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November 22, 2006

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition of Image Access, Inc. d/b/a NewPhone for Declaratory Ruling Regarding Incumbent Local Exchange Carrier Promotions Available for Resale Under the Communications Act of 1934, as Amended, and Sections 51.601 *et seq.* of the Commission's Rules, WC Docket No. 06-129

Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission's Rules for Consent to the Transfer of Control of BellSouth Corporation to AT&T, Inc., WC Docket No. 06-74, DA 06-2035

Dear Ms. Dortch:

Image Access, Inc. d/b/a NewPhone, ABC Telecom d/b/a Home Phone, Alternative Phone, Inc., AmeriMex Communications Corp., CGM, Inc., Connect Paging, Inc. d/b/a Get A Phone, dPi Teleconnect, Express Phone Service, Inc., FLATEL, Inc., Ganoco, Inc. d/b/a American Dialtone, Lost Key Telecom, Quality Telephone, Seven Bridges Communications, Smart Telecom Concepts, LLC, and NALA/PCA - The National Alternative Local Exchange Carrier Association/ Prepaid Communications Association (collectively, the "Resale Coalition") hereby submit this *ex parte* letter for filing in the above-captioned dockets. As explained below, BellSouth continues to discriminate against and attempt to eliminate its resale competition through the use of cash-back and bundled promotions which it refuses to make available to resellers. BellSouth's unlawful and unabated actions have had a cumulative, deleterious affect on the Resale Coalition members' ability to serve their primary customer base of underprivileged subscribers. The Resale Coalition urges the Commission to act swiftly by putting an end to BellSouth's unlawful resale practices.

BellSouth's latest promotion, which is attached hereto, is further evidence of BellSouth's continuing and unlawful campaign to eradicate any remaining resale competition. Pursuant to the terms of the promotion, BellSouth is offering "winback" customers unlimited local service with a Caller ID Deluxe and host of vertical features, without any installation fees, long distance service for five cents per minute with no monthly recurring fee for 12 months, and \$100 cash-back -- **all for \$23 per month** for 12 months.¹ Notably, however, BellSouth refuses to make this promotion available to the Resale Coalition, despite its obligations under Section 251(c)(4) of the Act and the Commission resale rules. The result is that, in many states, BellSouth can sell the entire bundle of services at retail for less than what it costs the Resale Coalition to purchase from BellSouth only local service portion of that bundle.² These anticompetitive practices must be curbed before they spread further -- and before resale competition disappears altogether.

As the Resale Coalition has explained in previous presentations and submissions, Resale Coalition member carriers use resale to serve predominantly underserved and underprivileged groups of consumers.³ The Commission must therefore act swiftly to correct such anti-competitive conduct and to protect these consumers by granting NewPhone's Petition for Declaratory Ruling filed by NewPhone,⁴ and by imposing resale conditions upon the proposed merger of BellSouth and AT&T.⁵ Consistent with its filings in those proceedings, the Resale Coalition asks the Commission to order the following:

- (1) for all promotions greater than 90 days in duration, at the option of the requesting telecommunications carrier, ILECs shall *either* (i) in addition to offering the telecommunications service that is the subject of the promotion at the wholesale avoided cost service discount, offer to telecommunications carriers throughout the entire local exchange footprint of the combined company the value of all cash-back, gift card, coupon, or other similar giveaways or incentives that the ILEC provides to retail end-users; *or* (ii) apply the wholesale avoided cost service discount to the "effective retail rate" of the telecommunications service that is the subject of the ILEC promotion;⁶

¹ See terms and conditions of BellSouth promotion appended hereto as *Attachment A*.

² See Preferred Pack Plan Cost Table, appended hereto as *Attachment B*.

³ *Ex Parte* Letter from John J. Heitmann, Counsel, NewPhone and Q-Tel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attachment at 3 (September 28, 2006).

⁴ *Petition of Image Access d/b/a NewPhone for Declaratory Ruling Pleading Cycle Established*, Public Notice, WC Docket No. 06-129, DA 06-1421 (rel. July 10, 2006).

⁵ See *Ex Parte* Letter from John J. Heitmann, Counsel, NewPhone *et al.*, to FCC Chairman Kevin J. Martin and Commissioners Copps, Adelstein and Tate, WC Docket No. 06-74 (October 26, 2006).

⁶ The "effective retail rate" should be determined by subtracting the face value of the promotional incentive from the tariffed rate, and the value of such discount should be distributed evenly across any minimum monthly commitment up to a maximum of three months.

- (2) for all promotions greater than 90 days in duration, ILECs shall make available for resale the telecommunications services contained within mixed bundle promotions, *i.e.*, bundles consisting of both telecommunications service and information service, and apply the wholesale avoided cost discount to the “effective retail rate” of the telecommunications services contained within the mixed bundle;⁷ and
- (3) telecommunications carriers shall be entitled to resell Applicants’ promotions of greater than 90 days in duration at the wholesale avoided cost discount as of the first day the ILEC offers the promotion to retail subscribers.

Please do not hesitate to contact me, if you have any questions about this filing.

Respectfully submitted,



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Teleconnect, Express Phone Service, Inc.,
FLATEL, Inc., Ganoco, Inc. d/b/a American
Dialtone, Lost Key Telecom, Quality
Telephone, Seven Bridges Communications,
Smart Telecom Concepts, LLC, and
NALA/PCA - The National Alternative Local
Exchange Carrier Association/ Prepaid
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⁷ The “effective retail rate” of the telecommunications component 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 (for example, if the individual components comprising a mixed service bundle have a combined retail price of \$150 if purchased on a stand-alone basis, and the telecommunication service component has an stand-alone retail price of \$30, the telecommunications service component would have an “effective retail rate” of 20% of the total mixed service bundled price).



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Dear Mr. Gene Dry,

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Plus, BellSouth has all the services you need bundled together for one low rate — another reason to choose the company you know best! Just take a look at all you get:

For only **\$23.00** a month¹, you'll get:

- Unlimited local calling with the BellSouth® PreferredPack® Plan
- Our most popular calling features: Caller ID Deluxe, Call Waiting Deluxe, Call Return (*69), Three-Way Calling and BellSouth® Privacy Director® service for much less than you would pay for each feature separately²
- BellSouth® Long Distance Service for only 5¢ a minute — WITH NO MONTHLY FEE for 12 months³
- No charge to switch to BellSouth

Order today and receive \$100 CASH BACK!⁴

BellSouth is the one company that offers it all — high-speed Internet services, local and long distance, Cingular Wireless® and DIRECTV® service.

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Monday through Friday, 8 a.m. – 7 p.m. EST and Saturday, 8 a.m. – 5 p.m. EST

Be sure to mention promo code **BH06**

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Sincerely,

Laura M. Ruff
Director, Consumer Marketing

Para español por favor llame al 1.888.734.9240.

BellSouth
Express

The # security claim is based on the person's total amount being
1) **Quoted rate** for new qualifying residential customers. Bundled rate excludes taxes, fees & other charges. Rate will increase after 12 billing invoices. Offer ends 12/31/06. 2) **Calling features:** Long distance or expanded local calling Forwarding and Three-Way Calling. 3) **Nickel Savings Value Promotion:** Customers must not have subscribed to any BellSouth services prior to their enrollment in this promotion. International calls extra. A Carrier Cost Recovery Fee of \$0.99 will be charged imposed or required by any government. Taxes, fees and other charges, including Universal Service Fund, apply. Offer ends 12/31/06. 4) **Coupon:** Offer ends 12/31/06. Coupon to customers who switch local telephone service to BellSouth and purchase the BellSouth® Complete Choice® plan or t redemption required. Check will be sent within 4-6 weeks after receipt of coupons to customers who retain qualifying services. O
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