been Finally Allowed as of the Confirmation Date, including, without limitation, any Claims which may be asserted as the result of the rejection of an executory contract or unexpired lease under Section 8.1 of this Plan.

1.19 Court or Bankruptcy Court means the United States Bankruptcy Court for the Western District of Texas, San Antonio Division.

1.20 Debtor, Get A Phone, or GAP means Connect Paging, Inc.

1.21 Debtor in Possession means the Debtor in its capacity as Debtor in possession in the Chapter 11 Case pursuant to Sections 1101, 1107(a) and 1108 of the Bankruptcy Code.

1.22 Disbursing Agent means the Debtor.

1.23 Disclosure Statement, means the disclosure statement relating to the Plan, including without limitation, all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

1.24 Disputed means the portion (including, when appropriate, the whole) of any Claim as to which: (a) a proof of Claim has been or been deemed timely and properly filed under applicable law or Final Order of the Bankruptcy Court, and (b) an objection, motion to estimate, or complaint to determine the validity, priority or extent of any Lien asserted by the claimant with respect to the Claim has been timely filed.

1.25 Disputed Claim Amount means the higher of the amount set forth in the proof of Claim or listed on the Schedules relating to a Disputed Claim; provided, however, if a Disputed Claim is estimated for allowance purposes under Section 502(c) of the Bankruptcy Code, the amount so estimated pursuant to Final Order of the Bankruptcy Court shall be the Disputed Claim Amount.

1.26 Effective Date means January 1, 2007.

1.27 Final Order means an order of the Bankruptcy Court or any other court of competent jurisdiction that has been entered on the docket of the Bankruptcy Court or such other court for ten (10) or more days and that is not then stayed or reversed.

1.28 Other Priority Claim means any Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in right of payment under Section 507(a) of the Bankruptcy Code.

1.29 Plan means this Chapter 11 plan, including, without limitation, all exhibits, supplements, appendices and schedules hereto, either in its present form or as the same may be altered, amended or modified from time to time.

1.30 Priority Tax Claim means any Claim of a governmental unit of the kind specified in Sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.31 Schedules means the schedules of assets and liabilities, the list of holders of Equity Interests, and the statements of financial affairs filed by the Debtor under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation Date.

1.32 Unsecured Creditors means any Unsecured Claim.

## ARTICLE II.

### GENERAL PREMISES OF THE PLAN AND PLAN CONCEPTS

#### 2.1 Basic Plan Premises

a. Ambient Ventures, LLC, a company owned by Byron Young, the current president of the company, will purchase 100% of the stock in Connect Paging for \$100,000.00. Cardinal Communications, Inc. will no longer be a shareholder in Connect Paging. \$50,000.00 of the purchase price will be paid in the form of funds loaned by Ambient Ventures, LLC to Connect Paging during this bankruptcy proceeding. The remaining \$50,000.00 will be paid in cash at closing. The closing of the sale will take place on or before the Effective Date.

b. All of the proceeds of the stock purchase will be paid to Connect Paging to use for operating capital or to make plan payments. The current outstanding shares in Connect Paging will be cancelled.

c. The current management team of Byron Young, Brandon Young, and Brian Young will remain in place.

d. Connect Paging continue to will resell telecommunications services through its distributor network to convenience stores in Texas.

e. Through the revenues generated by its business, the Debtor will pay its unsecured creditors over time. All payments to unsecured creditors will total \$420,000.00 - \$400,000.00 to AT&T and \$20,000.00 to all other unsecured creditors.

f. In the event that the case is subsequently converted to a Chapter 7 proceeding, all assets of the company will be re-vested to the Chapter 7 Estate under the supervision of the Chapter 7 Trustee. Additionally, the Debtor's discharge is limited to the provisions contained within §1141 (d)(1).

## ARTICLE III

### TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS

3.1 **Administrative Expense Claims.** Except to the extent that any person entitled to payment of any Allowed Administrative Expense Claim has been paid by the Debtor prior to the Effective Date or agrees to a different treatment, each holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the Effective Date or, if later, the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or within ten (10) days thereof; provided, however, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business, shall be paid in full and performed by Debtor in the ordinary course of business.

3.2 **Professional Compensation and Reimbursement Claims.** All entities, seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses shall file their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred within 30 days of the Effective Date.

**3.3 Debtor in Possession Loan of Ambient Ventures, LLC.** Ambient Ventures has loaned the Debtor \$50,000.00 in operating capital during the Chapter 11 proceeding. This loan will be converted to equity and applied toward the purchase price for the Debtor.

**3.4 Allowed Priority Tax Claims.** The priority tax creditors will be paid in equal monthly installments in deferred cash payments of principal and interest within five (5) years of the Petition Date, pursuant to 11 U.S.C. Section 1129(a)(9)(C). The first payment to the priority creditors will be due thirty (30) days after the Effective Date of the Plan. The following payments thereafter will occur on a monthly basis on the 1st day of each month. All claims of the priority tax creditors shall be paid with interest at the rate set forth in 26 USC Section 6621 and 6622.

Any and all priority claims of the Internal Revenue Service will be handled as follows:

(a) that the debt the Debtor owed to the IRS is a dischargeable debt, except as otherwise provided for in the Bankruptcy Code, and that if the Debtor should default, the IRS may file a certificate of default with the Court and serve the certificate of default on the Debtor, Debtor's attorney and affected parties, and should the Debtor not cure the default, the IRS is not subject to the provisions of the Bankruptcy Code so that the IRS can take whatever actions are necessary to collect said debt in the event of a default; and

(b) the Debtor's failure to make a payment to the IRS pursuant to the terms of the Plan shall be an event of default; as to the IRS, there is an event of default if payment is not received by the 15<sup>th</sup> day of each month; if there is a default to the IRS, IRS must send written demand for payment to the Debtor and Debtor's attorney and said payment must be received by the IRS within thirty (30) days of the date of the demand letter; the Debtor can receive up to three (3) notices of default from the IRS; however, on the third notice of default from the IRS, the third default cannot be cured, the IRS shall file a certificate of default with the Court, and the IRS may accelerate its allowed claim(s), past or future, and declare the outstanding amount of such claim(s) to be immediately due and owing, and pursue any and all available state and federal rights and remedies.

(c) The IRS is bound by the provisions of the confirmed plan and is barred under section 1141 from taking any collection action against the debtor for pre-petition claims during the duration of the plan (provided there is no default as to the IRS). The period of limitations on collection remains suspended under 26 U.S.C. sec. 6503(h) for tax periods being paid under the plan and terminates on the earlier of (1) all required payments to the IRS have been made; or, (2) 30 days after the date of a demand letter (described above) for which the debtor failed to cure the default.

**3.5 Statutory Fees Due the United States Trustee.** Pursuant to 28 U. S. C. § 1930(a)(6), The United States Trustee's fees do not require allowance by the Court and both pre-confirmation and post-confirmation UST fees shall be paid in cash and in full pursuant to all applicable provisions of the Bankruptcy Code and other statutory provisions.

#### ARTICLE IV

##### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS AND SPECIFICATION OF IMPAIRMENT

Claims, other than Administrative Expense Claims and Priority Tax Claims are classified for all purposes, including voting, conformation and distribution pursuant to the Plan as follows:

<u>Class:</u>	<u>Status</u>
Class 1 - Claim of AT&T .....	Impaired
Class 2 - General Unsecured Claims .....	Impaired
Class 3 - Unsecured Claim of Cardinal Communications, Inc. ....	Impaired
Class 4 - Equity/Ownership Interests .....	Impaired

ARTICLE V

TREATMENT OF CLAIMS AND EQUITY INTERESTS

5.1 CLASS 1 -- CLAIM OF AT&T.

(a) Impairment and Voting. Class 1 is impaired by the Plan. The holder of the Allowed Class 1 Claim is entitled to vote to accept or reject the Plan.

(b) Treatment. The only Claim in, and party to, this Class is AT&T.

The Debtor will pay AT&T \$400,000.00 over four years without interest. Monthly payments in the amount of \$8,333.33 will commence on January 15, 2007. Subsequent payments will be due on the 15<sup>th</sup> of each month thereafter for the next 47 months.

(c) Cure of executory contracts. The payment of this amount to AT&T shall be considered sufficient to cure all prepetition payment defaults to AT&T and will allow the Debtor to assume all executory contracts, including all interconnection agreements, with AT&T.

5.2 CLASS 2 -- CLAIMS OF OTHER GENERAL UNSECURED CREDITORS.

(a) Impairment and Voting. Class 2 is impaired by the Plan. The holder of an Allowed Class 2 Claim is entitled to vote to accept or reject the Plan.

(b) Treatment. The Claims in this Class include those of the general unsecured creditors holding Allowed Unsecured Claims, without priority, other than AT&T, but including claims for rejection damages by parties to rejected unexpired leases and executory contracts.

The Claimants of this Class shall receive a pro rata share/portion of a total \$20,000 to be paid over four years in quarterly payments of \$1,250.00, without interest. The first payment shall be made by January 15, 2007. The succeeding payments shall be due on 15th day of each succeeding quarter thereafter.

5.3 CLASS 3 -- UNSECURED CLAIM OF CARDINAL COMMUNICATIONS, INC.

(a) Impairment and Voting. Class 3 is impaired by the Plan. The holder of an Allowed Class 3 Claim is an insider claim, but is allowed to vote according to 11 U.S.C. §1126.

(b) Treatment. This class consists of the insider unsecured claim of Cardinal Communications, Inc. The Allowed Claim of Cardinal Communications, Inc. will be subordinated to the claims of Class 1 and Class

2 creditors. Thus, the Allowed Claims of Cardinal Communications, Inc. will not be paid anything until claims of Class 1 and 2 creditors are paid in full. The claim of Class 3 is subordinated under the Plan and no distribution will be made to this creditor class.

#### 5.4 CLASS 4 -- CLAIMS OF EQUITY/OWNERSHIP INTERESTS.

(a) Impairment and Voting. Class 4 is impaired by the Plan. The holder of an Allowed Class 4 Equity/Ownership Interests will lose their ownership interests in the stock of the Debtor. This class consists of insiders, but is allowed to vote according to 11 U.S.C. §1126.

(b) Treatment. The Equity/Ownership Interests in this Class, Cardinal Communications, Inc. will lose its ownership interests in the Debtor. The Debtor shall issue new shares to Ambient Ventures, LLC in consideration of the payments described above, which will result in all of the shares in the Debtor being owned by Ambient Ventures after consummation of the plan by the Debtor.

### ARTICLE VI

#### EXECUTORY CONTACTS AND UNEXPIRED LEASES

##### 6.1 Assumption or Rejection of Executory Contracts and Unexpired Leases.

(a) Executory Contracts and Unexpired Leases. By the terms of this plan, the Debtor assumes the executory contracts with AT&T (as discussed above), as well as all other contracts not rejected herein. The Debtor hereby rejects its contracts with TelLawCom Labs, Inc., AirBand / GoComm, and Intec Telecom Systems, and its lease with Fort Worth Plaza, L.P.

(b) Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases. Entry of the Confirmation Order shall constitute the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption and rejection of the executory contracts and unexpired leases assumed or rejected pursuant to Section 6.1(a) hereof. Any rejection damages suffered by the parties to the rejected unexpired leases and executory contracts shall be considered Class 2 Unsecured Claims.

### ARTICLE VII

#### PROVISIONS REGARDING CORPORATE GOVERNANCE AND MANAGEMENT OF THE REORGANIZED DEBTOR

7.1 On the Effective Date, the ownership, management, control and operation of the Debtor shall be reverted into the Debtor which will pursue any litigation and distribute net proceeds from business operations as described above. The managers of the Reorganized Debtor, Byron Young, Brian Young, and Brandon Young, will remain the same and will receive the same compensation for their services after Confirmation as prior to Confirmation.

### ARTICLE VIII

#### IMPLEMENTATION AND EFFECT OF CONFIRMATION OF PLAN

8.1 Retain Property; As of the Effective Date, all moveable, immovable, tangible and intangible property of the Debtor shall be retained by and revert in the Debtor free and clear of any claims, liens, mortgages or any other encumbrances, other than those expressly provided for in the Plan. However, in the

event that the case is subsequently converted to a Chapter 7 proceeding, all assets of the company will be re-vested to the Chapter 7 Estate under the supervision of the Chapter 7 Trustee.

8.2 Causes of Action. Except as provided in the Plan, as of the Effective Date, pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, any and all Causes of Action accruing to the Debtor and Debtor in Possession, including, without limitation, actions against Cardinal Communications, Inc., and others under Sections 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code, shall become assets of the Reorganized Debtor, and the Reorganized Debtor shall have the authority to prosecute such Causes of Action for the benefit of creditors. The Causes of Action also include any and all causes of action against Cardinal Communications, Inc. under the Texas Uniform Fraudulent Transfers Act and Texas Business & Commercial Code Section 24.001 et seq., and for breach of fiduciary duty. The Reorganized Debtor shall have the authority to compromise and settle, otherwise resolve, discontinue, abandon or dismiss all such Causes of Action without approval of the Bankruptcy Court. All net proceeds obtained from the Causes of Action will be paid to creditors, including use of such proceeds to make the payments required under this Plan.

8.3 Discharge of Debtor. The rights afforded herein and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Commencement Date, against the Debtor, Debtor's attorneys, or any of Debtor's assets or properties; however, under 26 U.S.C. §6672, collection activity against responsible officers is not prohibited. Except as otherwise provided herein, on the Effective Date, all such Claims against the Debtor shall be satisfied, discharged, and released in full. Nothing in this section shall affect the Causes of Action reserved in Section 8.2.

## ARTICLE IX

### RETENTION OF JURISDICTION

9.1 The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To determine any and all objections to and proceedings involving the allowance, estimation, classification, and subordination of Claims or Equity Interests;

(b) To determine any and all applications for allowances of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or the Plan;

(c) To determine the terms for the rejection or assumption of executory contracts or unexpired leases or for the assumption and assignment, as the case may be, of executory contracts or unexpired leases to which either Debtor is a party or with respect to which either Debtor may be liable, and to hear and determine, and if need be to liquidate, any and all Claims arising therefrom including the determination of defaults required to be cured;

(d) To issue orders, determinations, and rulings regarding the valuation, recovery, disposition, distribution, operation, or use of the Debtor's property, including claims to recover preferences, fraudulent conveyances, damages, or equitable relief of any type from any person, and whether initiated prior to or after the Effective Date;



(e) To determine any and all applications, claims, Causes of Action, adversary proceedings, and contested or litigated matters that may be commenced by the Reorganized Debtor subsequent to the Effective Date;

(f) To consider any modifications of the Plan, remedy any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order, to the extent authorized by the Bankruptcy Code;

(g) To determine all controversies, suits, and disputes that may arise in connection with the interpretation, enforcement, or consummation of the Plan, the Plan documents and agreements executed in connection therewith or any person's obligations under the Plan or any documents and agreements executed in connection therewith;

(h) To consider and act on the compromise and settlement of any Claim against or Cause of Action by or against the Debtor;

(i) To enter a Final Decree under Bankruptcy Rule 3022 terminating the Chapter 11 Case;

(j) To determine such other matters as may be set forth in the Confirmation Order or which may arise in connection with the Plan, the Confirmation Order or the Effective Date.

(k) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

(l) To recover all assets of the Debtor and property of the Debtor estate, wherever located;

(m) To hear and determine matters concerning state, local and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code; and,

(n) To hear any other matter not inconsistent with the Bankruptcy Code.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

10.1 **Effectuating Documents and Further Transactions.** The Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents and take such actions as may be reasonably necessary or appropriate to effectuate, implement and consummate the Plan without any further evidence of the terms and conditions of the Plan and any notes or securities issued pursuant to the Plan, or any action of the Debtor or its managers to authorize such; the acting Managers of the Debtor (Byron Young, Brandon Young, Brian Young) will, without any further need of court orders or Board actions, deemed to be authorized to execute any of the aforesaid documents or agreements or to take any of the aforementioned steps to confirm, implement and consummate the Plan of Reorganization. The Plan will be binding upon and inure to the benefit of the Debtor, claimants, Equity Interests and their respective successors and assigns, including, without limitation, the Reorganized Debtor; and the court may issue such orders in aid of consummation of the Plan under Sections 105 and 1142, of the Bankruptcy Code.

10.2 **Payment of Statutory Fees Due the United States Trustee.** All fees due and payable pursuant to 28 U. S. C. Section 1930(a)(6) shall be paid when due.

10.3 Severability. In the event that the Bankruptcy Court determines, prior to the Confirmation Date, that any provision in the Plan is invalid, void or unenforceable, such provision shall be invalid, void or unenforceable with respect to the holder or holders of such Claims or Equity Interests as to which the provision is determined to be invalid, void or unenforceable.

10.4 Revocation or Withdrawal of the Plan. The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any claims by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any person in any further proceedings involving the Debtor. Additionally, the settlement agreement between Debtor and AT&T Texas remains valid and enforceable in accordance with its terms even if the Debtor withdraws or revokes the plan.

10.5 Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtor, the holders of Claims and Equity Interests, and their respective successors and assigns, including, without limitation, the Reorganized Debtor.

10.6 Notices. All notices, requests and demands to or upon the Debtor or the Reorganized Debtor to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, with a copy by mail, addressed as follows:

If to the Debtor:

Connect Paging, Inc.  
c/o John H. Weinstein  
Tom St. Germain  
John Haas Weinstein, APLC  
407 S. Union Street  
Opelousas, LA 70570-0008  
Telephone: (337) 948-4700  
Telecopier: (337) 948-4172  
e-mail: tom@weinlaw.com

10.7 Prepayment. The Debtor may prepay any payments or installments under this Plan without penalty.

10.8 Final Allowance. Notwithstanding anything contained above, all distributions to Classes under this Plan will only be made after the creditors in said Classes have their Claims fully fixed and allowed by the Court. However, objections on claims in one Class will not preclude distribution to creditors in other Classes where no disputes exist regarding Claims in the other Classes.

**IF THERE ARE ANY INCONSISTENCIES OR CONFLICTS  
BETWEEN THE PLAN AND DISCLOSURE STATEMENT,  
THE TERMS AND PROVISIONS OF THE PLAN CONTROL.**

Dated. November 2, 2006

Respectfully submitted,

CONNECT PAGING, INC.

By: /s/ Byron Young  
Byron Young, President  
JOHN HAAS WEINSTEIN, APLC

By: /s/ Tom St. Germain  
JOHN HAAS WEINSTEIN (LA#7558)  
TOM ST. GERMAIN (LA#24887)  
407 S. Union Street  
Opelousas, LA 70570  
(337) 948-4700

PULMAN, BRESNAHAN, PULLEN  
& CAPPUCCIO, LLP

By: /s/ Elliott S. Cappuccio  
(by Tom St. Germain with permission)  
ELLIOTT S. CAPPUCCIO  
(TX# 24008419)  
2161 N.W. Military Hwy., Suite 400  
San Antonio, TX 78213  
(210) 222-9494

ATTORNEYS FOR DEBTOR



The relief described hereinbelow is SO ORDERED.

Signed November 28, 2006.

Ronald B. King  
United States Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

IN RE:

CONNECT PAGING, INC

DEBTOR

§  
§  
§  
§  
§  
§

CASE NO. 06-51519  
CHAPTER 11

---

**AMENDED ORDER CONFIRMING CONNECT PAGING, INC.'S  
JOINT FIRST AMENDED LIQUIDATING PLAN OF REORGANIZATION**

---

CAME ON FOR CONSIDERATION and hearing, the confirmation of the Joint First Amended Liquidating Plan of Reorganization, filed by CONNECT PAGING, INC. ("Debtor"), and after considering the evidence, arguments of counsel, and the pleadings on file, the Court hereby enters the following Final Confirmation Order:

I.

**FINDINGS OF FACT**

1. On August 11, 2006, Debtor filed a Voluntary Petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq. Since the Filing Date, the Debtor has continued to operate its business affairs as Debtor-in-Possession. No Trustee or Examiner has been appointed as of this date.

2. On or about September 28, 2006, the Debtor filed its Plan (the "Plan") and the Disclosure Statement (the "Disclosure Statement"). The Plan was immaterially modified on November 3, 2006 (the "Immaterially Modified Plan"), Disclosure Statement was approved by the Court on or about November 8, 2006.

3. A confirmation hearing on the Plan was scheduled for November 21, 2006. Objections to the confirmation of the Plan were filed by AT&T, the Internal Revenue Service, Cardinal Communications, and the United States Trustee. All of the objections have been satisfied by the filing of the Immaterially Modified Plan.

4. The Immaterially Modified Plan complies with the applicable provisions of 11 U.S.C. § 101 et seq. The classification of claims and interests are in accordance with § 1122 of the Bankruptcy Code, and the contents of the Immaterially Modified Plan comply with § 1123 of the Bankruptcy Code.

5. The proponent of the Immaterially Modified Plan have complied with the applicable provisions of the Bankruptcy Code. The solicitation of acceptances was in accordance with the disclosure requirements of § 1125 of the Bankruptcy Code.

6. The Immaterially Modified Plan has been proposed in good faith, and not by any means forbidden by law.

7. All payments made or promised by the Debtor in connection with, or incident to the Immaterially Modified Plan, or the captioned case, for services or for costs and expenses have been fully disclosed to the Court and are reasonable, and any such payment to be fixed after confirmation of the Immaterially Modified Plan is subject to the approval of the Court as reasonable.

8. The Debtor has disclosed the identity and affiliations of all individuals (including insiders) who will serve, after confirmation of the Immaterially Modified Plan, as officers and directors of the Debtor and their salaries as required by § 1129 (a)(5) of the Bankruptcy Code. There will be no successor to the Debtor under the Plan. The appointment of such persons to offices or their continuance therein, is equitable, and consistent with the interests of the creditors and equity security holders and with public policy. The Debtor is authorized to pay and reimburse such persons said compensation and expenses incurred in the ordinary course of the Debtor's post-petition business.

9. With respect to each class, each holder of an Allowed Claim has accepted the Immaterially Modified Plan and will receive or will retain under the Immaterially Modified Plan, on account of such claim or interest, property of a value, as of the Effective Date of the Immaterially Modified Plan, that which is not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

10. Each class has either accepted the Immaterially Modified Plan by the requisite majority or is not impaired under the Immaterially Modified Plan.

11. At least one class of claims or interest has accepted the Immaterially Modified Plan determined without including any acceptances of the Immaterially Modified Plan by an insider holding a claim in such class.

12. The Immaterially Modified Plan is not likely to be followed by the need for liquidation or further reorganization of the Debtor.

**II.**

**CONCLUSIONS OF LAW**

13. To the extent that any of the foregoing Findings of Fact are deemed to be Conclusions of Law, the same are incorporated herein by reference.

14. With respect to all classes of Creditors and holders of Interests, the requirements for confirmation of the Immaterially Modified Plan as set forth in § 1129 (a) of the Bankruptcy Code, have been met, and the Immaterially Modified Plan may be confirmed.

**III.**

**FINAL ORDER**

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE

**ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The Immaterially Modified Plan of Reorganization filed by the Debtor is hereby confirmed.

2. The Debtor is authorized and directed to execute and issue all documents and take any and all steps and actions necessary or appropriate to effect the terms of the Plan.

3. The Court shall retain jurisdiction of the Reorganization Case after the confirmation of the Immaterially Modified Plan until consummation of the Immaterially Modified Plan with respect to the following matters:

- (a) to classify, allow or disallow Claims and direct distribution of funds under the Immaterially Modified Plan and to hear and determine any controversies pertaining thereto;
- (b) to hear and determine any and all applications, adversary proceedings and other matters arising out of or related to the Immaterially Modified Plan;
- (c) to enter and implement such orders as may be appropriate in the event the Order confirming the Immaterially Modified Plan is for any reason stayed, reversed, revoked or vacated;
- (d) to liquidate or estimate damages or determine the manner and time for such liquidation or estimation in connection with any contingent or unliquidated Claim;
- (e) to adjudicate all Claims to any lien or any of the Debtor's assets or any proceeds thereof;
- (f) to determine the propriety of the terms and conditions of the sale of any assets of the Debtor and to make such orders as are necessary or appropriate to carry out the intendment of the Immaterially Modified Plan;
- (g) to hear and determine matters concerning state, local and federal taxes pursuant to §§ 346, 505, 525, and 1146 of the Bankruptcy Code; and
- (h) to hear and determine any dispute or any other matter regarding the Debtor's breach of the Immaterially Modified Plan or any other matter relating to the Immaterially Modified Plan.

4. The Debtor is discharged of and from any and all Claims or Interests as provided in § 1141 (d) of the Bankruptcy Code and the Immaterially Modified Plan

APPROVED AS TO FORM:

**JOHN HAAS WEINSTEIN, APLC**  
Post Office Box 8  
Opelousas, Louisiana 70571-0008  
(337) 948-4700 Telephone  
(337) 948-4172 Telecopier

By: /s/ Tom St. Germain  
John Haas Weinstein (LA #7558)  
Tom St. Germain (LA #24887)



**Barry T. Smitherman**  
Chairman

**Donna L. Nelson**  
Commissioner

**Kenneth W. Anderson, Jr.**  
Commissioner

**W. Lane Lanford**  
Executive Director



**Public Utility Commission of Texas**

RECEIVED  
2008 OCT -3 PM 1:17  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**TO:** Mark Foster  
Foster Malish & Cowan LLP  
1403 West 6<sup>th</sup> St.  
Austin, TX. 78703

Infrastructure and Reliability Division  
Legal Division

**RE:** Docket No. 36081 - *Application of Get A Phone for an Amendment to its Service Provider Certificate of Operating Authority*

**NOTICE OF APPROVAL**

This Notice addresses the application of Get A Phone (the Applicant) filed on August 28, 2008 for an amendment to its service provider certificate of operating authority (SPCOA) No. 60530 to reflect a change in ownership/control and a name change. On April 24, 2008, Applicant underwent a corporate name change from Connect Paging, Inc. (d/b/a Get A Phone) to New Talk Inc. Ambient Ventures LLC (Ambient) purchased Applicant, and Ambient is the 100% owner of Applicant. The docket was processed in accordance with applicable statutes and Commission rules. The Commission provided notice of the application to interested parties. More than 15 days have passed since the completion of notice. No protests, motions to intervene, or requests for hearing were filed. The Applicant and the Commission Staff (Staff) are the only parties to the proceeding. Staff recommends approval of the application, as amended. The application, as amended, is approved.

**Statutory Findings**

1. The Applicant is a Texas corporation formed on September 2, 1997, with authority to transact business in the State of Texas. Ambient Ventures LLC is a Texas limited liability company doing business in Texas as of September 8, 2004.
2. The Applicant's parent company is Ambient Ventures LLC.

3. The Applicant has authority to provide local telecommunications services in Florida, Georgia, Oklahoma, Kentucky and California.
4. The Applicant's competitive local exchange service in Kentucky was revoked during the tenure of the former owners due to non-payment of a tax liability. Current management is working to reinstate the Kentucky authority.
5. The Applicant is currently authorized to provide facilities-based, data, and resale telecommunications services within geographic area of the entire State of Texas (authorized service area).
6. The Applicant requests to amend its SPCOA to reflect a change in ownership/control to Ambient Ventures LLC and a name change to NEW TALK.
7. The application complies with PURA<sup>1</sup> § 54.154(b).
8. The Applicant is not precluded by PURA §§ 54.201 or 54.152 from providing service under an SPCOA.
9. The Applicant is entitled to approval of this application, having demonstrated the financial and technical qualifications to provide service, and the ability to provide the necessary quality of service for its customers, as required by PURA §§ 54.154(b) and 54.155(b).

**Complaint History**

10. The Office of the Texas Attorney General reported no complaints registered against the Applicant.

---

<sup>1</sup> The Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 66.016 (Vernon 2007 & Supp. 2008) (PURA).

11. A check of the Commission's Customer Protection Division complaint database revealed no complaints registered against the Applicant.
12. A check of the Commission's Enforcement & Investigations database revealed no outstanding notices of violation against the Applicant.
13. The Applicant committed in its responses to the Commission's Service Quality Questionnaire to meet the quality of service standards.

**Ordering Paragraphs**

1. The application of Get A Phone to amend its facilities-based, data, and resale telecommunications service provider certificate of operating authority (SPCOA) is approved.<sup>2</sup> Get A Phone's SPCOA No. 60530 is amended to reflect a change in ownership/control to Ambient Ventures LLC and a name change to NEW TALK.
2. The Applicant shall be bound by requirements of P.U.C. SUBST. R. 26.111. Service under this certificate shall be provided exclusively in the name under which the certificate was granted by the Commission.
3. The Applicant shall file any future changes in address, contact representative, and/or telephone numbers in an annual report with the Commission by June 30<sup>th</sup> of each year *Annual Information Reporting Requirements for a Service Provider Certificate of Operating Authority and/or a Certificate of Operating Authority*, Project No. 27357. If the SPCOA holder has any change during the year in the information requested in Section One of the annual report form, then the SPCOA holder shall file an updated form correcting the information in Section One within 30 days of the change.

---


<sup>2</sup> Administrative approval of this uncontested application has no precedential value in a future proceeding.

4. The Applicant shall provide a copy of its application and/or the Commission's Notice of Approval, in accordance with the individual entity's requirements, to all affected Commission on State Emergency Communications (9-1-1) entities prior to providing service to those entities.
  
5. The Applicant's provision of local telephone service to end-users, whether by its own facilities, flat-rate resale, or usage sensitive loop, must also include "9-1-1" emergency telephone service at a level required by the applicable regional plan followed by local telephone service providers under Chapters 771 and 772 of the Texas Health and Safety Code, TEX. HEALTH & SAFETY CODE ANN. §§ 771.001 *et seq.* (Vernon 2003) (the Code) or other applicable law, and any applicable rules and regulations implementing those chapters. The Applicant shall diligently work with the Commission on State Emergency Communications, local "9-1-1" entities, and any other agencies or entities authorized by Chapters 771 and 772 of the Code to ensure that all "9-1-1" emergency services, whether provided through the certificate holder's own facilities, flat-rate resale, or usage sensitive loop, are provided in a manner consistent with the applicable regional plan followed by local telephone service providers under Chapters 771 or 772 of the Code or other applicable law and any applicable rules and regulations implementing those chapters. The Applicant shall diligently work with the "9-1-1" entities to pursue, in good faith, the mutually agreed goal that the local "9-1-1" entities and emergency service providers experience no increase in their current level of rates and, to the extent technically feasible, no degradation in services as a result of the certification granted herein and the involvement of the certificate holder in the provision of "9-1-1" emergency service.
  
6. The Applicant shall notify all affected 9-1-1 administrative entities at least 30 days prior to activating or using a new NXX in a rate center or upon the commencement of providing local telephone service in any rate center in compliance with P.U.C. SUBST. R. 26.433(d)(3).

7. The Applicant shall execute a separate service agreement with each 9-1-1 entity and remit the required 9-1-1 emergency service fee to the 9-1-1 entity pursuant to such agreement in compliance with P.U.C. SUBST. R. 26.435(e)(4).
8. The Applicant has committed to and is bound by the quality of service requirements set forth in the Quality of Service Questionnaire. The underlying incumbent local exchange companies (ILECs) continue to be bound by the quality of service requirements contained in P.U.C. SUBST. R. 26.54. Approval of the SPCOA application does not expand the scope of the underlying ILEC's obligation to its own customers.
9. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

SIGNED AT AUSTIN, TEXAS the 3rd day of October 2008.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
\_\_\_\_\_  
**SONYA BATCHELOR**  
**ADMINISTRATIVE LAW JUDGE**

DOCKET NO. 38389

PETITION OF NEW TALK, INC. FOR  
POST-INTERCONNECTION DISPUTE  
RESOLUTION AND REQUEST FOR  
EXPEDITED RULING AND INTERIM  
RULING WITH SOUTHWESTERN  
BELL TELEPHONE, L.P. D/B/A AT&T  
TEXAS UNDER FTA RELATING TO  
BILLING DISPUTES

§  
§  
§  
§  
§  
§  
§  
§

PUBLIC UTILITY COMMISSION  
OF TEXAS

FILED  
JUL 13 PM 3:38  
FD

ORDER ON APPEAL OF ORDER NO. 2

This Order grants in part and denies in part New Talk's appeal of Order No. 2 in which the arbitrators prohibited AT&T from discontinuing or suspending service-order provisioning to New Talk during the pendency of this docket, on the condition that New Talk pay \$2,169,533.27 to AT&T as undisputed charges, and \$1,082,034.80 into escrow as disputed charges. New Talk appealed the placement of the condition and the arbitrators' failure to order the refund of the security deposit. This order grants the appeal only with respect to the placement of the condition.

I. Procedural History

On June 28, 2010, New Talk filed a post-interconnection dispute complaint and request for emergency action, interim ruling, and request for expedited ruling. On July 6, 2010, the parties participated in a hearing for an interim ruling on New Talk's request that AT&T be prohibited from discontinuing or suspending service-order provisioning and whether New Talk was required to pay into escrow the disputed amount for billed service. On July 13, 2010, the arbitrators issued Order No. 2 in which the arbitrators prohibited AT&T from discontinuing or suspending service-order provisioning to New Talk during the pendency of this docket. The arbitrators placed a condition on this relief, however, stating that New Talk must pay the \$2,169,533.27 which AT&T alleged were undisputed charges, and must pay the \$1,082,034.80 into escrow which AT&T alleged were disputed charges. In reaching their decision, the

arbitrators relied on P.U.C. PROC. R. 21.129(g). The arbitrators also made findings regarding New Talk's credit history and denied New Talk's request that AT&T be ordered to refund a \$260,000 security deposit to New Talk.<sup>1</sup> On July 23, 2010, New Talk appealed Order No. 2 arguing that the arbitrators placed an improper condition on New Talk's interim relief. New Talk also argued that the arbitrators wrongly denied New Talk's request for the return of the \$260,000 security deposit.<sup>2</sup> AT&T filed a response to New Talk's appeal on July 30, 2010.

## II. Discussion

Though not directly appealed, the Commission finds that granting interim relief to New Talk from AT&T's threat to discontinue service-order provisioning is appropriate considering the factors of P.U.C. PROC. R. 21.129(g). However, the condition on the interim relief requiring New Talk to pay \$3,251,568.07, partially into escrow and partially directly to AT&T, was procedurally improper because AT&T had not itself made an interim relief request. Therefore, by attaching the condition in response to New Talk's request for interim relief, the arbitrators were going beyond the scope of the hearing on interim relief. Additionally, the Commission finds that the arbitrators ruled on New Talk's request regarding the security deposit prematurely. Although New Talk did request in its complaint that the Commission require that AT&T return the \$260,000 security deposit, no party requested interim relief regarding the security deposit.

The Commission grants New Talk's appeal regarding the placement of the payment condition and denies New Talk's appeal regarding the security deposit. However, parties are not prohibited from addressing the disputed amounts at the hearing on the merits, nor does the denial of New Talk's appeal regarding the security deposit foreclose parties from addressing that issue at the hearing on the merits, including New Talk's credit history and whether AT&T's demand for an additional security deposit was proper.

---

<sup>1</sup> Order No. 2 at 6-7 (July 13, 2010).

<sup>2</sup> New Talk's Appeal at 18.

SIGNED AT AUSTIN, TEXAS the 13<sup>th</sup> day of September 2010

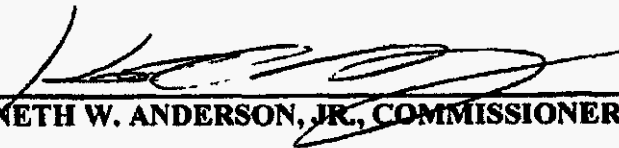
**PUBLIC UTILITY COMMISSION OF TEXAS**



**BARRY T. SMITHERMAN, CHAIRMAN**



**DONNA L. NELSON, COMMISSIONER**



**KENNETH W. ANDERSON, JR., COMMISSIONER**



DOCKET NO. 38389

<b>PETITION OF NEW TALK, INC. FOR POST-INTERCONNECTION DISPUTE RESOLUTION AND REQUEST FOR EXPEDITED RULING AND INTERIM RULING WITH SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A AT&amp;T TEXAS UNDER FTA RELATING TO BILLING DISPUTES</b>	<b>§ § § § § § § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION OF TEXAS</b>
--	--	---

**ORDER NO. 2**

On June 28, 2010, New Talk, Inc. (New Talk) filed its Post-Interconnection Dispute Resolution Complaint and Request for Emergency Action, Interim Ruling, and Request for Expedited Ruling under P.U.C. PROC. R. 21.125, 21.127 and 21.129 (Petition). New Talk's Petition concerns billing disputes with Southwestern Bell Telephone, L.P. d/b/a AT&T Texas (AT&T) as well as a demand by AT&T that New Talk escrow disputed amounts. New Talk alleges in its Petition that AT&T has threatened not to accept additional orders from New Talk and to suspend provisioning activity on all pending orders. New Talk seeks emergency action and an interim ruling directing AT&T to cease and desist from its threatened action to discontinue or suspend service order provisioning and its insistence that New Talk pay disputed amounts into escrow. It asserts it has established 12 months of good credit history with AT&T, which under the terms of the interconnection agreement (ICA) relieves it from paying disputed amounts into escrow. On July 2, 2010 AT&T filed its Response to New Talk's Complaint, Request for Emergency Action, Interim Ruling, and Request for Expedited Ruling refuting New Talk's claim that it has established 12 months of good credit history with AT&T. On July 2, 2010 Order No. 1 was filed scheduling a hearing on the request for interim ruling for July 6, 2010 and giving notice of the arbitration team. On July 6, 2010 the parties participated in the hearing for interim ruling.

**Exhibit "E"**

## I. Background.

On May 7, 2010, AT&T sent New Talk a letter threatening to discontinue all services unless New Talk posted a security deposit in the amount of \$500,000 by June 10, 2010.<sup>1</sup> The parties subsequently agreed that New Talk would deposit an additional \$100,000<sup>2</sup> in exchange for AT&T's agreement to extend the June 10, 2010 deadline to July 10, 2010.<sup>3</sup> New Talk now seeks return of the \$260,000 security deposit for the reason New Talk believes it has established good credit history and therefore the deposit is contrary to the terms of the ICA.<sup>4</sup> The evidence establishes that on June 22, 2010, AT&T sent a letter to New Talk demanding payment of an alleged past due undisputed balance of \$2,169,533.27 and for \$1,082,034.80 in disputed amounts to be paid into an escrow account in accordance with Section 10.2, *et seq.* of the ICA between AT&T and New Talk. The AT&T letter further stated that in the event these demands were not met, "requests for additional service will not be accepted and provisioning activity on all pending orders will be suspended."<sup>5</sup> New Talk maintains most of the disputed amount represents an offset for claims relating to the "Movers and Win-Back Cash Back Promotions" in the amount of \$50 per eligible New Talk customer, with AT&T having credited New Talk with only \$39.50.<sup>6</sup> New Talk claims it has merely offset the disputed amounts relating to the Win-Back Cash Back Promotions.<sup>7</sup>

No party objected to the appointment of the arbitrators or the arbitration panel.<sup>8</sup> The scope of the July 6, 2010 hearing was limited to New Talk's request for an interim ruling sought pursuant to P.U.C. PROC. R. 21.129 as to whether AT&T should be prohibited from

---

<sup>1</sup> Petition of New Talk at 12, Exhibit D.

<sup>2</sup> *Id.* New Talk had previously posted a \$160,000. security deposit.

<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Id.* The ICA at Sec. 8.11.1 requires a security deposit in the event there is a proven history of late payments or a party has not established a minimum of twelve consecutive months' good credit history.

<sup>5</sup> AT&T TX Exhibit 2.

<sup>6</sup> Petition of New Talk at 7.

<sup>7</sup> Tr. at 57-58.

<sup>8</sup> Tr. at 5.

discontinuing or suspending service order provisioning and whether New Talk was required to pay into escrow the disputed amount for billed services.<sup>9</sup>

## II. Discussion.

**Undisputed Amounts.** Pursuant to P.U.C. PROC. R. 21.129(a)(3), a “party cannot obtain interim relief to avoid payment of undisputed amounts. The party seeking an interim ruling on payment issues bears the burden of proof to demonstrate what amounts are not disputed and payments have been made pursuant to applicable contract provisions.” Furthermore, New Talk identified no provisions in the ICA that allow it to offset undisputed amounts owed to AT&T with amounts that New Talk disputes. In a prior docket, the Commission ruled that there is no right of offset in an ICA dispute if the ICA does not expressly provide that right.<sup>10</sup> No evidence was adduced to refute AT&T’s statement that \$2,169,533.27 was past due and undisputed.

**Disputed Amounts.** Although the affidavit and worksheets of Kevin Murphy lists a total of \$4,195,602.67 in disputed amounts<sup>11</sup> it appears that the numbers on his worksheets are the total amount of disputed bills, not the amounts subject to dispute. Additionally, a portion of that amount appears to relate to bills that have been resolved in New Talk’s favor as well as reflect a large number of disputes that have already run the dispute process and, in many cases, for which substantial downward adjustments were made to the original billed amount. Although New Talk witness Brian Young alleges that, by applying offsets, AT&T actually owes New Talk \$1,085,000,<sup>12</sup> there is no other evidence to support this number. The Arbitrators conclude that the evidence from AT&T is more credible, and that the evidence supports a conclusion that New Talk owes AT&T \$1,082,034.80 in disputed amounts. The Commission has previously held that:

“offsets...by their very nature assume that each offsetting party is providing something of value to the other party....But it is illogical to argue that such an

---

<sup>9</sup> Tr. at 16:19-23.

<sup>10</sup> *Complaint of Premiere Network Services, Inc. for Resolution of Interconnection Agreement Dispute Against Southwestern Bell Telephone, L.P. d/b/a SBC Texas*, Docket No. 28209, Arbitration Award (Dec. 19, 2003) at 73, affirmed, Order Approving Modified Arbitration Award and Addendum to Arbitration Award, Granting and Denying in Part Premiere’s Appeal and Addressing SBC’s Request to Terminate (Feb. 3, 2004) at 5.

<sup>11</sup> Petition of New Talk at Ex. B, Ex. B-1 and Ex. B-2.

<sup>12</sup> Tr. 27:13-15 and 42-43 (Jul, 6, 2010).

offset not only completely removes the original amount billed, it also creates a payment obligation on the original billing party. Such a situation would mean that Party A billing \$100 dollars for services rendered to Party B could somehow end up owing party B more than the \$100 dollars originally billed after applying offsets for services not rendered that were contained in the original \$100 dollar billing. The math simply does not work and a billing offset that exceeds the amount billed, intuitively, does not make sense.<sup>13</sup>

**Credit History.** Section 10.2.4 of the parties' ICA requires the disputing party to deposit disputed amounts into an interest bearing escrow account.<sup>14</sup> However, Section 8.7 of the ICA provides that a billed party is not required to place disputed amounts in escrow if:

(i) the Billed Party does not have a proven history of late payments and has established a minimum of twelve consecutive (12) months good credit history with the Billing Party (prior to the date it notifies the Billing Party of its billing disputes); or (ii) the Billed Party has not filed more than three previous billing disputes within the twelve (12) months immediately preceding the date it notified the Billing party of its current billing disputes...<sup>15</sup>

It is clear that New Talk does not meet the criteria for good credit history under ICA § 8.7(i) that would exempt it from depositing disputed amounts into escrow. Although New Talk claims to have been "right-paying" AT&T's bills based on the disputes, the claim does not stand in light of the mere nominal payments made over the prior twelve months. If New Talk were making payments consistent with the ICA, it would have remitted the undisputed portion of the bills. Additionally, it appears that New Talk has filed many more than three billing disputes in the twelve (12) months immediately preceding the date it notified the Billing Party of its current billing disputes, many of which have not been resolved in New Talk's favor.<sup>16</sup> Therefore, ICA § 8.7(ii) does not apply to New Talk.

**Suspension of Provisioning Activity.** On June 22, 2010, AT&T sent a letter to New Talk demanding payment of the past due undisputed balance of \$2,169,533.27 and for \$1,082,034.80

---

<sup>13</sup> *Complaint of Premiere Network Services, Inc. for Resolution of Interconnection Agreement Dispute Against Southwestern Bell Telephone, L.P. d/b/a SBC Texas*, Docket No. 28209, Arbitration Award (Dec. 19, 2003) at 73-74, affirmed, Order Approving Modified Arbitration Award and Addendum to Arbitration Award, Granting and Denying in Part Premiere's Appeal and Addressing SBC's Request to Terminate (Feb. 3, 2004) at 5.

<sup>14</sup> AT&T Ex. 1 at 35.

<sup>15</sup> *Id.* at 28.

<sup>16</sup> Petition of New Talk at Ex. B-2.

in disputed amounts to be paid into an escrow account in accordance with Section 10.2, *et seq.* of the ICA between AT&T and New Talk. AT&T further stated that in the event these demands were not met, "requests for additional service will not be accepted and provisioning activity on all pending orders will be suspended."<sup>17</sup> AT&T's letter specified a suspension date of July 8, 2010. However, at the hearing AT&T agreed not to take action before July 14, 2010, the day after the deadline for the arbitrators to issue this order.

P.U.C. PROC. R. 21.129(g) provides that the presiding officer may grant a request for interim relief only on a showing of good cause, and that in determining good cause, the presiding officer may consider:

- (1) whether there is a substantial likelihood of success on the merits of the movant's claims;
- (2) whether there is a substantial threat that the movant will suffer irreparable injury if interim relief is not granted;
- (3) whether the threatened injury to the movant outweighs any harm that the other party might suffer if interim relief is granted, including consideration of both parties' ability to compete;
- (4) the need for relief prior to the reasonably anticipated date of a final decision in the proceeding; and
- (5) any other relevant factors as determined by the presiding officer.

According to New Talk and undisputed by AT&T, the majority of the disputed amounts concern a dispute between New Talk and AT&T over the bill credits for the "Movers" and "Win-Back Cash Back" promotions.<sup>18</sup> New Talk presented extensive argument in its Petition on the merits of this issue, whereas AT&T took the position that the underlying dispute was beyond the scope of the request for an interim ruling. AT&T is incorrect; as indicated above, P.U.C. PROC. R. 21.129(g) provides that the arbitrators may consider whether there is a substantial likelihood of success on the merits of the movant's (New Talk's) claims.

Under the Movers and Win-Back promotions, AT&T provides a one-time, \$50 credit to a retail customer that moves to a new residence and selects AT&T or that used to be an AT&T

---

<sup>17</sup> AT&T TX Exhibit 2.

<sup>18</sup> The other identified dispute concerns charges related to suspensions of retail customers by New Talk.

customer and switches back to AT&T. The ICA states: "SBC TEXAS will offer the services to CLEC for resale at the promotional rate without a wholesale discount. For promotions of more than 90 days, SBC TEXAS will make the services available at the avoided cost discount from the promotional rate."<sup>19</sup>

The arbitrators conclude that New Talk is likely to prevail on the merits of this claim, such that AT&T may not apply an avoided cost discount to these one-time credits, because each of these credits do not extend more than 90 days.

As additional support for its request for an interim ruling, New Talk testified that due to its high-risk clientele and frequent account turnover, it was critical to their business to be able to place new orders and that such relief was necessary immediately to prevent AT&T from suspending new orders.<sup>20</sup>

### III. CONCLUSION

1. AT&T is prohibited from discontinuing or suspending service order provisioning to New Talk based on the issues in dispute in this docket during the pendency of this docket. This injunction is conditioned on New Talk, by August 20, 2010, paying AT&T undisputed charges in the amount of \$2,169,533.27 and paying into escrow \$1,082,034.80 of disputed charges. The arbitrators are making these payments a condition of the injunction rather than a separate requirement because AT&T has not sought interim relief and, as stated above, the scope of the July 6, 2010 hearing was limited to New Talk's request for an interim ruling sought pursuant to P.U.C. PROC. R. 21.129 as to whether AT&T should be ordered not to discontinue or suspend service order provisioning and whether New Talk was required to pay into escrow the disputed amount for billed services. This ruling does not prevent New Talk and AT&T from addressing the correct undisputed and disputed amounts at the hearing on permanent relief. The arbitrators have set August 20, 2010 as the deadline for these actions in order to allow New Talk a reasonable period of time to take these actions and to allow the parties to appeal this order to the Commission if they so choose.<sup>21</sup>

2. New Talk's request that AT&T be ordered to refund the \$260,000 security deposit is denied. New Talk did not allege that its agreement with AT&T to provide the security deposit

---

<sup>19</sup> Interconnection Agreement, Attachment 1, Section 4.1.

<sup>20</sup> Petition of New Talk, Exhibit A, at 3.

<sup>21</sup> The Commission has an open meeting scheduled for August 19, 2010.

included a refund provision. In addition, AT&T faces the risk that New Talk will not pay AT&T the undisputed amounts addressed by this order and will not pay the disputed amounts addressed by this order into escrow. Furthermore, the undisputed amounts and disputed amounts addressed by this order are for service through May 2010. AT&T faces the risk that New Talk will not pay for service that AT&T has provided after May 2010, as evidenced by New Talk's prior failure to pay undisputed amounts and given the large amounts it currently owes AT&T and the amounts that it is required to escrow.


3. Pursuant to P.U.C. PROC. R. 21.129(h), this interim ruling is effective throughout this dispute resolution proceeding until a final decision is issued pursuant to this subchapter, unless otherwise ordered by the arbitrators or the Commission upon appeal.

4. Pursuant to P.U.C. PROC. R. 21.33(B)(1), the arbitrators have restyled the docket as shown in the caption above.

**SIGNED AT AUSTIN, TEXAS on the 13<sup>th</sup> day of July, 2010.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
\_\_\_\_\_  
**KAREN S. HUBBARD**  
**ARBITRATOR**

  
\_\_\_\_\_  
**MARK BRYANT**  
**ARBITRATOR**

**DOCKET NO. 38389**

<b>PETITION OF NEW TALK, INC. FOR POST-INTERCONNECTION DISPUTE RESOLUTION AND REQUEST FOR EXPEDITED RULING AND INTERIM RULING WITH SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A AT&amp;T TEXAS UNDER FTA RELATING TO BILLING DISPUTES</b>	§ § § § § § § § § §	<b>PUBLIC UTILITY COMMISSION</b>  <b>OF</b>  <b>TEXAS</b>
--	--	---

RECEIVED  
10 JUL 28 PM 2:23  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**ORDER NO. 3**

**I. BACKGROUND**

On June 28, 2010, New Talk, Inc. (New Talk) filed its Post-Interconnection Dispute Resolution Complaint and Request for Emergency Action, Interim Ruling, and Request for Expedited Ruling under P.U.C. PROC. R. 21.125, 21.127 and 21.129 (Petition). New Talk's Petition concerns billing disputes with Southwestern Bell Telephone, L.P. d/b/a AT&T Texas (AT&T) as well as a demand by AT&T that New Talk escrow disputed amounts. New Talk alleges in its Petition that AT&T has threatened not to accept additional orders from New Talk and to suspend provisioning activity on all pending orders. New Talk sought emergency action and an interim ruling directing AT&T to cease and desist from its threatened action to discontinue or suspend service order provisioning and its insistence that New Talk pay disputed amounts into escrow. It asserts it has established 12 months of good credit history with AT&T, which under the terms of the interconnection agreement (ICA) relieves it from paying disputed amounts into escrow. On July 2, 2010 AT&T filed its Response to New Talk's Complaint, Request for Emergency Action, Interim Ruling, and Request for Expedited Ruling refuting New Talk's claim that it has established 12 months of good credit history with AT&T. On July 2, 2010 Order No. 1 was filed scheduling a hearing on the request for interim ruling for July 6, 2010 and giving notice of the arbitration team.

On July 6, 2010 the parties participated in the hearing for interim ruling and on July 13, 2010 the Arbitrators entered an order prohibiting AT&T from discontinuing or suspending service order provisioning to New Talk based on the issues in dispute in this docket during the

**Exhibit "F"**



pendency of this docket, conditioned on New Talk, by August 20, 2010, paying AT&T undisputed charges in the amount of \$2,169,533.27 and paying into escrow \$1,082,034.80 in disputed charges.<sup>1</sup> New Talk's request that AT&T be required to refund a \$260,000 security deposit previously posted was denied.

On July 16, 2010, New Talk filed a Request for Informal Settlement Conference; on July 20, 2010, AT&T filed a Motion for Clarification of Order No. 2; and on July 23, 2010, New Talk filed an appeal of Order No. 2 and Motion for Reconsideration, but did not file a response to AT&T's Motion for Clarification of Order No. 2.

### **II. Notice of Prehearing Conference and Request for Procedural Schedule**

A prehearing conference in this docket is scheduled for **Monday, August 30, 2010 at 10:00 AM in Hearing Room Gee** at the Public Utility Commission, 7<sup>th</sup> floor, 1701 N. Congress Ave., Austin, TX 78701 to receive a status report on the informal settlement conference, to set a procedural schedule and to address any pending motions or ancillary matters.

### **III. New Talk's Motion for Expedited Hearing**

New Talk's Motion for Expedited Hearing is denied. This billing dispute arose over one year ago. New Talk could have petitioned the Commission the dispute much sooner. In addition, in Order No. 2 the arbitrators concluded that New Talk failed to properly pay AT&T undisputed charges in the amount of \$2,169,533.27 and to properly pay into escrow \$1,082,034.80 in disputed charges and gave New Talk until August 20, 2010 to correct these failures as a condition of the arbitrators' order prohibiting AT&T from discontinuing or suspending service order provisioning to New Talk based on the issues in dispute in this docket during the pendency of this docket. The arbitrators have scheduled a prehearing conference soon after that date to include setting a procedural schedule and addressing any pending motions or ancillary matters, which will allow the arbitrators to consider whether New Talk has made these payments. Furthermore, New Talk recently requested an informal settlement conference, and P.U.C. PROC. R. 21.123(e) provides that the informal settlement conference will precede formal dispute resolution.

---

<sup>1</sup> This ruling does not prevent New Talk and AT&T from addressing the correct undisputed and disputed amounts at the hearing on permanent relief.

#### IV. Clarification of Order No. 2

AT&T requested in its Motion for Clarification of Order No. 2 that:

(a) "...the Arbitrator's conclusion on page 6 of Order No. 2 [that New Talk is likely to prevail on the merits of its claim that AT&T may not apply an avoided cost discount to the Movers and Win-Back promotions credits] be deleted" asserting that the finding is "inaccurate and not necessary to support the result reached at this juncture of the proceeding."<sup>2</sup> And,

(b) requested clarification that "New Talk be prohibited from applying offsets to bills it receives as of the date of Order No. 2 and that prospectively it be ordered to pay all undisputed amounts to AT&T and all disputed amounts into an escrow account."<sup>3</sup>

The arbitrators decline to delete their conclusion on page 6 of Order No. 2 because, in issuing Order No. 2, the arbitrators appropriately considered whether there is a substantial likelihood of success on the merits of the New Talk's claims, pursuant to P.U.C. PROC. R. 21.129(g)(1).

As to AT&T's request for clarification that the relief granted be applied prospectively, the arbitrators agree that further clarification will assist in the appropriate interpretation of Order No. 2. Therefore, Order No. 2 is clarified such that AT&T is prohibited from discontinuing or suspending service order provisioning to New Talk based on the issues in dispute in this docket during the pendency of this docket, conditioned on New Talk (1) by August 20, 2010, paying AT&T undisputed charges in the amount of \$2,169,533.27 and paying into escrow \$1,082,034.80 of disputed charges; and (2) paying AT&T, without offsets or "right-paying," all undisputed charges and paying into escrow all disputed charges for bills issued subsequent to the bills for which the \$2,169,533.27 and \$1,082,034.80 amounts accrued.

---

<sup>2</sup> AT&T Mt. for Clarification at 5.

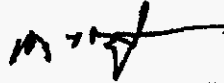
<sup>3</sup> *Id.* at 6.

SIGNED AT AUSTIN, TEXAS on the 28<sup>th</sup> day of July, 2010.

**PUBLIC UTILITY COMMISSION OF TEXAS**



**KAREN S. HUBBARD  
ARBITRATOR**



**MARK BRYANT  
ARBITRATOR**