



PUBLIC NOTICE

Federal Communications Commission
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DA 06-1421
Released: July 10, 2006

**PETITION OF IMAGE ACCESS, INC. d/b/a NEWPHONE FOR DECLARATORY RULING
PLEADING CYCLE ESTABLISHED**

WC Docket No. 06-129

COMMENTS: July 31, 2006
REPLY COMMENTS: August 10, 2006

On June 13, 2006, Image Access, Inc. d/b/a NewPhone (NewPhone) filed a petition for declaratory ruling regarding the resale of incumbent local exchange carrier (ILEC) services. Specifically, NewPhone asks the Commission to declare that:

- an ILEC's refusal to make cash-back, non-cash-back, and bundled promotional discounts available for resale at wholesale rates is an unreasonable restriction on resale and is discriminatory in violation of the Act and the Commission's rules and policies;
- for all promotions greater than 90 days, ILECs are required either to offer to telecommunications carriers the value of the giveaway or discount, in addition to making available for resale at the wholesale discount the telecommunications service that is the subject of the ILEC's retail promotion, or to apply the wholesale discount to the effective retail rate of the telecommunications service that is the subject of the ILEC's retail promotion;
- the effective retail rate for a giveaway or discount shall be determined by subtracting the face value of the promotion from the ILEC-tariffed rate for the service that is the subject of the promotion, and the value of the discount shall be distributed evenly across any minimum monthly commitment up to a maximum of three months;
- for all ILEC promotions greater than 90 days, ILECs shall make available for resale the telecommunications services contained within mixed-bundle promotions (promotions consisting of both telecommunications and non-telecommunications services) and apply the wholesale avoided cost discount to the effective retail rate of the telecommunications service contained within the mixed bundle;
- the effective retail rate of the telecommunications service component(s) of a mixed-bundle promotion shall be determined by prorating the telecommunications service component based on the percentage that each unbundled component is to the total of the bundle if added together at their retail, unbundled component prices; and
- telecommunications carriers shall be able to resell ILEC promotions greater than 90 days in duration as of the first day the ILEC offers the promotion to retail subscribers.

We invite comments on the NewPhone petition. Interested parties may file comments on or before **July 31, 2006** and reply comments on or before **August 10, 2006**. Comments may be filed using

the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹ Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, **WC Docket No. 06-129**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). **Parties are strongly encouraged to file comments electronically using the Commission's ECFS.**

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. Parties should also send a copy of their filings to Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A361, 445 12th Street, SW, Washington, D.C. 20554 or by e-mail to lynne.engledow@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in WC Docket No. 06-129 are available for public inspection and copying during business hours at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com. People with disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files,

¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at telephone (202) 418-0530 or TTY (202) 418-0432.

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. *See* 47 C.F.R. §§ 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. *See* 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission’s rules. *See* 47 C.F.R. § 1.1206(b).

For further information, contact Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, (202) 418-2350.

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