

The Impact of ILEC Promotions on Resale Competition

Presented by Image Access, Inc. d/b/a NewPhone,
NALA and Quality Telephone (Qtel)

Federal Communications Commission
September 27-28, 2006

Who We Are

- ❑ NewPhone is a competitive local exchange carrier providing resold local exchange services throughout the Southeast.
- ❑ On June 13, 2006, NewPhone filed a Petition for Declaratory Ruling with the Commission in WC Docket No. 06-129 concerning ILEC promotions available for resale.
- ❑ The National Alternative Local Exchange Carrier Association/Prepaid Communications Association (NALA) is a non-profit association dedicated to ensuring that the concerns of the prepaid dial tone industry are heard in federal and state regulatory and legislative arenas.
- ❑ Quality Telephone (Qtel) is a competitive local exchange carrier providing resold local exchange services in more than 30 states.

What Customers Think and Why Resale/Competition is Critical

- Based on a survey of 618 customers of member companies conducted by the NALA organization, which NewPhone and Quality Telephone (Qtel) are key members:
 - We serve a unique customer base, with many more single moms with more children than the national average. Our customers skew more urban, more ethnic and more economically disadvantaged.
- The phone is critical...
 - With 85% customers using the home phone as the primary phone to communicate with doctors and school, as well as friends and family.
 - And 97% customers saying that 911 is accessed through this phone is very important.
- And the customers have few choices...
 - With customers saying that if their current CLEC were to disconnect their phone...
 - Only 16% of customers saying they would go back to the Bells
 - Only 4% saying they would go to alternatives like VoIP or a cable phone
 - But 35% would go to another CLEC-type company, and
 - A full 45% would go without home phone service for awhile.
- When asked if you would ever consider going to the Bells for home phone service...
 - Only 31% said yes, leaving 69% looking for phone service exclusively from competitive providers like NewPhone and Qtel.

The Problem Faced by Local Resellers

- ❑ ILECs are increasingly employing sophisticated and complicated promotional and discounted bundled offerings that include local telecommunications services.
- ❑ As a result, it is becoming more difficult to determine the actual retail rate of the service from which the wholesale discount is to apply, and disputes between ILECs and resellers are occurring more often and taking longer to resolve.
- ❑ Failure to properly account for promotions and discounts and to settle disputes promptly greatly affects the ability of resellers to provide service, particularly to residential and small business customers, harming competition in these market segments.
- ❑ It is critical for the FCC to clarify how the “real” retail rate is calculated when cash-back/give-away and bundled promotions are used.

FCC Policy Regarding §251(c)(4): The Importance of Local Resale

As provided in the FCC's First Report and Order in 96-98:

- "Resale is an important entry strategy for new entrants...in the short term...[and] over the longer term."
- "Clear [national] resale rules will create incentives for parties to reach agreement on resale arrangements in voluntary negotiations...aid states in conducting arbitrations...[and] minimize regulatory burdens and uncertainty for all parties..."
- "[R]esale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored."

Also see the FCC's Order in 04-223, Qwest Omaha Forbearance Order, where 251(c)(4) resale is seen as an important means of fostering local competition.

ILEC Promotions and Bundles: Key Issues

- **Cash Back and Non-Cash Back Promotions**
 - The ILECs' promotions lower the price of the telecommunications service, creating an "effective retail rate"

- **Bundling of Telecom Services and Non-Telecom Services ("Mixed Bundles")**
 - The ILECs' pricing of bundles lowers the price of the telecommunications service component, creating an "effective retail rate"

- **Timing/Availability of Long-Term Promotions**
 - ILECs are required to make the promotion available for resale at the wholesale discount on Day 1, not Day 91

ILEC Promotional Practices Are Unreasonable and Discriminatory Restrictions on Resale

- ❑ ILECs offer long-term cash-back, non-cash back and bundled promotions to their retail customers but refuse to offer them for resale, insisting that the resale discount apply only to standard tariffed rates
- ❑ ILEC promotions create a “price squeeze” for resellers
- ❑ ILEC promotions disguise the true retail price of telecommunications service

The ILECs’ resale restrictions on cash-back, non-cash back and bundled promotions violate Section 251(c)(4) of the Act, and sections 51.603, 51.605 and 51.613 of the Commission’s rules

NewPhone Petition for Declaratory Ruling

WC Docket No. 06-129

NewPhone asks the Commission to declare that:

- the ILECs' refusal to make telecommunications services subject to 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 ILEC promotions greater than 90 days in duration, at the option of the requesting telecommunications carrier, ILECs are required to *either*
 - offer to telecommunications carriers **the value of all cash-back, check, gift card, coupon, or other similar giveaways or discounts** 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*
 - **apply the wholesale discount to the "effective retail rate"** of the telecommunications service that is the subject of the ILEC's retail promotion;

NewPhone Petition for Declaratory Ruling

WC Docket No. 06-129

NewPhone asks the Commission to declare that (cont.):

- for all ILEC promotions greater than 90 days in duration, **ILECs shall make available for resale the telecommunications service component(s) contained within “mixed bundle” promotions, *i.e.*, bundles consisting of both telecommunications service and non-telecommunications service, such as information services, and apply the wholesale avoided cost discount to the “effective retail rate”** of the telecommunications services contained within the mixed bundle;

NewPhone Petition for Declaratory Ruling

WC Docket No. 06-129

NewPhone asks the Commission to declare that (cont.):

- the **“effective retail rate” for cash-back, check, gift card, coupon, or other similar giveaway or discounts shall be determined by subtracting the face value of the promotional discount from the ILEC tariffed rate for the telecommunications service that is the subject of the ILEC promotional offering** and the value of such discount shall be distributed evenly across any minimum monthly commitment up to a maximum of three months;
- the **“effective retail rate” of the telecommunications service component(s) of a mixed service bundle shall be determined by prorating the telecommunications service component based on the percentage that each unbundled component is to the total of the mixed service bundle if added together at their retail unbundled component prices; and**
- telecommunications carriers shall be entitled to the resell at the wholesale discount ILEC promotions of greater than 90 days in duration **as of the first day the ILEC offers the promotion to retail subscribers.**

General Examples of Promotional and Bundled Offerings in the Marketplace

□ Cash-Back and Non-Cash Back Promotions

- \$100 cash-back with local service, plus 2 custom calling features
- \$25 gift card for reconnecting local service
- Waiver of service connection fee
- 2 Free Custom calling features for 12 months
- Monthly discount on local service

□ Mixed Bundles

- Local service, plus 2 custom calling features, plus long distance for \$15.00 mo.
- Local service, plus long distance at a discount from the tariffed rate
- Bundle plus cash-back

Specific Example #1

BellSouth Bundled Promotional Retail Rates vs. BellSouth Wholesale Rates

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: October 27, 2005
BY: Marshall M. Criser III, President -FL
Miami, Florida

OFFICIAL APPROVED VERSION, RELEASED BY BSHQ
GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 35.5.13
Cancels First Revised Page 35.5.13

EFFECTIVE: November 11, 2005

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory -- From Central Office where services are available (Cont'd)	Unlimited Reacquisition Bundle -- Residential customers who are returning to BellSouth and who subscribe to BellSouth Complete Choice service, BellSouth Long Distance Unlimited service, and BellSouth Voice Mail Premium service are eligible for this promotion.	--Any qualifying residential customer who purchases BellSouth Complete Choice service, BellSouth Long Distance Unlimited service, and BellSouth Voice Mail Premium service under this promotion will be eligible to receive a discount on their BellSouth Complete Choice service monthly recurring charge in the amount of \$5.00, and a discount on their BellSouth Voice Mail Premium service monthly recurring charge in the amount of \$3.95.	10/30/03 to 10/25/04 and 10/30/04 to 10/25/05 and 11/11/2005 to 10/25/2006
	--Customer must either not currently have service with BellSouth or not have service with BellSouth on one or more of their existing lines.	--The customer must place the order on or after October 30, 2003.	(C)
	--Customer must have been disconnected from BellSouth for no fewer than ten (10) days.	--The customer must place the order on or before October 25, 2006.	(C)
	--Customer must have local service or equivalent with another provider at the same local service address on one or more of their existing lines.	--BellSouth reserves the right to discontinue this promotion at any time without customer notice.	
	--Customer must request service at the same address and in the same name, unless customer is planning an imminent move from one address in BellSouth territory to another address in BellSouth territory within thirty (30) days of responding to the offer. In the case of an imminent move, the BellSouth rep can offer the customer the promotion and place the order at the new address. Customers will not be required to sign a contract or make any term commitment in order to be eligible for this promotion.	--Customer must have the eligible services on their new service order (N) in order to receive promotional offer.	
	--The customer must switch their local service to BellSouth and purchase BellSouth Complete Choice service.	--Customers have the option not to take the BellSouth Voice Mail Premium service.	
		--BellSouth employees are not eligible for this promotion.	
		--Offer only available in markets where BellSouth Complete Choice service is available.	

BELLSOUTH BUNDLED OFFER

CompleteChoice local service = \$26.00 mo.

MemoryCall Voicemail = \$3.95 mo.

TOTAL BUNDLED RETAIL RATE = \$29.95 mo.

BELLSOUTH WHOLESALE RATE

CompleteChoice local service tariffed rate = \$31.00 mo.

FL AVOIDED COST DISCOUNT = 21.83%

LOCAL SVC. WHOLESALE RATE = \$24.23 mo.

MemoryCall Voicemail tariffed rate = \$8.50 mo.

TOTAL WHOLESALE RATE (incl. voicemail) = \$32.73 mo.

Specific Example #2

BellSouth Bundled Promotional Retail Rates vs. BellSouth Wholesale Rates

For less than \$15.00 a month, you get...

- Local Service with your choice of 2 calling features such as Caller ID Deluxe, Call Waiting Deluxe, Call Return (*69), Three-Way Calling and more -- at no additional charge for 12 months!²
- BellSouth® Long Distance Service for only 5¢ a minute -- WITH NO MONTHLY FEE for 12 months!³
- BellSouth® Voice Mail Service -- for 12 months -- so you never miss a call!⁴ (Available upon request.)
- Local service connection fee waived -- a savings of up to \$41.00!

Plus, we'll give you \$50 CASH BACK⁵ to spend any way you want!

Only BellSouth delivers the quality, service and reliability you deserve.

To sign up for this offer today, call us toll free at **1.877.359.3602**,
Monday through Friday, 8 a.m. - 7 p.m. EST and Saturday, 8 a.m. - 5 p.m. EST.
Or visit us online any time at bellsouth.com/welcome.

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COX-3/LIFE
COPRO-A (see back for more details) HUGOAL 6/19

BELLSOUTH \$15 BUNDLED OFFER

2 Pack Plan Local Service (FL) valued at \$22.00 mo.

BellSouth Long Distance Nickel Plan (\$5.95 mo. value) free for 12 mos. = value of \$71.40

MemoryCall Voicemail (\$8.50 value) free for 12 mos. = \$102.00 value

Local service connection fee waived (value of \$41.00)

TOTAL BUNDLED RETAIL RATE = approx. \$15.00 mo.

2 Pack Plan Local Service (FL) tariffed rate = \$22.00 mo.

FL Avoided Cost Discount = 21.83%

TOTAL WHOLESALE RATE = \$17.20 mo.

TOTAL WHOLESALE RATE (incl. voicemail) = \$25.70 mo.

Specific Example #2 (cont.)

The Effect of Cash-Back Included in BellSouth Bundled Promotional Retail Rates

For less than \$15.00 a month¹, you get...

- **Local Service with your choice of 2 calling features** such as Caller ID Deluxe, Call Waiting Deluxe, Call Return (*69), Three-Way Calling and more – at no additional charge for 12 months!²
- **BellSouth® Long Distance Service** for only \$6 a minute – WITH NO MONTHLY FEE for 12 months!³
- **BellSouth® Voice Mail Service** – for 12 months – so you never miss a call!⁴ (Available upon request.)
- **Local service connection fee waived** – a savings of up to \$41.00!

Plus, we'll give you \$50 CASH BACK⁵ to spend any way you want!

Only BellSouth delivers the quality, service and reliability you deserve.

To sign up for this offer today, call us toll free at **1.877.359.3602**,
Monday through Friday, 8 a.m. – 7 p.m. EST and Saturday, 8 a.m. – 5 p.m. EST.
Or visit us online any time at bellsouth.com/welcome.

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C205-3/1/08
02/07/08-A (see back for more details) H00246 6/1/08

When BellSouth's cash-back offer is factored into its \$15 bundle, the result is an astounding "effective retail rate" for the **entire bundle of free** for 3 months, or \$6.67 for 6 mos., or \$10.83 for one year

WHOLESALE RATE FOR LOCAL SERVICE ONLY

2 Pack Plan Local Service (FL) tariffed rate = \$22.00 mo.

FL Avoided Cost Discount = 21.83%

TOTAL WHOLESALE RATE = \$17.20 mo.

Comments & Replies on the NewPhone Petition for Declaratory Ruling

In Support:

- COMPTEL
- National Alternative Local Exchange Carrier Assoc./Pre-Paid Communications Assoc.
- Home Phone
- Alternative Phone
- AmeriMex Communications
- Budget Phone
- Get a Phone
- dPI Teleconnect
- Express Phone Service
- FLATEL
- American Dialtone
- Quality Telephone
- Angles Communication Solutions
- Southeast Telephone

In Opposition:

- BellSouth
- Verizon
- AT&T
- Qwest
- Embarq

Arguments Proffered in Supporting Comments and Replies

- ❑ NewPhone's concerns are not hypothetical and must be addressed by the Commission through a clarification of existing rules
- ❑ Sound public policy favors grant of NewPhone's Petition
- ❑ NewPhone's Petition is entirely consistent with the pricing standard under section 252(d)(3) of the Act; state commission wholesale discount rates are not at issue here
- ❑ ILEC cash-back and non-cash-back promotions are price discounts which should be made available to resellers
- ❑ Resellers are entitled to obtain the telecommunications service components of ILEC mixed bundle offerings at the "effective retail rate" paid by consumers
- ❑ ILEC practices regarding the timing of discounted resale of long-term promotions are unreasonable and discriminatory in violation of the Act and the Commission's rules and policies

Indiana, North Carolina & Kansas Have Recognized the Problem

□ **Indiana Order**

- ILECs are required to calculate an “**effective rate**” for the price of the regulated service by adjusting for the value of any discounts associated with the non-regulated services
- ILECs are required to price their promotional offerings above a “price floor” to prevent predatory pricing

□ **North Carolina Order**

- The one-time gifts (including gift cards, check coupons and other merchandise) -- which are not telecommunications services -- need not be resold, but such items are **promotional offerings and have economic value**. As such, the NC Order requires that the “price lowering impact of any such 90-day-plus promotions on the real tariff or retail list price be determined and that the benefit of such reduction be passed on to resellers by applying the wholesale discount rate to the **lower actual retail price.**”
- An ILEC is required to make any telecommunications services provided by it and offered as a component of a **mixed bundle** available for resale on a standalone basis. The actual retail rate for this standalone service “must be determined by **accounting for the value** of the services in the bundle that are not telecommunications services provided by the ILEC (emphasis added).”

□ **Kansas Order**

- ILECs are required to price their promotional offerings above a “price floor” to prevent predatory pricing
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Conclusion

- ❑ The ILECs' resale practices constitute unreasonable restrictions and/or limitations upon the resale of telecommunications service in violation of federal law
- ❑ The ILECs' resale practices threaten to destroy all resale competition
- ❑ The Commission must promptly grant NewPhone's Petition for Declaratory Ruling in its entirety