STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Image Access, Incorporated, d/b/a NewPhone for Designation as an Eligible Telecommunications Carrier

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2009 - 360 - C

(Please type or print)

Submitted by: John J. Pringle, Jr.

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ **Emergency Relief demanded in petition**

☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other:**

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
☐ Electric	☐ Affidavit	☐ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certification
☐ Electric/Telecommunications	☐ Answer	☐ Motion	☐ Request for Investigation
☐ Electric/Water	☐ Appellate Review	☐ Objection	☐ Resale Agreement
☐ Electric/Water/Telecom.	☐ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☒ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☒ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☐ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

Print Form Reset Form

ELLIS : LAWHORNE

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February 11, 2010

FILED ELECTRONICALLY
The Honorable Jocelyn G. Boyd
Clerk
SC Public Service Commission
P.O. Drawer 11649
Columbia, SC 29211

RE: Application of Image Access, Incorporated, d/b/a NewPhone for Designation as an Eligible Telecommunications Carrier
Docket No. 2009-360-C, Our File No. 2199-11709

Dear Jocelyn:

Enclosed is the **Testimony of Jim R. Dry** filed on behalf of Image Access, Incorporated, d/b/a NewPhone in the above-referenced docket.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

John J. Pringle, Jr.

JJP/cr
cc: Nannette S. Edwards, Esquire (via electronic mail service)
Mr. Jim R. Dry (via electronic mail service)
Paul F. Guarisco, Esquire (via electronic mail service)
Enclosure

BEFORE THE

SOUTH CAROLINA PUBLIC SERVICE COMMISSION

APPLICATION OF	)	
IMAGE ACCESS, INC d/b/a	)	
NEWPHONE FOR DESIGNATION	)	**DOCKET NO. 2009-360-C**
AS AN ELIGIBLE TELECOMMUNICATIONS	)	
CARRIER	)	

REBUTTAL TESTIMONY OF JIM R. DRY

Q: Please state your name and address.

A: My name is Jim R. Dry. My business address is 5555 Hilton Avenue, Suite 415, Baton Rouge, Louisiana 70808.

Q: By whom are you employed and in what capacity?

A: I am the President of Image Access, Inc. d/b/a NewPhone ("NewPhone"). My responsibilities with NewPhone include oversight of the day to day operations of the company. I am also actively involved in planning and development and regulatory compliance.

Q: Did you file direct testimony in this Docket on January 21, 2010?

A: Yes.

Q: What is the purpose of your rebuttal testimony?

A: The purpose of this testimony is to reply to the testimony of Mr. James M. McDaniel of the Office of Regulatory Staff ("ORS"), filed in this Docket on February 4, 2010. Specifically, I wish to address Mr. McDaniel's concerns with

respect to 1) NewPhone's operations in South Carolina, and 2) and compliance with the Commission's regulations.

Q: How do you respond to Page 3, Lines 15-21 of Mr. McDaniel's testimony, which state that NewPhone is not a facilities based carrier and does not comply with the federal requirements for ETC designation?

A: Mr. McDaniel is correct in stating that at the time he filed his testimony, NewPhone was providing telecommunications services in South Carolina through resale only. However, as of the date of this testimony, NewPhone has actually provisioned two customers by means of unbundled network elements ("UNEs"). As mentioned in my direct testimony filed January 21, 2010, NewPhone currently has obtained ETC designation in Alabama, Louisiana, Mississippi, North Carolina, and Tennessee, and NewPhone provisions its services in those states through a combination of resale and unbundled network elements ("UNEs") pursuant to NewPhone's interconnection and commercial agreements with AT&T.[1], and is provisioning services in those states via a combination of resale and UNEs. [2] NewPhone, following its practice in other states where it has sought

[1] Copies of these agreements were provided to the ORS on February 3, 2010 in response to ORS' First Audit Information Request dated January 21, 2010. Moreover, NewPhone's interconnection agreement with AT&T has been filed with this Commission.

[2] According to the FCC Rules, facilities obtained as UNEs satisfy the requirement that an ETC provide the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.Section 54.201(f) of the FCC's Rules states, "[f]or the purposes of this section, the term 'own facilities' includes, but is not limited to, facilities obtained as unbundled elements pursuant to Part 51 of this chapter, provided that such facilities meet the definition of the term 'facilities' under this subpart." 47 C.F.R. § 54.201(f). The term "facilities" under Section 54.201 is defined as "any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part." 47 C.F.R. 54.201(e). Therefore, the use of UNEs, or equivalents thereof, meets this definition of "facilities."

1 and obtained ETC designation, will acquire UNEs in South Carolina to provision
2 its Lifeline customers.
3
4 **Q: How do you respond to Page 4, Lines 3-6 of Mr. McDaniel's testimony,**
5 **stating that NewPhone has not demonstrated compliance with the**
6 **Commission's regulatory requirements?**
7 A: Mr. McDaniel is correct in stating that NewPhone had not filed Quarterly Quality
8 of Service Reports as of the date of his testimony. However, since that date
9 NewPhone has filed Quarterly Quality of Service Reports for the year 2009 with
10 the ORS.
11
12 **Q: Does this conclude your rebuttal testimony?**
13 A: Yes.

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2009-360-C

IN RE:	)	
	)	
Application of Image Access,	)	
Incorporated, d/b/a NewPhone for	)	**CERTIFICATE OF SERVICE**
Designation as an Eligible	)	
Telecommunications Carrier	)	

This is to certify that I have caused to be served this day, one (1) copy of the **Rebuttal Testimony of Jim R. Dry** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA ELECTRONIC MAIL SERVICE
Nannette S. Edwards, Esquire
Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia SC 29211

Carol Roof
Paralegal

February 11, 2010
Columbia, South Carolina