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June 28, 2007

VIA ECFS

Honorable Kevin J. Martin, Chairman
Honorable Jonathan S. Adelstein, Commissioner
Honorable Michael J. Copps, Commissioner
Honorable Robert McDowell, Commissioner
Honorable Deborah Taylor Tate, Commissioner
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

Dear Honorable Chairman, Honorable Commissioners, and Madam Secretary:

More than one year ago, on June 13, 2006, Image Access, Inc. d/b/a NewPhone ("NewPhone") filed the above-captioned Petition for Declaratory Relief. In its Petition, NewPhone requested that the Commission issue a declaratory ruling to ensure that resale remains a viable method of competitive entry into the local exchange market and is not stifled by incumbent local exchange carriers' ("ILEC") unreasonable and discriminatory practices and policies. In particular, NewPhone asked the Commission to remove uncertainty surrounding the resale of ILEC services subject to cash-back promotions, gift cards, coupons, checks, or other similar giveaways, and to rule as to the wholesale availability and pricing of telecommunications services offered to ILEC retail customers as part of a mixed service bundle, *i.e.*, a bundle consisting of both telecommunications and non-telecommunications services.

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 with NewPhone, the "Resale Coalition") and COMPTTEL have joined in support of NewPhone's Petition. Multiple rounds of *ex parte* meetings have been conducted and the Resale Coalition has urged the Commission to promptly grant the Petition.

Today, the Resale Coalition, through its undersigned counsel, writes to urge the Commission to take action in this docket as expeditiously as possible. Resale competition under Section 251(d) of the Act is dying.¹ ILECs, including AT&T and Verizon, continue to discriminate against and attempt to eliminate resale competition through the use of cash-back and bundled promotions which they refuse to make available to resellers. The ILECs' 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. Undoubtedly, this has contributed to the recent rise in the percentage of homes without telephones.² The Resale Coalition urges the Commission to act swiftly to correct these trends by putting an end to unlawful resale practices.

AT&T and Verizon's latest promotional retail offerings³ provide further evidence of their continuing and unlawful campaign to eradicate any remaining resale competition. Pursuant to the terms of one recent promotional offering, AT&T is offering "winback" customers unlimited local service with Caller ID Deluxe and Call Waiting Deluxe, voicemail, no installation fees, long distance service for five cents per minute with no monthly recurring fee for 12 months, and \$50 cash-back -- all for \$18 per month for 12 months (compared to tariffed/standard rates ranging from \$22 to \$25 per month for just the local service component of the bundle). Another recent promotional offering makes a similar package of services with several additional features available for \$23 per month with a free \$100 Target gift card (compared to tariffed/standard rates ranging from \$26 to \$32 per month for just the local service component of the bundle). AT&T refuses to make these promotional retail offerings available to Resale Coalition members, despite its obligations under Section 251(c)(4) of the Act and the Commission's resale rules. The result is that, in many states, AT&T sells the entire bundle of services at retail for *less* than what it charges Resale Coalition members for only the local service

¹ See Local Telephone Competition as of June 30, 2006, Wireline Competition Bureau, Jan. 2007, at Table 2 (showing a 41% decrease in CLEC residential lines between June 2004 and June 2006).

² After reaching a low point of 4.8-5.3% in 2002, the percentage of homes without telephones has risen to 7.6% for the most recent reporting period. Local Telephone Subscriberhip in the United States (Data through November 2006), Wireline Competition Bureau, May 2007, at Table 1 (showing a 41% decrease in CLEC residential lines between June 2004 and June 2006). The telephone subscriberhip penetration rate for households with incomes below \$20,000 is below 92% while the rate for households with incomes of over \$100,000 is over 98%. *Id.* at 1.

³ See terms and conditions of the AT&T and Verizon promotions referenced here appended hereto as *Attachments A, B and C.*

portion of these bundles.⁴ Verizon's conduct and use of promotional offerings is similar to that of AT&T.⁵ One recent Verizon promotional offering provides to consumers a local service bundle at \$19.99 per month by providing a "[l]ocal service discount of \$20/mo. bill credit" for 12 months. Verizon refuses to provide resellers with the same bill credits and insists that resellers pay based on tariffed rates its retail customers clearly do not pay. The Commission must take action to curb these anticompetitive practices 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.⁶ The Commission also has always recognized resale competition as a valid and valuable form of competitive entry.⁷ The Commission must act swiftly to correct such anti-competitive conduct and to protect consumers by granting the Petition for Declaratory Ruling filed by NewPhone.

Consistent with its advocacy in those proceedings, the Resale Coalition asks the Commission to adopt a declaratory ruling with the following *simplified findings* based on those previously proposed by NewPhone.

(1) Declaration Regarding Long Term Promotion – Telecommunications Services at Promotional Price Plus Gift Card or Other Incentive

For all promotions greater than 90 days in duration, ILECs shall make available for resale the telecommunications service that is the subject of the promotion at the promotional price minus the wholesale avoided cost service discount, and provide to the reseller the retail value of all cash-back, gift card, coupon, or other giveaways or incentives that the ILEC provides to retail end-users within the same time frame that such items would be provided to a retail customer.

⁴ See Cost Comparison Tables, appended hereto as *Attachment D*.

⁵ Like AT&T, Verizon refuses to give the benefit of retail cash back offers to resellers and refuses to resell telecommunications services offered to retail customers in a mixed service bundle.

⁶ *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).

⁷ See *Petition of Image Access d/b/a NewPhone for Declaratory Ruling Pleading Cycle Established*, WC Docket No. 06-129, (filed June 13, 2006) at 10-12 (citing various FCC orders).

Illustration No. 1

<p>Long term promotion – telecommunications services at promotional price plus gift card or other incentive</p>	<p><i>ILEC promotional offering:</i> Local service plus 2 features (<i>e.g.</i>, caller ID and call waiting); <i>plus</i> connection charges waived; <i>plus</i> cash back</p> <p><i>ILEC promotional retail rate:</i> \$18; <i>plus</i> \$50 connection charges waived; <i>plus</i> \$50 cash back</p> <p><i>Other:</i> \$25 standard (tariffed/posted) ILEC rate 15% applicable wholesale discount</p>
<p>Unlawful application of federal resale requirements</p>	<p>Wholesale rate applied to standard (tariffed/posted) \$25 rate; service connection fee waiver denied to reseller;⁸ \$50 cash back denied to reseller</p> <p><i>Reseller pays:</i> \$21.25 (cost to reseller = \$25 - (\$25 x .15))</p> <p><i>Reseller receives:</i> No connection fee (\$50) waiver No cash back (\$50)</p> <p><i>Unlawful for these independent reasons:</i> (1) <i>discount applied to standard (tariffed/posted) rate rather than retail rate;</i> (2) <i>failure to provide connection fee waiver as provided to retail customers; and</i> (3) <i>cash back provided to retail customer denied to reseller</i></p>

⁸ ILECs typically provide to resellers the service connection fee waiver, when the reseller is reselling a package of telecommunications services that is not bundled with non-telecommunications services. When telecommunications services are offered in a mixed bundle of telecommunications services and non-telecommunications services, ILECs typically deny the resale request and do not allow resellers to take advantage of the service connection fee waiver.

<p>Lawful application of federal resale requirements</p>	<p>Wholesale rate applied to promotional \$18 rate; <i>plus</i> service connection fee waived; <i>plus</i> \$50 cash back provided to reseller</p> <p>Reseller pays: \$15.30 (cost to reseller = \$18 - (\$18 x .15))</p> <p>Reseller receives: Connection fee (\$50) waived \$50 cash back</p>
<p>Harm from unlawful application of federal resale requirements</p>	<p>Additional monthly amount reseller must pay to ILEC under unlawful application: \$5.95 (monthly cost differential between lawful and unlawful application)</p> <p>Reseller's cost above monthly ILEC retail rate: \$3.25</p> <p>Additional savings provided to retail customers but not to resellers under unlawful application: \$100 (non-recurring aspects of the promotion provided to retail customers but not to resellers: \$50 one time cost differential for non-recurring connection fee paid by reseller but not by retail customer of ILEC and \$50 cash back received by ILEC retail customer, but not by reseller)</p>

Explanation

This simplified, proposed declaration eliminates the alternative formulation proposed previously in the NewPhone Petition and by the Resale Coalition. The result is a single, clean and straightforward piece of guidance on how the FCC's resale rules apply to promotional offerings including cash-back, gift card, coupon, or other similar giveaways or incentives.⁹ With this guidance, the FCC will ensure that resellers can resell ILEC

⁹ As has been explained in the Resale Coalition's Joint Reply Comments, the ILECs treat these promotions or marketing incentives as revenue reductions. See Joint Reply Comments of Image Access d/b/a NewPhone et. al, WC Docket No. 06-129 (filed Aug. 10, 2006) (citing p. 63 of BellSouth 2004 10-K).

retail services subject to the same terms and conditions applicable to retail customers at a price that reflects the true retail (rather than tariffed) rate minus the wholesale discount.¹⁰

In the absence of such guidance, ILECs will continue to misapply the Commission's resale rules by limiting their application to tariffed offerings only. This unjust and unreasonable practice results in unlawful discrimination against resellers and their customers as resellers pay more on a wholesale basis for services than the Act requires and than ILEC retail customers do.

(2) Declaration Regarding Long Term Promotion – Telecommunications Services within Mixed Bundle

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 non-telecommunications service (e.g., information service), and apply the wholesale avoided cost discount to the effective “retail rate” of the telecommunications services contained within the mixed bundle.

The effective “retail rate” of the telecommunications component of a mixed service bundle shall be determined by *either*:

(a) *prorating* the telecommunications service component subject to section 251(c)(4) resale based on the percentage that each unbundled component is to the total of the mixed service bundle if added together at their standard retail unbundled component prices; *or*

(b) using a reasonable, consistent and publicly disclosed *allocation* set by the ILEC and used for the purpose of federal and state reporting for universal service, regulatory fees, taxation, etc.

Once an allocation is declared, it is not subject to retroactive revision.

Any declared allocation above a standard/tariffed rate for the same or comparable service offering is per se unreasonable and is deemed to be in violation of 47 U.S.C. §§ 201(b) and 202(a).

The value of all cash-back, gift card, coupon, or other similar giveaways or incentives that the ILEC provides to retail end-users must be provided to the reseller consistent with

¹⁰ Such guidance is entirely consistent with Commission precedent. See, e.g., *In the Matter of Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended*, Memorandum Opinion and Order, 14 FCC Rcd 21579, ¶ 47 (“our rules require the incumbent LEC to apply the wholesale discount to the special reduced rate”) (rel. Dec. 23, 1999).

such prorating or allocation. The prorated or allocated value of all cash-back, gift card, coupon, or other similar giveaways or incentives must be provided to the reseller within the same time frame that such items would be provided to a retail customer.

Illustration No. 2

<p>Long term promotion – telecommunications services within mixed bundle</p>	<p>ILEC promotional offering: Mixed bundled service offering <i>including</i> local service plus 2 features, voice mail, no monthly fee long distance, and DSL, <i>plus</i> connection charges waived, <i>plus</i> cash back</p> <p>ILEC promotional retail rate for bundle: \$79 promotional rate; <i>plus</i> \$50 connection charges waived, <i>plus</i> \$100 cash back</p> <p>Other: \$25 standard (tariffed/posted) rate for local service plus two features 15% applicable wholesale discount</p>
<p>Prorating method: sample fact pattern</p>	<p>Components of ILEC bundled offering: \$25 standard rate for local service plus two features \$15 standard rate for voice mail \$9 standard rate for long distance (plus usage) \$51 standard rate for DSL \$100 standard rate total for all components</p> <p>Pro rata share of telecom subject to local resale requirements: 25%</p> <p>Promotional rate for telecom services included in mixed bundle and subject to local resale requirements: \$19.75 (\$79 promotional retail rate x .25 pro rata share of telecom subject to local resale requirements)</p>

<p>Prorating method: unlawful application of federal resale requirements¹¹</p>	<p>Wholesale rate applied to standard (tariffed/posted) \$25 rate; service connection fee waiver denied to reseller; cash back denied to reseller</p> <p>Reseller pays: \$21.25 (cost to reseller = \$25 - (\$25 x .15))</p> <p>Reseller receives: No connection fee (\$50) waiver No cash back (\$25)</p> <p>Unlawful for these independent reasons: (1) discount applied to standard (tariffed/posted) rate rather than retail rate; (2) failure to provide connection fee waiver as provided to retail customers; (3) prorated share of cash back provided to retail customer denied to reseller</p>
<p>Prorating method: lawful application of federal resale requirements</p>	<p>Wholesale rate applied to promotional \$19.75 rate; plus service connection fee (\$50) waived; plus \$25 cash back provided to reseller</p> <p>Reseller pays: \$16.78 (cost to reseller = \$19.75 - (\$19.75 x .15))</p> <p>Reseller receives: Connection fee (\$50) waived \$25 cash back</p>

¹¹ ILECs typically respond to a request to resell telecommunications services offered in a mixed bundle of telecommunications services and non-telecommunications services by denying the request and directing the reseller to standard/tariffed offerings.

<p>Prorating method: harm from unlawful application of federal resale requirements</p>	<p><i>Additional monthly amount reseller must pay to ILEC under unlawful application:</i> \$4.47 (monthly cost differential between lawful and unlawful application)</p> <p><i>Reseller's cost above monthly ILEC retail rate:</i> \$1.50</p> <p><i>Additional savings provided to retail customers but not to resellers under unlawful application:</i> \$75 (non-recurring aspects of the promotion provided to retail customers but not to resellers: \$50 one time cost differential for non-recurring connection fee paid by reseller but not by retail customer of ILEC and \$25 cash back received by ILEC retail customer, but not by reseller)</p>
<p>Allocation method: sample fact pattern #1</p>	<p><i>Components of ILEC bundled service offering:</i> \$18 declared allocation for local service plus two features \$15 declared allocation for voice mail \$9 declared allocation for long distance (plus usage) \$37 declared allocation for DSL \$79 ILEC promotional retail rate for bundle</p> <p><i>Allocated rate for telecom services included in mixed bundle and subject to local resale requirements:</i> \$18 (\$18 used consistently across all jurisdictions as local revenues for all reporting, tax and contribution purposes)</p> <p><i>Allocated share of telecom subject to local resale requirements:</i> 23% (18/79)</p>

<p><u>Allocation method:</u> sample fact pattern #1 – unlawful application of federal resale requirements</p>	<p>Wholesale rate applied to standard (tariffed/posted) \$25 rate; service connection fee waiver denied to reseller; cash back denied to reseller</p> <p><i>Reseller pays:</i> \$21.25 (cost to reseller = \$25 - (\$25 x .15))</p> <p><i>Reseller receives:</i> No connection fee (\$50) waiver No cash back (\$23)</p> <p><i>Unlawful for these independent reasons:</i> <i>(1) discount applied to standard (tariffed/posted) rate rather than retail rate;</i> <i>(2) failure to provide connection fee waiver as provided to retail customers;</i> <i>(3) allocated share of cash back provided to retail customer denied to reseller</i></p>
<p><u>Allocation method:</u> sample fact pattern #1 – lawful application of federal resale requirements</p>	<p>Wholesale rate applied to promotional \$18 rate; <i>plus</i> service connection fee (\$50) waived; <i>plus</i> \$23 cash back provided to reseller</p> <p><i>Reseller pays:</i> \$15.30 (cost to reseller = \$18 - (\$18 x .15))</p> <p><i>Reseller receives:</i> Connection fee (\$50) waived \$23 cash back</p>

<p>Allocation method: sample fact pattern #1 – harm from unlawful application of federal resale requirements</p>	<p><i>Additional monthly amount reseller must pay to ILEC under unlawful application:</i> \$5.95 (monthly cost differential between lawful and unlawful application)</p> <p><i>Reseller’s cost above monthly ILEC retail rate:</i> \$3.25</p> <p><i>Additional savings provided to retail customers but not to resellers under unlawful application:</i> \$73 (non-recurring aspects of the promotion provided to retail customers but not to resellers: \$50 one time cost differential for non-recurring connection fee paid by reseller but not by retail customer of ILEC and \$23 cash back received by ILEC retail customer, but not by reseller)</p>
<p>Allocation method: sample fact pattern #2</p>	<p><i>Components of ILEC bundled offering:</i> \$25 declared allocation for local service plus two features¹² \$15 declared allocation for voice mail \$9 declared allocation for long distance (plus usage) \$30 declared allocation for DS \$79 ILEC promotional retail rate for bundle</p> <p><i>Allocated rate for telecom services included in mixed bundle and subject to local resale requirements:</i> \$25 (\$25 used consistently across all jurisdictions as local revenues for all reporting, tax and contribution purposes)</p> <p><i>Allocated share of telecom subject to local resale requirements:</i> 32% (25/79)</p>

¹² This sample fact pattern uses the full standard/tariffed rate as the publicly declared allocated rate. An ILEC may choose to allocate in this manner provided that it does so publicly and consistently. Once an allocation is declared, it is not subject to retroactive revision. Any declared allocation above a standard/tariffed rate for the same or comparable service offering should be deemed per se unreasonable and in violation of 47 U.S.C. §§ 201(b) and 202(a).

<p>Allocation method: sample fact pattern #2 – unlawful application of federal resale requirements</p>	<p>Wholesale rate applied to standard (tariffed/posted) \$25 rate; service connection fee waiver denied to reseller; cash back denied to reseller</p> <p>Reseller pays: \$21.25 (cost to reseller = \$25 – (\$25 x .15))</p> <p>Reseller receives: No connection fee (\$50) waiver No cash back (\$32)</p> <p>Unlawful for these independent reasons: <i>(1) failure to provide connection fee waiver as provided to retail customers; and</i> <i>(2) prorated share of cash back provided to retail customer denied to reseller</i></p>
<p>Allocation method: sample fact pattern #2 – lawful application of federal resale requirements</p>	<p>Wholesale rate applied to \$25 standard (tariffed/posted) rate (declared allocated rate); <i>plus</i> service connection fee (\$50) waived; <i>plus</i> \$32 cash back provided to reseller</p> <p>Reseller pays: \$21.25 (cost to reseller = \$25 – (\$25 x .15))</p> <p>Reseller receives: Connection fee (\$50) waived \$32 cash back</p>

Allocation method: sample fact pattern #2 – harm from unlawful application of federal resale requirements	<i>Additional monthly amount reseller must pay to ILEC under unlawful application:</i> \$0 (monthly cost differential between lawful and unlawful application) <i>Reseller's cost above monthly ILEC retail rate:</i> \$0 <i>Additional savings provided to retail customers but not to resellers under unlawful application:</i> \$82 (non-recurring aspects of the promotion provided to retail customers but not to resellers: \$50 one time cost differential for non-recurring connection fee paid by reseller but not by retail customer of ILEC and \$32 cash back received by ILEC retail customer, but not by reseller)
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Explanation

This modified, proposed declaration allows an ILEC to elect either a prorated or allocated method of arriving at the effective/true/actual retail rate enjoyed by consumers of telecommunications services incorporated into mixed bundles. This modified proposal allows the ILEC flexibility bounded only by the principles of transparency, consistency and reasonableness. The result is simple and straightforward guidance on how the FCC's resale rules apply to telecommunications services included in mixed bundles. With this guidance, the FCC will ensure that resellers can resell ILEC retail services subject to the same terms and conditions applicable to retail customers at a price that reflects the actual retail (rather than tariffed) rate minus the wholesale discount.

To the extent a bundled offering is coupled with a cash-back or similar offer, the ILEC should be required to provide to the reseller the value of all cash-back, gift card, coupon, or other similar giveaways or incentives that the ILEC provides to retail end-users within the same timeframe such incentive would be provided to a retail customer, *subject to the same method (prorated or allocated) selected to arrive at the effective retail rate.*

In the absence of such guidance, ILECs will continue to misapply the Commission's resale rules by limiting their application to tariffed offerings only. This results in unlawful discrimination against resellers and their customers as resellers pay more on a wholesale basis for services than the Act requires and than ILEC retail customers do.

(3) Declaration Regarding Timing of Availability of Long Term Promotions for Resale

A requesting telecommunications carriers shall be entitled to resell an ILEC's 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.

An ILEC refusal to apply the wholesale discount to a promotion without a set expiration date as of the first day it is offered is an unjust and unreasonable practice, an unjust and unreasonable restriction on resale, and an unjust and unreasonable discriminatory practice, in each case where the promotion is not terminated in 90 days or less.

Illustration

Application of Wholesale Discount to Promotions

Term of Promotion	30 Day Promotion (Short Term Promotion)	91 Day Promotion (Long Term Promotion)	Promotion with Undefined Term
Timing of Availability of Promotion for Resale	Day 1	Day 1	Day 1
Timing of Application of Wholesale Avoided Cost Discount	No Discount	Discount available day 1	Discount as of day 1, unless promotion is terminated within 90 days
Installation Fee Waiver Provided to Reseller	Yes	Yes	Yes
Value of Cash Back / Gift Card / Give-away Provided to Reseller	Yes	Yes	Yes

Explanation

This proposed declaration provides guidance that will eliminate the ILECs' unreasonable and unreasonably discriminatory practice of refusing to apply the wholesale discount to a long term promotion (one lasting more than 90 days) until day 91. Consistent with the Commission's rules and policies, the avoided cost discount should apply to a long term promotion as of the first day it becomes available. An ILEC refusal to apply the wholesale discount to a promotion without a set expiration date as of the first day it is offered should be deemed an unreasonable and unjustly discriminatory practice, in each case where the promotion is not terminated in 90 days or less.

(4) Declaration Regarding Short Term Promotions

For all promotions of 90 days or fewer in duration, ILECs shall:

(i) make available for resale the telecommunications service that is the subject of the promotion as of the first day the ILEC offers the promotion to retail subscribers; and

(ii) make available for resale the telecommunications service that is the subject of the promotion at the promotional price, and provide to the reseller the retail value of all cash-back, gift card, coupon, or other giveaways or incentives that the ILEC provides to retail end-users within the same time frame that such items would be provided to a retail customer.

Illustration

Distinction in Resale Rules Applicable to Short Term Promotions

The wholesale avoided cost service discount does not apply to promotions of 90 days or fewer in duration. There is no other applicable distinction.

Explanation

This proposed declaration is intended to eliminate potential gamesmanship that may result if ILECs' current abuses and violations of the Commission's resale rules and policies are curbed by the Commission's adoption of the proposed declarations specified herein. The only distinction in the Commission's resale rules and policies applicable to long term and short term promotions is that short term promotions (those offered for 90 days or less) are not subject to the wholesale avoided cost discount. Short term promotions are subject to all other resale rules and obligations. Thus, short term promotions must be available for resale: (1) as of the first day they are offered; (2) at the promotional price; and (3) with the value of all cash-back, gift card, coupon, or other giveaways or incentives that the ILEC provides to retail end-users provided to the reseller within the same time frame that such items would be provided to a retail customer. To the extent a short term promotion includes a mixed bundle of telecommunications and

non-telecommunications services, the declarations set forth above with respect to mixed bundles apply and the ILEC may elect to either prorate or allocate to arrive at the effective retail rate.

(5) **Declaration Regarding Unreasonable Restrictions on Resale and Unjust and Unreasonable Practices and Discrimination**

An ILEC's refusal to make available for resale at wholesale rates telecommunications services subject to cash-back, non-cash-back, coupons, giveaways and bundled promotional discounts is an unreasonable restriction on resale, an unjust and unreasonable practice, and unjust and unreasonable discrimination in violation of the Act and the Commission's rules and policies.

Explanation

This proposed declaration is intended to clarify that an ILEC's avoidance of compliance or refusal to comply with its resale obligations under the Act and the Commission's rules and policies is unlawful.

Section 251(c)(4) requires ILECs:

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) ***not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service***, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.¹³

Section 271(c)(2)(B)(xiv) provides that, in order for a Bell Operating Company to provide in-region interLATA services, it must offer telecommunications services for resale in accordance with section 251(c)(4) and the avoided cost pricing standard enunciated in Section 252(d)(3).¹⁴

¹³ 47 U.S.C. § 251(c)(4) (emphasis added).

¹⁴ 47 U.S.C. § 271(c)(2)(B)(xiv). 47 U.S.C. § 252(d)(3) provides, in pertinent part, "a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

In the *Local Competition Order*, the Commission concluded that “resale restrictions are presumptively unreasonable” and “in violation of section 251(c)(4).”¹⁵

Similarly, **section 51.605(e)** of the Commission’s rules provides that, “[e]xcept as provided in Sec[ti]on 51.613, an [I]LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the [I]LEC.”¹⁶ Section 51.613(a), in turn, provides that the only restriction on resale that may be imposed by ILECs are those concerning cross-class selling and short term promotions of 90 days or less.¹⁷ **Section 51.613(b)** states that “[w]ith respect to any restrictions on resale not permitted under paragraph (a), an [I]LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.”¹⁸ The Resale Coalition is not aware of any state in which an ILEC has proven that its restrictions on resale are either reasonable or nondiscriminatory.

Section 51.603(a) of the Commission’s rules requires all LECs to make their telecommunications services available for resale on “terms and conditions that are reasonable and non-discriminatory.”¹⁹

Section 51.603(b) of the Commission’s rules requires all LECs to make their telecommunications services available for resale “subject to the same conditions and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.”²⁰

ILEC practices that:

- (1) offer services for resale at the standard (tariffed/posted) rate only and not at the retail rate;
- (2) for resale promotions of greater than 90 days in duration, apply the resale avoided cost discount to the standard (tariffed/posted) rate rather than retail rate;
- (3) refuse to provide to resellers connection fee and other fee waivers as provided to retail customers;

¹⁵ *Local Competition Order*, 11 FCC Rcd. at 15966, ¶ 939.

¹⁶ 47 C.F.R. § 51.605(e).

¹⁷ See 47 C.F.R. § 51.613(a). Cross-class selling, e.g., offering business customers a residential customer promotion, is only prohibited to the extent that a state commission relieves an ILEC of its resale obligations with respect to cross-class promotions.

¹⁸ 47 C.F.R. § 51.613(b).

¹⁹ 47 C.F.R. § 51.603(a).

²⁰ 47 C.F.R. § 51.603(b).

- (4) refuse to provide to resellers the value of all cash-back, gift card, coupon, or other similar giveaways or incentives within the same time frame that such items would be provided to a retail customer;
- (5) refuse to make available for resale the telecommunications services contained within "mixed bundle" promotions, *i.e.*, bundles consisting of both telecommunications service and non-telecommunications service (*e.g.*, information service);
- (6) for resale promotions of greater than 90 days in duration, refuse to apply the wholesale avoided cost discount to the effective retail rate of the telecommunications services contained within a mixed bundle;
- (7) refuse to make available for resale 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;
- (8) refuse to apply the wholesale discount to a promotion without a set expiration date as of the first day it is offered, in each case where the promotion is not terminated in 90 days or less;
- (9) refuse to make available for resale the telecommunications service that is the subject of a short term promotion as of the first day the ILEC offers the promotion to retail subscribers; and
- (10) refuse to make available for resale the telecommunications service that is the subject of a short term promotion at the promotional price, and provide to the reseller the retail value of all cash-back, gift card, coupon, or other giveaways or incentives that the ILEC provides to retail end-users within the same time frame that such items would be provided to a retail customer

are unjust, unreasonable and discriminatory and constitute unreasonable restrictions on resale in violation of sections 251(c)(4)(B), 271(c)(2)(B)(xiv), 201(b) and 201(a) of the Act, the *Local Competition Order*, and sections 51.603 (a) and (b), 51.605(e), and 51.613(b) of the Commission's rules.

* * *

As the Resale Coalition has explained previously, it is imperative that the Commission issue a declaratory ruling regarding ILEC resale obligations under section 251(c)(4) of the Act and its resale rules and policies. Without such a ruling, resale competitors likely will soon disappear. Given the Commission's recent series of orders limiting ILEC unbundling obligations, resale is now an even more important method of local exchange competition. Central to this reality, however, is that the barriers to resale entry must be low and that resellers

must be able to obtain service as required by the Commission's resale rules and policies in order to compete with the ILECs. In order to ensure that resale remains a viable alternative for competitors and consumers, we urge the Commission to promptly adopt the declarations proposed by the Resale Coalition in this docket and as set forth herein.

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

Respectfully submitted,



John J. Heitmann
Thomas Cohen

*Counsel for 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*

cc: Ian Dillner
Scott Deutchman
Scott Bergmann
John Hunter
Nicholas Alexander
Tom Navin
William Dever
Donald K. Stockdale, Jr.

Attachment A

0045889 03/15 ALS02LA

Mr. Gene Dry
1328 Octavia St.
New Orleans, LA 70115-4225



Hurry! Act Now!

Call toll free 1.866.873.3586
or visit att.com/signup
and enter invitation code
5000016860

Dear Mr. Gene Dry,

You can't count on just any phone service provider.

Now that BellSouth is joining the new AT&T, you have access to even more top-of-the-line services. That's why every 11 seconds a customer switches to the new AT&T.* Just take a look at all you get:

LOCAL AND LONG DISTANCE PHONE SERVICE FOR ONLY \$18 A MONTH!¹

- Local Service with Caller ID Deluxe and Call Waiting Deluxe²
- Long Distance Service for only 5¢ a minute — WITH NO MONTHLY FEE for 12 months³
- Voice Mail Service — so you never miss a call (Available upon request)

HIGH-SPEED INTERNET SERVICE FOR ONLY \$32.95 A MONTH!⁴

- Great low price on FastAccess® DSL Ultra
- Downstream connection speeds up to 1.5Mbps
- Talk & surf at the same time on the same line
- Easy installation and instant connections
- No gimmicks, no introductory pricing, guaranteed
- FREE DSL modem after rebate when you order online⁴

BUNDLE ALL THESE SERVICES FOR LESS THAN \$51 A MONTH.¹

Plus receive up to \$150 CASH BACK³ with no connection or activation fees!

The new AT&T is the most complete provider for the way you live, with TV, broadband, home phone and wireless.

Sign up today — call us toll free at **1.866.873.3586**

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 S007** and **invitation code 5000016860**

Visit us online anytime at att.com/signup and enter the invitation code above

Sincerely,

Laura M. Ruff
Director, Consumer Marketing

P.S.: For only \$5.00 more a month, you can get up to double your speed and HomeNetworking Plus with **FastAccess DSL Xtreme!**

Para español por favor llame al 1.866.883.6145.

(See reverse side for important information)

P3/Promo-S007/BUN55

Quoted rate for new qualifying residential customers. Rate excludes taxes, fees & other charges. Rate includes \$2.00/mo. companion services package for optional voice mail service. Employees not eligible. Offer ends 4/30/07. **2) Calling features** and optional voice mail available to customers who switch their local service from another provider, or subscribe to a domestic Long Distance plan, FastAccess DSL or Cingular Wireless. Calling features must be compatible and are subject to availability. Some features require additional equipment. **3) Nickel Savings Value Promotion:** Customers must not have subscribed to any Long Distance service within five (5) days prior to their enrollment in promotion. International calls extra. Rate will increase with Nickel Value plan monthly recurring charge (\$3.95) after 12 billing invoices. A Carrier Cost Recovery Fee of \$0.99 will be charged monthly. This fee is not a tax or charge imposed or required by any government. Taxes, fees and other charges, including Universal Service Fund, apply. Offer ends 4/30/07. **4) Service requires a DSL modem (\$75). Quoted Price** of \$32.95 for residential FastAccess DSL Ultra, \$37.95 for FastAccess DSL Xtreme. **Other Charges:** Taxes and additional charges apply. **Modem Offer:** For new residential internet customers who order online only. Credit will be applied to your bill by end of second-month billing period after receipt of completed rebate form. Applicable taxes and fees based on the full price of all products and services, and no taxes or fees will be added to any rebate. A refurbished modem may be provided. HomeNetworking Plus offer requires HomeNetworking Gateway purchased from BellSouth. **Other Terms:** Existing FastAccess customers: Service is available upon request. Speeds based on downstream DSL sync rate and may vary. Read service agreement on Website or call for details. **5) Cash Back: \$50 cash-back** is available to customers who switch local telephone service to BellSouth and purchase qualifying services. Offer redemption required at www.att.com/bellsouthrewards within 90 days of purchased service(s). Check will be sent within 4-6 weeks to customers who retain qualifying service. Offer ends 4/30/07. **\$100 cash back** with purchase of FastAccess DSL (Ultra or Xtreme). Offer redemption required at www.att.com/bellsouthrewards within 90 days of purchased service(s). Check/Gift Cards or gift of comparable value will be sent 4-6 weeks to eligible customers who retain qualifying service(s). Offer ends 4/30/07.

Offers: Rate may vary depending on state and geographic location. Other conditions apply to all offers. Valid for one service line at the intended local service address. Offered services and features not available in all areas. All offers may be modified or discontinued at any time without notice. Pricing subject to change. Long distance service provided by BellSouth Long Distance, Inc. All trademarks and service marks contained herein are the property of their respective owners. ©2007 AT&T Knowledge Ventures. All rights reserved. AT&T, AT&T logo, BellSouth and BellSouth logo are trademarks of AT&T Knowledge Ventures and/or AT&T affiliated companies. ©2007 BellSouth Corporation
/a AT&T South.

Attachment B

BELLSOUTH® is joining the new **AT&T**

0576305 04/12 BTAN1LA

Mr. Gene Dry
1328 Octavia St.
New Orleans, LA 70115-4225



Hurry! Act Now!
\$100 Target
GiftCard

Plus a \$100 Visa® Gift Card!

Call us toll free
1.866.660.0825

Dear Mr. Gene Dry,

You can't count on just any phone service provider.

Now that BellSouth is joining the new AT&T, you have access to even more top-of-the-line services. That's why every 11 seconds a customer switches to the new AT&T.* Just take a look at all you get:

LOCAL & LONG DISTANCE PHONE SERVICE

- Unlimited local calling with the PreferredPack® Plan
- Our most popular calling features: Caller ID Deluxe, Call Waiting Deluxe, Call Return (*69), Three-Way Calling and Privacy Director® service for much less than you would pay for each feature separately¹
- Long Distance Service for only 5¢ a minute — WITH NO MONTHLY FEE for 12 months²

FOR ONLY **\$23.00** A MONTH!³

HIGH-SPEED INTERNET SERVICE

- Great low price on FastAccess® DSL Ultra
- Downstream connection speeds up to 1.5Mbps
- Talk & surf at the same time on the same line
- Easy installation and instant connections
- No gimmicks, no introductory pricing, guaranteed
- FREE DSL modem after rebate when you order online⁴

FOR ONLY **\$32.95** A MONTH!⁴

BUNDLE ALL THESE SERVICES...

FOR LESS THAN **\$56** PER MONTH!⁵

Plus receive a **\$100 Target GiftCard**
and a **\$100 Visa Gift Card!**⁵

No connection or activation fees

The new AT&T is the most complete provider for the way you live, with TV, broadband, home phone and wireless.

Sign up today — call us toll free at **1.866.660.0825**

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 AN07** and **invitation code 5000016860**

Visit us online anytime at **att.com/connect** and enter the invitation code above

Sincerely,

Laura M. Ruff
Director, Consumer Marketing

Para español por favor llame al 1.866.679.0959.

P.S.: For only **\$5.00 more a month**, you can get up to double your speed
and HomeNetworking Plus with **FastAccess DSL Xtreme!**



Claim based on customers returning to AT&T phone service from other service providers.

1) **Calling features:** Long distance or expanded local calling rates may apply for Call Return, Call Forwarding and Three-Way Calling. 2) **Nickel Savings Value Promotion:** Customers must not have subscribed to any Long Distance service within five (5) days prior to their enrollment in this promotion. International calls extra. Rate will increase with Nickel Value plan monthly recurring charge (\$3.95) after 12 billing invoices. A Carrier Cost Recovery Fee of \$0.99 will be charged monthly. This fee is not a tax or charge imposed or required by any government. Taxes, fees and other charges, including Universal Service Fund, apply. Offer ends 4/30/07. 3) **Quoted rate for new qualifying residential customers.** Bundled rate excludes taxes, fees & other charges. Offer ends 4/30/07. 4) **Service requires a DSL modem (\$75) and qualifying local phone service.** Quoted Price of \$32.95 for residential FastAccess DSL Ultra, \$37.95 for FastAccess DSL Xtreme. **Other Charges:** Taxes and additional charges apply. **Modem Offer:** For new residential Internet customers who order online only. Credit will be applied to your bill by end of second-month billing period after receipt of completed rebate form. Applicable taxes and fees based on the full price of all products and services, and no taxes or fees will be added to any rebate. BellSouth may provide refurbished modem. Limitations apply. See reward site or rebate form for details. HomeNetworking Gateway purchased from BellSouth. **Other Terms:** Offer available for new residential customers in AL, FL, GA, KY, NC, SC, TN, LA and MS. Speeds based on downstream DSL synch rate and may vary. Read service agreement on Website or call for details. Service and speed options not available in all areas. 5) **\$100 Target GiftCard** to customers who switch local telephone service to BellSouth and purchase the Complete Choice® plan or the PreferredPack plan. Gift Card(s) will be sent within 4-6 weeks to customers who retain qualifying services. Offer ends 4/30/07. The Bullseye Design and Target are registered trademarks of Target Brands, Inc. Target is not a participating partner in or sponsor of this offer. **\$100 Visa Gift Card** with the purchase of FastAccess DSL (Ultra or Xtreme). Offer redemption required at www.att.com/bellsouthrewards within 90 days of purchased service(s). Visa Gift cards will be sent 4-6 weeks to eligible customers who retain qualifying service(s). Offer ends 4/30/07. This Card is issued by Regions Bank® pursuant to a license from Visa U.S.A. Inc. Regions is a mark of Regions Asset Company used under license. Use anywhere Visa debit cards are accepted. To complete your rebate redemption, please activate your card within 90 days. Card expires 180 days from issue date. Please refer to your cardholder agreement for details.

All Offers: Rate may vary depending on state and geographic location. Other conditions apply to all offers. Valid for one service line at the intended local service address. Advertised services and features not available in all areas. All offers may be modified or discontinued at any time without notice. Pricing subject to change. Long distance provided by BellSouth Long Distance, Inc. All trademarks and service marks contained herein are the property of their respective owners. ©2007 BellSouth Corporation d/b/a AT&T South. ©2007 AT&T Knowledge Ventures. All rights reserved. AT&T is a registered trademark of AT&T Knowledge Ventures.

Attachment C

P.O. Box 1915-D
Beltsville, MD 20704-1915



Joyce Dubuque
92 Randolph St.
Springfield, MA 01108-1614



**Unlimited calling for just
\$19.99 a month for 12 months.**

Dear Joyce Dubuque:

Now is the best time to switch to Verizon. Because for as low as **\$19.99 a month** (plus taxes and fees) for 12 months, you can talk all you want. That's an incredibly low price for unlimited calling.

Unlimited calling — that's anytime, anywhere.

With **Verizon Freedom ValueSM**, you can call anywhere in the U.S. — that's unlimited local, regional and long distance calling — anytime, day or night, without worrying about running up your bill. Best of all, it's all for one very low monthly price.

Verizon means proven reliability.

Why trust your calls to just anyone? Go with a company you know and trust. With Verizon, every call, day or night, comes over a network that's proven 99.9% reliable. Those kinds of numbers are too good to ignore.

Switch to Verizon — and save a lot.

Sign up for **Verizon Freedom Value** and enjoy unlimited calling for a great price. Don't wait, because this offer is only for a limited time. Call **1-888-686-5488** (Mon.-Fri., 8am-8pm; Sat., 8am-4pm) and switch to Verizon today.

Sincerely,

Robert Driscoll
Vice President, New England Sales & Local Marketing

P.S. Now is the best time to switch to Verizon and enjoy unlimited calling for just **\$19.99 a month** for your first 12 months. Just call **1-888-686-5488** (Mon.-Fri., 8am-8pm; Sat., 8am-4pm) and begin saving. We look forward to having you join us.



See reverse side for important Consumer Information.

Consumer Information

With subscription to Verizon Freedom ValueSM, you must retain Verizon as your local provider and Verizon Long Distance as your long distance provider. Verizon Freedom Value plan includes domestic direct-dialed calls only. Billing name and address must be the same on all Verizon accounts for charges to be on one bill. Customers must be authorized to make account changes to all accounts. Universal Service Fee, taxes and other charges apply. Tariffs apply to some services. Available only to residential customers in selected areas. Service not available in all areas or on all telephone lines and is subject to final confirmation of services by Verizon. Additional terms and conditions apply. ©2007 Verizon. All Rights Reserved. CI-FRV-9/05

Local service discount of \$20/mo. bill credit available for 12 months to residential customers, who, during the promotional period, change their existing local service from another service provider to Verizon and who purchase Verizon Freedom Value, as provided by Verizon. At the end of the promotional period, monthly rate will increase to the then-current in-market price. Cannot be combined with other offers or promotions. Offer expires 6/16/07. CI-MA/PA/VA/TX-LIFT-3/07

Attachment D

AT&T PreferredPack Plan / Monthly Recurring Charges¹

State	Tariffed Rate	Promotional Rate ²	State Approved Avoided Cost Discount	Reseller's Cost Based on Tariffed Rate (Unlawful Application of Federal Resale Requirements)	Reseller's Cost Based on Retail Rate (Lawful Application of Federal Resale Requirements)	Reseller's Cost Above Lawful Resale Rate (Additional Monthly Amount Reseller Must Pay to ILEC Under Unlawful Application of Federal Resale Requirements)	Reseller's Cost Above Retail (Reseller's Cost Above Monthly ILEC Retail Rate Under Unlawful Application of Federal Resale Requirements)
AL	\$29.95	\$23.00	16.30%	\$25.07	\$19.25	\$5.82	\$2.07
FL	\$27.00	\$23.00	21.83%	\$21.11	\$17.98	\$3.13	--
GA	\$30.00	\$23.00	20.30%	\$23.91	\$18.33	\$5.58	\$0.91
KY	\$30.00	\$23.00	16.79%	\$24.96	\$19.14	\$5.82	\$1.96
LA	\$28.00	\$23.00	20.72%	\$22.20	\$18.23	\$3.97	--
MS	\$32.00	\$23.00	15.75%	\$26.96	\$19.38	\$7.58	\$3.96
NC	\$26.00	\$23.00	21.50%	\$20.41	\$18.06	\$2.35	--
SC	\$29.00	\$23.00	14.80%	\$24.71	\$19.60	\$5.11	\$1.71
TN	\$26.00	\$23.00	16.00%	\$21.84	\$19.32	\$2.52	--

¹ Current promotion also includes a \$100 Target gift card (more typically, this component of the promotion is provided as "\$100 cash back") and a waiver of the \$50 nonrecurring installation fee that are provided to retail customers. AT&T refuses to make this retail promotion available to resellers. Thus, under AT&T's unlawful application of its federal resale applications, retail customers receive \$150 in promotional benefits that AT&T unlawfully denies to resellers.

² Includes Long Distance Service at \$0.05/mou with no monthly fee (typically \$2.99) for 12 months.

AT&T 2 Pack Plan / Monthly Recurring Charges³

State	Tariffed Rate	Promotional Rate ⁴	State Approved Avoided Cost Discount	Reseller's Cost Based on Tariffed Rate (Unlawful Application of Federal Resale Requirements)	Reseller's Cost Based on Retail Rate (Lawful Application of Federal Resale Requirements)	Reseller's Cost Above Lawful Resale Rate (Additional Monthly Amount Reseller Must Pay to ILEC Under Unlawful Application of Federal Resale Requirements)	Reseller's Cost Above Retail (Reseller's Cost Above Monthly ILEC Retail Rate Under Unlawful Application of Federal Resale Requirements)
AL	\$25.00	\$18.00	16.30%	\$20.93	\$15.07	\$5.86	\$2.93
FL	\$22.00	\$18.00	21.83%	\$17.20	\$14.07	\$3.13	--
GA	\$25.00	\$18.00	20.30%	\$19.93	\$14.35	\$5.58	\$1.93
KY	\$25.00	\$18.00	16.79%	\$20.80	\$14.98	\$5.82	\$2.80
LA	\$22.00	\$18.00	20.72%	\$17.44	\$14.27	\$3.17	--
MS	\$25.00	\$18.00	15.75%	\$21.06	\$15.17	\$5.89	\$3.06
NC	\$22.00	\$18.00	21.50%	\$17.27	\$14.13	\$3.14	--
SC	\$25.00	\$18.00	14.80%	\$21.30	\$15.34	\$5.96	\$3.30
TN	\$22.00	\$18.00	16.00%	\$18.48	\$15.12	\$3.36	\$0.48

³ Current promotion also includes a \$50 cash back and a waiver of the \$50 nonrecurring installation fee that is provided to retail customers. AT&T refuses to make this retail promotion available to resellers. Thus, under AT&T's unlawful application of its federal resale applications, retail customers receive \$150 in promotional benefits that AT&T unlawfully denies to resellers.

⁴ Includes Long Distance Service at \$0.05/mou with no monthly fee (typically \$2.99) for 12 months.