



October 6, 2006

BY ELECTRONIC FILING

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

Re: WC Docket: 06-74: Notification of Ex Parte

Dear Ms. Dortch:

On October 5, 2006, on behalf of Fones4All Corporation (“Fones4All”), the undersigned conducted an in-person *ex parte* meeting with Scott Bergmann, Legal Advisor to Commissioner Adelstein and spoke by telephone to Scott Deutchman, Competition and Universal Service Legal Advisor to Commissioner Copps to correct the blatant misrepresentations, half-truths and inaccuracies set forth in AT&T’s October 4, 2006 letter regarding Fones4All in this docket. In addition, Fones4All reiterated the need for the Commission to put in place the following conditions on any merger approval in light of the demonstrable harms to low income consumers, as well as the diminished competition in the low income market in the applicants’ territories that will result from the merger:

- The merged company should be required, for a period of at least 60 months, to provide basic two-wire residential loop combined with local switching at the most recently applicable state commission established TELRIC rates for to requesting carriers for the purpose of allowing carriers to serve single-line residential end users who are eligible for participation in either a state or federal universal program, thereby ensuring facilities-based wireline competition in the low income universal service market.
- The merged company should be required to repair on a going forward basis substandard copper loop plant reported by CLECs in order to ensure that these facilities are available to serve low income end users, who often reside in areas where degraded plant is present.
- The merged company should be required to implement in the AT&T region the same systems and procedures that BellSouth currently has in place for processing

bulk migrations and hot cuts (as described by Fones4All in its filings in this docket) by no later than 9 months after the close of the transaction.

In accordance with the Commission's rules, 47 C.F.R. Sec. 1.1206(b)(1), Fones4All is electronically filing in the above-referenced dockets this letter.

Respectfully submitted,



Ross A. Buntrock
Counsel to Fones4All Corporation

Attachments

cc: Scott Bergmann (via electronic mail)
Scott Deutchman (via electronic mail)

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Fones4All Corp. Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 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*, Memorandum Opinion and Order, WC Docket No. 05-261 (Sept. 28, 2006).

This Commission makes its most difficult decisions when two important and conflicted interests must be balanced. In the case before us, the petitioner seeks forbearance from rules that it contends will enable it, and similarly situated communications providers, to offer more affordable telephone service to a wider swath of low income telephone consumers. The record is replete with evidence that such services would be welcome news. According to our own data, the percentage of households that subscribe for telephone service hit its lowest point in 2005 in over fifteen years. The importance of home telephone service is self-evident as consumers, particularly low income consumers, rely heavily on home phones to stay connected with their families, make important calls to employers and doctors, and in an emergency to make that life-saving call. The importance of the services being offered by the petitioner cannot be understated, particularly at a time when the universal service fund's Lifeline/Link-Up program assists only one-third of eligible households.

While allowing a default judgment – a pocket veto of sorts – is possible, it is not the responsible choice here. This is the second time in recent months that we have been faced with a forbearance petition and a Commission that lacks a majority on the issue at hand. On the previous occasion, I observed that failure to act in a forbearance petition is not the way to make sound policy or, in effect, to change current law. I don't believe the process is significantly different here, much as I might find the policy outcome appealing. For these reasons, I am unwilling to permit a default judgment to become new communications law. I therefore concur in this Order, not because the rules in place are of my choosing or my liking, nor because I agree with the analysis in the Order, but because sound policy dictates that rules are to be created or forborne from through reasoned decisions made by this Commission.

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Fones4All Corp. Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 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*, Memorandum Opinion and Order, WC Docket No. 05-261 (Sept. 28, 2006).

In this Order, the Commission denies the petitioner's request that we forbear from applying our rules so that the petitioner may use unbundled network elements, specifically the platform of elements known as UNE-P, to serve consumers participating in the Lifeline program. While I believe the Commission can and must do more to promote service to low income consumers, I concur in this Order because I have serious questions about whether allowing a default grant of this forbearance petition is the appropriate means to advance that goal.

Congress made clear in Section 254 of the Act that "consumers in all regions of the Nation, including low-income consumers . . . should have access to telecommunications and information services" and I have repeatedly supported efforts to expand the availability of our Lifeline and Link-Up programs. Access to basic telephone service has long since moved from the category of luxury to necessity, yet there remains much more work to be done. As the Commission recently found, only approximately one third of eligible low income households actually subscribe to the Lifeline program.

I have also consistently supported efforts to encourage the development of competitive choice for consumers and, in this case, I am concerned that the Commission has not done all that it can to encourage providers to serve low income consumers. The prospect of competitive providers that will actively market to Lifeline consumers holds real promise for increasing telephone penetration among low income consumers. Although I do not believe we reach the optimal outcome and I have concerns about the analysis in this Order, I cannot support a default grant of this petition. The petition seeks relief from rules that do not reflect the balance I would have struck, but the public, the industry, and this Commission are far better served when we make decisions through reasoned fact-finding and analysis. As I have stated in the past, Section 10 forbearance is a powerful tool and the Commission must wield this tool responsibly. For these reasons, I concur in this decision.



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Yolanda Santos Adams
Wisconsin

September 1st, 2006

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Universal Service Lifeline Program

Dear Ms. Dortch:

I am President of the League of United Latin American Citizens (“LULAC”). With approximately 115,000 members throughout the United States and Puerto Rico, LULAC is the largest and oldest Hispanic Organization in the United States. LULAC advances the economic condition, educational attainment, political influence, health and civil rights of Hispanic Americans through community-based programs operating at more than 700 LULAC councils nationwide. The organization involves and serves all Hispanic nationality groups.

As the Commission knows, LULAC has a strong and ongoing interest in the Lifeline Program. We believe that the Commission should take all steps necessary to increase the knowledge of, and enrollment in the program, especially as the telecommunications marketplace, and particularly the residential marketplace, has experienced dramatic upheaval in the last several years. Accordingly, we urge the Commission to grant the relief and make available to competitive local exchange carriers (“CLECs”) unbundled local switching (“ULS”) at wholesale rates for the purpose of serving residential Lifeline eligible customers. Today, low-income Latino consumers are much less likely to have access to telephone service in this country. Instead, many of our members are forced to rely on over-priced calling cards, or pre-paid services from predatory companies, or to simply go without phone service. At the same time that hundreds of thousands of Latinos are without basic wireline telephone service, the Commission’s Universal Service Lifeline Program currently enrolls only one-third of the households who are eligible for assistance, and the program’s goals remain unmet.¹ Making available ULS to CLECs to serve Lifeline customer will significantly mitigate this problem.

¹ See Report and Order and Further Notice of Proposed Rulemaking, WC Docket 03-109, FCC 04-87 at ¶ 1 (Apr. 29, 2004) (“April 2004 Universal Service Order”).

Marlene Dortch, Secretary
September 1st, 2006
Page 2

Today the only carriers that are capable of economically providing wireline service to Lifeline Program participants are incumbent carriers. Making available ULS at wholesale rates to CLECs will serve the public interest by making participation in the program economic for those carriers, and thereby encourage competition among carriers for Lifeline customers. With the availability of ULS, carriers would actively seek out and compete for low-income customers through vigorous outreach efforts. Competition would be created for carriers to locate Lifeline customers and would encourage them to provide better service offerings and better customer service. Indeed, in the *TracFone Order* the Commission recognized that promotion of competition among providers of telecommunications services to the low income consumers referenced in Section 254(b)(3) of the Act is a significant consideration in evaluating whether forbearance is warranted in the context of petitions that seek to expand universal service availability to low income consumers.

LULAC agrees with Commissioner Abernathy's statement in the *TracFone Order*, where she said that "it is essential that we take all possible steps to ensure that low-income users are not barred from utilizing available support on the basis of the specific technologies they wish to use or the specific business plans pursued by their service providers." Accordingly, we urge the Commission to make ULS available to CLECs for the purpose of providing service to Lifeline eligible customers. Grant of this relief will go a great distance in helping the Commission meet its goal of expanding participation of eligible consumers in the Lifeline Program, including many of our members, by allowing competitors to provide their valuable services.

Respectfully submitted,



Hector M. Flores
LULAC National President

Cc: Commissioner Adelstein
Commissioner Copps
Commissioner Taylor Tate