

WOMBLE
CARLYLE
SANDRIDGE
& RICE

A PROFESSIONAL LIMITED
LIABILITY COMPANY



Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005
Telephone: (202) 467-6900
Fax: (202) 467-6910
Web site: www.wcsr.com

Ross A. Buntrock
Direct Dial: (202) 857-4479
Direct Fax: (202) 261-0007
E-mail: rbuntrock@wcsr.com

February 24, 2006

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Emergency Petition for Interim Waiver of the Commission's Rules Pending
Commission Action on the Fones4All Petition for Expedited Forbearance

Dear Ms. Dortch:

Fones4All Corporation ("Fones4All") respectfully submits via ECFS the attached Emergency Petition for Interim Waiver of the Commission's Rules Pending Commission Action on the Fones4All Petition for Expedited Forbearance. Please contact the undersigned if questions arise regarding this filing.

Sincerely,

Ross A. Buntrock
Counsel to Fones4All Corporation

cc: Best Copy and Printing Inc. (via email)
Attached Service List

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Fones4All Corp.)	
)	
Petition for Expedited Forbearance Under)	
47 U.S.C. § 160(c) and Section 1.53)	WC Docket No. 05-261
from Application of Rule 51.319(d))	
To Competitive Local Exchange)	
Carriers Using Unbundled Local Switching)	
to Provide Single Line Residential)	
Service to End Users Eligible for State)	
or Federal Lifeline Service)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	CC Docket 01-338
Carriers)	
)	
Fones4All Corp. Emergency)	
Petition for Interim Waiver of)	
Section 51.319(d) of the Commission's)	
Rules in the State of California)	

**FONES4ALL CORPORATION EMERGENCY PETITION FOR INTERIM WAIVER
OF SECTION 51.319(d) OF THE COMMISSION'S RULES IN THE STATE OF
CALIFORNIA PENDING COMMISSION ACTION ON THE FONES4ALL PETITION
FOR EXPEDITED FORBEARANCE**

Fones4All Corporation ("Fones4All"), by counsel, and pursuant to Section 1.3¹ of the Commission's rules, respectfully requests an interim waiver of Section 51.319(d) of the Commission's rules in the state of California until July 1, 2006 or until such time as the Commission acts upon the pending Petition for Expedited Forbearance Under 47 U.S.C. § 160(c)

¹ 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition of good cause therefore is shown.")

and Section 1.53 of the Commission's Rules ("Forbearance Petition") filed by Fones4All on July 1, 2005.² As set forth herein, Fones4All fully satisfies the special circumstances required for grant of an interim waiver of the Commission's rules, as set forth in *WAIT Radio v. FCC*,³ which allows the Commission to waive its own rules where particular facts would make strict compliance inconsistent with the public interest. As demonstrated herein, immediate grant of the interim waiver requested herein will afford the Commission the opportunity to fully consider and carefully address the Forbearance Petition during the remaining four months that remain of the twelve month statutory deadline to act on the Forbearance Petition, and accordingly will serve the public interest.

I. BACKGROUND

Fones4All is a California-based competitive local exchange carrier ("CLEC") that focuses on providing intrastate, interstate and international services to low income consumers, the vast majority of whom qualify for Lifeline service. On July 1, 2005, Fones4All filed a "Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 of the Commission's Rules" asking the Commission to exercise its forbearance authority under Section 10 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 160 to forbear from application of Section 51.319(d) of the Commission's rules, as modified in the *Triennial Review Remand Order*,⁴ with respect to requesting carriers who utilize unbundled local switching

² See *Public Notice*, "Pleading Cycle Established for Comments on Petition for Forbearance of Fones4All Corp. Pursuant to 47 U.S.C. § 160(c)." Pursuant to 47 U.S.C. § 160(c), the Commission has one year after it receives petitions for forbearance; the Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of 47 U.S.C. § 160(a).

³ *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

⁴ See *In the Matter of Unbundled Access to Network Elements* (WC Docket No. 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC

("ULS") to serve single-line residential end users who qualify for Lifeline service. In light of the urgent need for resolution of the issues raised in the Forbearance Petition in advance of the March 11, 2006 deadline for implementation of Section 51.319(d), and in light of the twelve month deadline for Commission action on forbearance petitions set forth in Section 10(c), Fones4All sought expedited consideration of its Forbearance Petition. On August 15, 2005 the Commission established a pleading cycle seeking public comment on the Forbearance Petition, with an initial comment deadline of October 14, 2005 and a reply comment deadline of November 14, 2005. Since that time, Fones4All has held numerous meetings with Commissioners and Commission staff in order to further address the complex issues raised in the Forbearance Petition.⁵ However, it is clear that the Commission needs the full twelve months which it is provided under Section 10(c) in order to fully address the issues raised in the Forbearance Petition. Given the pressing demands upon its resources, the Commission will not be in a position to act upon the Forbearance Petition prior to March 11, 2006, the date that Rule 51.319(d) is scheduled to be fully implemented.

II. THE CRITERIA FOR AN INTERIM WAIVER ARE MET

Under the Commission's rules, a waiver may be granted "for good cause shown."⁶ The Commission may exercise its discretion to waive a rule where particular facts would make strict

Docket NO. 01-338), Order on Remand, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*"), *petitions for review pending, Covad Communications Co. et al. v. FCC et al.* Nos. 05-1095 *et al* (D.C. Cir.).

⁵ That said, no reason exists for invoking the 90 day extension period in Section 10(c). A period longer than 12 months is simply not necessary as required by the statute. Moreover, the Commission should recognize that it would be inappropriate for the Bureau to grant the extension on delegated authority.

⁶ 47 C.F.R. § 1.3.

compliance inconsistent with the public interest.⁷ The waiver provides “a safety valve procedure for consideration of an application for exemption based on special circumstances.”⁸ Fones4All’s petition for an interim waiver of the rules set forth in Section 51.319(d) satisfies this standard. Furthermore, the Commission has a history of granting interim waivers such as this one in instances where the Commission is considering in pending proceedings complex factual, legal and policy questions.⁹

Granting the interim waiver would unquestionably serve the public interest. First and foremost, grant of an interim waiver would serve the public interest by allowing Fones4All to continue to provide its existing Lifeline customers a competitive alternative for Lifeline service pending resolution of the Forbearance Petition. The Commission has recognized that providing telephone service to low-income universal service eligible consumers provides a public benefit.¹⁰ Furthermore, in the *TracFone Order*,¹¹ the Commission recognized that promotion of competition among providers of telecommunications services to the low income consumers

⁷ *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

⁸ *WAIT Radio* at 1157.

⁹ See eg *Emergency Petition for Interim Waiver Pending Commission Review of Petition for Temporary Extension of Waiver*, Order, CC Docket No. 90-263, 1995 FCC LEXIS 5266 (1995) (“It is efficient and in the public interest to maintain the status quo by extending the Pacific Bell tariff waiver past August 3, 1995, to allow time for public comment and our evaluation of the merits of the extension petition. Thus, we are persuaded that there is good cause for extending the existing waiver on an interim basis.”); see also *In the Matter of Petition for Interim Waiver of Sections 61.42(g), 61.38 and 61.49 of the Commission’s Rules*, Order WCB/Pricing 02-16 (2002)

¹⁰ See *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket 03-109, FCC 04-87 at Appendix K (2004).

¹¹ See *TracFone Wireless, Inc. Petition for Forbearance*, Order, CC Docket 96-45, FCC 05-165 (2005) (“*TracFone Order*”).

referenced in Section 254(b)(3) of the Act is in the public interest and that the significant benefits of competition should be made available to all Americans.¹²

Second, a waiver would serve the public interest by allowing the Commission to take full advantage of the 12 month period provided under Section 160(c) of the Act for review of petitions for forbearance (which expires on July 1, 2006) to consider fully the issues raised in the Fones4All Forbearance Petition without having the petition effectively mooted by the intervening March 11, 2006 deadline for full implementation of Rule 51.319(d). To the extent that the Commission fails to grant the relief sought herein, there is a significant risk that a great number of the 80,000 Lifeline customers Fones4All serves using ULS will either lose their Fones4All service and/or have their service interrupted. By granting this petition, the Commission will ensure that it has adequate time to fully consider the issues raised in the Forbearance Petition—specifically whether the Commission should forbear from application of Rule 51.319(d) as it pertains to competitive LECs that use ULS to provide single line residential service to end users eligible for and enrolled in the Lifeline program—while at the same time preventing a potential disruption in Lifeline service to a large number of Lifeline customers by application of Rule 51.319(d).

III. A WAIVER IS WARRANTED IN LIGHT OF SBC CALIFORNIA’S INABILITY TO PROCESS BATCH MIGRATION ORDERS IN A FASHION THAT WOULD ALLOW FONES4ALL TO MEET THE MARCH 11, 2006 DEADLINE

Even if the Forbearance Petition were not pending before the Commission, the Commission is compelled to grant the interim waiver requested herein in light of SBC California’s inability to handle in a timely fashion the migration of Fones4All’s UNE-P lines to other switching facilities. As described more fully in the attached Declaration of Tiffany

¹² *Id.*, ¶ 8.

Chesnosky ("Chesnosky Declaration") which was filed in California Public Utilities Commission Docket A. 05-07-024 today in response to an Emergency Motion of SBC California To Compel UNE-P Transition, SBC California is not capable of completing the transition of Fones4All's UNE-P lines by March 11, 2006. As set forth in the Chesnosky Declaration, to this day, despite months of attempting to work with SBC California on the migration process, Fones4All has not been able to successfully process a single migration order. In light of SBC California's inability to meet the transition deadline the Commission should grant the interim waiver.

IV. CONCLUSION

Wherefore, Fones4All respectfully requests that the Commission grant Fones4All on an expedited basis the interim waiver of Section 51.319(d) of the Commission's Rules in the state of California consistent with the discussion presented herein.

Respectfully submitted,



Ross A. Buntrock
WOMBLE CARLYLE SANDRIDGE & RICE PLLC
1401 I Street N.W., Seventh Floor
Washington, D.C. 20005
(202) 467-6900
(202) 261-0007 Fax

Counsel to Fones4All Corp.

February 24, 2006

DECLARATION OF TIFFANY CHESNOSKY ON BEHALF OF FONES4ALL CORPORATION (U 6338) IN OPPOSITION TO THE “EMERGENCY MOTION OF SBC CALIFORNIA TO COMPEL UNE-P TRANSITION”

1. My name is Tiffany Chesnosky. My business address is 6320 Canoga Avenue, Suite 650, Trillium Building, Woodland Hills, California. I am a Vice President for Special Projects for Fones4All Corporation (“Fones4All”).

2. My primary responsibilities are supporting Fones4All’s network operations. Since September 2005 I have worked with Fones4All on, among other projects, the batch hot-cut (“BHC”) migration project to migrate Fones4All’s UNE-P lines to Fones4All’s own network facilities.

3. Prior to my current position, I was a Sales Support Manager at Pacific Bell Telephone. My responsibilities included supporting and implementing services to Internet Business Customers. Following my tenure with Pacific Bell I was Carrier Relations Implementation Manager at Collo.com in San Francisco, California, where my responsibilities included contract negotiations and development of processes and procedures development for carrier fiber build and equipment implementation into twenty three collocation facilities.

4. The purpose of my declaration is to respond to the factually incorrect statements, assertions and characterizations contained in SBC California’s February 13, 2006 self-styled “Emergency Motion to Compel UNE-P Transition” which incorrectly lists Fones4All as a CLEC that has not followed through on its transition plan. Herein, I detail the numerous obstacles SBC has placed in the way of Fones4All as the company has attempted to meet the March 11, 2006 transition deadline. My declaration sets forth the history of Fones4All’s attempts to work with SBC to ensure an orderly and timely

transition of Fones4All's UNE-P lines to Fones4All's own switching arrangements beginning in mid 2005 to the present day. I explain that despite Fones4All's efforts to work closely and cooperatively with SBC to manage the complex transition task, SBC to date has failed to devote adequate resources to either the BHC process generally and has dragged its feet on providing Fones4All with competent account team support in the transition process. I conclude that to the extent the March 11, 2006 deadline for completion of the transition of Fones4All's lines is not met, it will be due in large part to the lack of responsiveness of Fones4All's SBC account team.

5. In the *Triennial Review Remand Order*, based upon the advocacy of SBC and the other RBOCs, the FCC found that the hot cut process for the vast majority of mass market lines (i.e. UNE-P lines) would not create impairment. In making this finding the FCC specifically stated: "We find that the new hot cut processes developed by each of the BOCs significantly addresses these difficulties. Particularly in light of these new, improved hot cut procedures, we concluded that the commenters' concerns largely are speculative..."¹ The FCC specifically cited SBC's "Enhanced Daily Process" for batch hot cuts and noted that SBC places "no limitations on the number of local service requests that a competitive LEC may submit. Its 'Defined Batch Process' allows competitive LECs to order up to 100 hot cuts per day per central office with a standard provisioning interval under two weeks, resulting in 20-25 hot cuts per hour."² The FCC noted specifically, however that the 12 month transition period for the UNE-P conversion adopted in the *Triennial Review Remand Order* "is based on the incumbent LECs'

¹ TRRO, ¶ 210.

² TRRO, ¶ 211.

asserted ability to convert the embedded base of UNE-P customers to UNE-L on a timely basis while continuing to meet hot cut demand for new UNE-L customers.”³

6. On October 20, 2005 I requested on behalf of Fones4All via email from me to our SBC Account Manager, Cheryl Labat, the SBC Batch Hot Cut contract that SBC requires CLECs execute in order to utilize any BHC offering, along with any other information necessary to move forward with the BHC process. I did not receive any response from Ms. Labat for more than three weeks, despite that fact that I made numerous requests via email to Ms. Labat including, but not limited to inquiries via email on November 10, 2005; November 15, 2005; November 16, 2005 regarding the status of the BHC contract and stressing the need to immediately move forward with the process in light of the March 11, 2006 transition deadline. In fact, almost all of my written communications to Ms. Labat sounded a note of urgency in light of the rapidly approaching March 11, 2006 deadline. Finally, after my numerous inquiries, on November 21, 2005, just prior to the Thanksgiving holiday, and over one month after the initial request was made, SBC provided me with the Batch Hot Cut contract. I promptly worked to both review the contract and gather the information necessary to complete the contract and returned it to Ms. Labat so that SBC could file the executed BHC contract with the California Public Utilities Commission (“CPUC”), as per SBC’s normal and established protocol. However, SBC failed to file the contract with the CPUC for 9 weeks. I learned in a subsequent communication with Ms. Labat on January 5, 2006 that SBC had not yet filed the BHC contract with the CPUC and SBC had taken no steps to implement the contract with Fones4All. Shortly after this date SBC filed the BHC contract with the CPUC.

³ TRRO, ¶ 227.

7. On January 19, 2006 Fones4All posed six questions relating the BHC process and implementation thereof to Ms. Labat via email. Ms. Labat indicated in her response that she was unable to provide me with answers to four of my six questions and she referred me to another SBC employee by the name of "Ann Marie." On January 26, 2006, having received no response from Ms. Labat to Fones4All's outstanding questions, Fones4All once again corresponded via email with Ms. Labat regarding a question relating to the SBC's Trap and Trace product, which the SBC web site indicates requires execution of an NDA. Ms. Labat indicated that SBC no longer requires execution of an NDA in order to review information related to the product, however Ms. Labat was not capable of providing Fones4All with any additional information regarding the Trap and Trace product, including it's functionality or how the product is accessed by wholesale customers. As of February 6, 2006, Fones4All had still received no word from Ms. Labat regarding Fones4All's outstanding BHC implementation questions, nor had Fones4All received any response from "Ann Marie" regarding BHC questions. As of today, those questions remain unanswered.

8. SBC California's failure to implement the BHC contract with Fones4All in a timely fashion has needlessly delayed implementation of Fones4All's migration plan. Fones4All's migration plan called for beta migration to begin on February 15, 2006 with 10 LSRs that would have a FOC date of February 21, 2006. However, the initial 10 orders failed to go through SBC's systems because SBC had apparently failed to update its systems with Fones4All's new UNE-L OCN number. After the failure of these orders to go through the SBC California system I repeatedly asked Ms. Labat for her assistance in troubleshooting the issue. However, as of February 22, 2006 the issue, despite having

been escalated, had not been resolved. Finally, after having sought the assistance of legal counsel, I received word from Ms. Labat yesterday, February 23, 2006 that the issue arose from a transcription error. As of today, however, Fones4All still has not received any word regarding whether the order was successfully processed. SBC's lack of attention to this issue for seven calendar days, coupled with SBC's foot dragging in getting the BHC contract executed and filed, has hopelessly and unnecessarily hobbled Fones4All's migration plans.

9. Fones4All has redoubled its efforts in an attempt to recover from these set backs that are beyond the company's control, however, until SBC is willing or able to do the same Fones4All is in grave danger of missing the March 11, 2006 deadline.

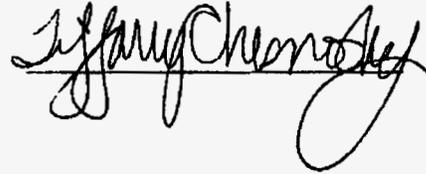
10. In light of these facts, SBC California's allegation that Fones4All is not following through on its transition plan are disingenuous. SBC states that it "does not see any significant queuing of orders from these carriers that would indicate the carriers are focused on completing the transition of its UNE-P lines in an orderly fashion pursuant to its transition plan prior to March 11, 2006." *See Smith Declaration at ¶ 15.* In Fones4All's case, the reason that its orders are not showing up is not because Fones4All is not executing its transition plan, but rather because SBC California is not doing its part to implement the plan.

17. Fones4All has attempted to work with SBC California on scheduling an orderly transition of its UNE-P lines, however SBC California has been either unwilling or unable to provide the necessary information and follow up in order for Fones4All to have any hope of meeting the March 11, 2006 deadline. SBC California's will have no

one to blame but itself if it finds itself facing a glut of orders on the eve of the migration deadline.

18. This concludes my declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Burlingame, California this 24th day of February, 2006.

A handwritten signature in black ink, appearing to read "Jeffrey Chen". The signature is written in a cursive style and is positioned to the right of the declaration text.

CERTIFICATE OF SERVICE

I, Edilma Carr, hereby certify that on this 24th day of February 2006, I served copies of the foregoing **“Emergency Petition for Interim Waiver of the Commission’s Rules Pending Commission Action on the Fones4All Petition for Expedited Forbearance”** by electronic filing and to the following parties by first-class mail, postage prepaid:

+Marlene Dortch
Office of the Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

*Best Copy and Printing, Inc.
The Portals, 445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

*Janice M. Myles
Federal Communications Commission
Wireline Competition Bureau
Competition Policy Division
The Portals, 445 12th Street, S.W.
Room 5-C327
Washington, D.C. 20554

*Sam Feder, General Counsel
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

*Thomas Navin
Wireline Competition Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

*Michelle Carey
Legal Advisor
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Jessica Rosenworcel
Competition and Universal Legal Advisor
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Scott Bergmann
Legal Advisor for Wireline Issues
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Aaron Goldberger
Legal Advisor
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Scott H. Angstreich
Kellogg, Huber, Hanser, Todd, Evans &
Figel, P.L.L.C.
1615 M. Street, N.W.
Suite 400
Washington, D.C. 20036
Tel.: (202) 326-7900

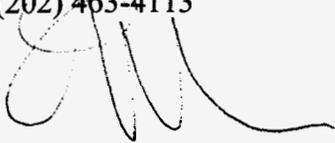
Karen Zacharia
Verizon
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
Tel.: 703-351-3193

Jim Lamoureux
Gary L. Phillips
Paul K. Mancini
SBC Communications, Inc.
1401 Eye Street, N.W.
4th Floor
Washington, D.C. 20005

James W. Olson
Indra Sehdev Chalk
Jeffrey S. Lanning
Robin E. Turtle
United States Telecom Association
607 14th Street, N.W.
Suite 400
Washington, D.C. 20005
Tel.: (202) 326-7223

Theodore R. Kingsley
Richard M. Sbaratta
BellSouth Corporation
Suite 4300
675 West Peachtree Street, N.E.
Atlanta, GA 30375-0001

Bennett L. Ross
BellSouth Corporation
1133 21st Street, N.W.
Suite 900
Washington, D.C. 20036
Tel. (202) 463-4113



Edilma Carr

+ *Via electronic filing*
* *Via electronic mail*