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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )**  
**NET TALK.COM, INC. FOR A CERTIFICATE )**  
**OF PUBLIC CONVENIENCE AND NECESSITY )**  
**TO PROVIDE FACILITIES-BASED LOCAL )**  
**EXCHANGE AND RESOLD INTEREXCHANGE )**  
**TELECOMMUNICATIONS SERVICES. )**  
**)**  
**)**  
**)**

**CASE NO. NTA-T-08-1**

**COMMENTS OF THE**  
**COMMISSION STAFF**

**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure in Order No. 30781 issued on April 15, 2009, submits the following comments.

**BACKGROUND**

On November 18, 2008, NET TALK.COM, INC. ("Net Talk") filed an Application for a Certificate of Public Convenience and Necessity, pursuant to *Idaho Code* §§ 61-526 through 528, IDAPA 31.01.01.111 and Commission Order No. 26665, to provide facilities-based local exchange and resold interexchange telecommunications services. On March 6, 2009, Net Talk filed a revised Application and proposed Local Exchange Telecommunications Tariffs, in accordance with Staff's recommendations.

Net Talk is a newly formed Florida corporation with a Class 5 switching facility data center located in North Miami Beach, Florida. Net Talk lists its principal place of business as North Miami Beach, Florida but is registered with the Idaho Secretary of State as a foreign limited liability company.

Net Talk will compete with other Voice over Internet Protocol (VoIP) providers and local incumbent local exchange carriers (ILECs) to provide facilities-based local exchange and resold interexchange services throughout Idaho.

Net Talk's Idaho service area will encompass the geographic areas currently served by Qwest Corporation.

Net Talk intends to offer its services immediately upon certification, using its own and/or leased facilities and the resale of other carrier's facilities and network elements.

#### **STAFF ANALYSIS**

Staff worked closely with the Company to bring its Application and illustrative price lists into compliance with Idaho Code and the Commission's Customer Relations Rules. While Net Talk intends to compete in the Basic Local Service market, it also has stated that it will pursue other services such as Voice over Internet Protocol (VoIP).

Net Talk's VoIP offering, while not considered traditional circuit switched basic local exchange service, requires that Net Talk be able to obtain telephone numbers from the Number Pool Administrator and requires Net Talk's interconnection with the appropriate local exchange providers. Current industry numbering standards, along with Federal Communications Commission (FCC) rules require that a provider requesting its initial block of telephone numbers in a particular state provide evidence to the Number Pool Administrator that the provider has either: (1) a license or authority issued by the FCC; or (2) that it holds a CPCN issued by the appropriate state regulatory body, such as a public utilities commission.

To date the FCC has not made a determination of the regulatory status of interconnected VoIP services. Therefore, it remains unclear whether interconnected VoIP telecommunications offerings should be classified as telecommunications services or information services under the definitions contained in the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996 (Telecommunications Act). If the FCC were to make a determination that interconnected VoIP offers, such as those proposed by Net Talk in this

Application, are information services; or, if the FCC were to preempt state regulation of VoIP services, no regulation of such services could be undertaken or continued by this Commission.

However, denying the Application for a CPCN could have the practical effect of denying Net Talk entry into the Idaho telecommunications market. Without numbering resources, Net Talk cannot provide its interconnected VoIP service to Idaho customers. Staff believes that approval of this Application would be consistent with the Commission's obligation, under state and federal statutes, to promote competition for telecommunications services, including basic local exchange service. Staff believes that, because interconnected VoIP service is the functional equivalent of circuit switched local exchange services, granting this Application for a CPCN would encourage competition within Idaho. It would also afford Net Talk the same numbering resources that are currently used by Idaho LECs without question or restriction of the services they are offering.

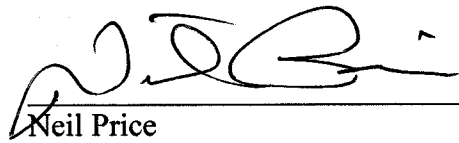
With its initial filing, Staff had concerns regarding the Idaho 208 area code that is approaching exhaust. To address this concern, Net Talk filed an amended Application wherein it stated that as part of its application it will comply with all federal and state guidelines that regulate and monitor Idaho telephone numbers.

#### **STAFF RECOMMENDATION**

Staff recommends that Net Talk be granted a CPCN subject to the following conditions:

1. The granting of this Certificate will be conditioned upon the Company complying with the Number Pool Administrator and Idaho Commission Order No. 30425, which requires NRUF and Utilization reporting.
2. As a provider of intrastate local exchange services and in accordance with the Commission's Rules, Net Talk will be required to report and contribute, as appropriate, to the Idaho Universal Service Fund, Idaho Telecommunications Relay System, ITSAP and any requisite annual reporting that may be deemed appropriate in the future for competitive telecommunication providers.
3. Upon issuance of the Certificate, Net Talk shall file a completed and final price list with all its rates, terms and conditions to have on file with the Commission.

Respectfully submitted this 5th day of May 2009.



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Neil Price  
Deputy Attorney General

Technical Staff: Carolee Hall

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 5<sup>TH</sup> DAY OF MAY 2009, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. NTA-T-08-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY

CERTIFICATE OF SERVICE