

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 26, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (M. Watts, Beard)
Division of Economic Regulation (Livingston)
Office of the General Counsel (Brooks)

RE: Docket No. 090106-TX – Investigation and determination of appropriate method for refunding apparent overcharges by Image Access, Inc. d/b/a NewPhone, Inc. due to overbilling on TASA fees.

AGENDA: 04/07/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED:

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\090106.RCM.DOC

Case Background

The Florida Public Service Commission (the Commission) issued competitive local exchange telecommunications company (CLEC) certificate number 5783 to Image Access, Inc. d/b/a NewPhone, Inc. (Image Access) on February 2, 1999.

As part of the Commission's review of Image Access's application for eligible telecommunications carrier (ETC) status,¹ staff issued a data request to the company on September 16, 2008. In the request, staff asked for a sample customer bill.

Image Access responded on October 16, 2008. While reviewing the data, staff saw that the amount charged for the Telecommunications Access Surcharge Act (TASA) fee was incorrect. Each year, the Commission approves the proposed budget for the Florida Telecommunications Relay and sets the amount of the surcharge. The amount of the surcharge set in 2007 and 2008 was \$0.11. The sample bill provided by Image Access showed the charge as \$0.23.

Staff requested that the company provide a breakdown of its taxes and fees on January 6, 2009. The company responded on January 14, 2009. After additional clarification, staff informed the company that it appeared to be overcharging customers for the TASA fee. Staff asked the company to identify the time period during which the overcharges occurred, the number of customers affected, and the total amount of the overcharges.

Image Access investigated and reported on February 4, 2009, that customers were billed \$0.23 per month from September 2006 to October 2008. The company said that its billing system in Florida had inadvertently been programmed with the wrong amount. Its controllers' notes indicated the charge should have been \$0.11 per month. Image Access stated that the billing software has been revised to bill the correct amount for the TASA fee in Florida.

Image Access submitted a refund proposal on March 6, 2009. This recommendation addresses Image Access's refund proposal. The Commission has jurisdiction over this matter pursuant to Sections 364.02, 364.04, and 364.285, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

¹ Docket No. 080523-TX - Petition for designation as eligible telecommunications carrier (ETC) by Image Access, Inc. d/b/a NewPhone, Inc., received on August 5, 2008.

Discussion of Issues

Issue 1: Should the Commission accept Image Access, Inc. d/b/a NewPhone, Inc.'s proposal to issue a refund of \$2,164.16, plus interest in the amount of \$113.29, for a total of \$2,277.45, to the affected customers during the April 2009 billing cycle; require the company to remit any unrefundable monies to the Commission by August 31, 2009, for deposit in the General Revenue Fund; and require the company to submit a refund report by August 31, 2009, to the Commission stating, (1) how much was refunded to its customers, (2) the total number of customers receiving refunds, and (3) the amount of money determined to be unrefundable?

Recommendation: Yes, the Commission should accept Image Access's refund proposal. (M. Watts/Beard/Livingston/Brooks)

Staff Analysis: Order Nos. PSC-07-0457-PAA-TP, issued on May 29, 2007, and PSC-08-0337-PAA-TP, issued on May 27, 2008, in Docket No. 040763-TP, In Re: Request for submission of proposals for relay service, beginning in June 2005, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991, set the TASA fee at \$0.11 for 2007 and 2008. Image Access charged its customers \$.23 per month for this fee, an apparent overcharge of \$0.12 per month.

To resolve this matter, Image Access proposes to issue a refund of \$2,164.16, plus interest in the amount of \$113.29, for a total of \$2,277.45, to the affected customers during its April 2009 billing cycle. Staff calculated the interest amount using the overcharges that occurred over the 26-month period from September 2006 to October 2008, with the expectation the company will refund the entire amount in April 2009. Staff used the average 30-day commercial paper rate for each month through February 2009, and the last available monthly interest rate of 0.770% for months beyond February 2009. This calculation is consistent with the requirements of Rule 25-4.114, F.A.C.

Accordingly, staff recommends that the Commission accept Image Access, Inc. d/b/a NewPhone, Inc.'s proposal to issue a refund of \$2,164.16, plus interest in the amount of \$113.29, for a total of \$2,277.45, to the affected customers during the April 2009 billing cycle; require the company to remit any unrefundable monies to the Commission by August 31, 2009, for deposit in the General Revenue Fund; and require the company to submit a refund report by August 31, 2009, to the Commission stating, (1) how much was refunded to its customers, (2) the total number of customers receiving refunds, and (3) the amount of money determined to be unrefundable.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. The company should submit its final report, identified by docket number, by August 31, 2009. If any monies are not refunded, Image Access should submit payment of these monies to the Commission at the time it submits its final report, and the Commission shall deposit these monies in the General Revenue Fund. Upon receipt of the final report, this docket should be closed administratively if no timely protest has been filed. **(Brooks)**

Staff Analysis: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. The company should submit its final report, identified by docket number, by August 31, 2009. If any monies are not refunded, Image Access should submit payment of these monies to the Commission at the time it submits its final report, and the Commission shall deposit these monies in the General Revenue Fund. Upon receipt of the final report, this docket should be closed administratively if no timely protest has been filed.