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Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAILED  
MAR 17 2008  
FCC

In the Matter of	)	
	)	
2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	CC Docket No. 00-257
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. <u>94-129</u>
	)	
Telescope Communications, Inc. Petition for Waiver	)	
	)	

**ORDER**

Adopted: March 6, 2008

Released: March 13, 2008

By the Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

**I. INTRODUCTION**

1. In this Order, we grant Telescope Communications, Inc. (Telescope) a limited waiver of the 30-day advance notification requirements contained in 47 C.F.R. § 64.1120(e). In 2001, the Commission instituted streamlined procedures for compliance with the authorization and verification requirements of our rules and of section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, in situations involving the carrier-to-carrier sale or transfer of subscriber bases.<sup>1</sup> We find that it is in the public interest to grant Telescope a limited waiver of these rules, to the extent necessary to enable Telescope to become the presubscribed provider of local service to customers of a competitive local exchange carrier that has been ordered to cease providing service.

**II. BACKGROUND**

2. In 1998, the Commission adopted rules to implement section 258 of the 1996 Act, which expanded the Commission's existing authority to deter and punish "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications

<sup>1</sup> See 2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129, 16 FCC Rcd 11218 (2001) (*Streamlining Order*), adopting 47 C.F.R. § 64.1120(e). See also 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

service.<sup>2</sup> Pursuant to section 258 and the Commission's rules, carriers are barred from changing a customer's preferred carrier without first complying with the Commission's procedures.<sup>3</sup>

3. According to the streamlined procedures adopted by the Commission, carriers need not obtain individual subscriber authorization and verification for carrier changes associated with the carrier-to-carrier sale or transfer of a subscriber base, provided that, not later than 30 days before the planned carrier change, the acquiring carrier notifies the Commission, in writing, of its intention to acquire the subscriber base and certifies that it will comply with the procedures set forth in section 64.1120(e) of the Commission's rules, including providing 30-day advance written notice to all affected subscribers.<sup>4</sup> These rules are designed to ensure that affected subscribers have adequate information about the carrier change in advance, that they are not financially harmed by the change, and that they will experience a seamless transition of service from their original carrier to the acquiring carrier.<sup>5</sup> This self-certification process also provides the Commission with information it needs to fulfill its consumer protection obligations.<sup>6</sup>

4. On March 5, 2008, Telescape filed with the Commission a Petition for Waiver asking the Commission to waive the 30-day advance notice requirements of sections 64.1120(e)(1) and (e)(3) of the rules to permit Telescape to give notice to certain Fones4All, Inc. (Fones4All) customers and to the Commission less than 30 days prior to the transfer of the customers from Fones4All to Telescape.<sup>7</sup>

### III. DISCUSSION

5. Generally the Commission's rules may be waived for good cause shown.<sup>8</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>9</sup> Waiver of the

<sup>2</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, FCC 03-116 (rel. May 23, 2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

<sup>3</sup> *Id.*

<sup>4</sup> 47 C.F.R. § 64.1120(e).

<sup>5</sup> *See Streamlining Order* at para. 10, 16 FCC Rcd at 11222.

<sup>6</sup> *Id.*

<sup>7</sup> Petition for Waiver filed with the Commission by Telescape in CC Docket Nos. 94-129 and 00-257 on March 5, 2008 (*Petition*).

<sup>8</sup> 47 C.F.R. § 1.3.

Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>10</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>11</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>12</sup> The Commission specified in the *Streamlining Order* that instances in which it is impossible to comply precisely with the streamlined procedures will be resolved on a case-by-case basis.<sup>13</sup>

6. We find that Telescape has demonstrated that good cause exists to justify a limited waiver of the Commission's requirements to the extent necessary to enable Telescape to provide notice to the Commission and the affected Fones4All customers less than 30 days prior to the transfer of the customers to Telescape. According to Telescape, on January 23, 2008, the California Public Utilities Commission (CaPUC) effectively ordered Fones4All to transfer its customers to another carrier or apply for authority to discontinue service.<sup>14</sup> In response to this order, Telescape states that Fones4All entered into an agreement to transfer to Telescape 9,500 primarily low income users.<sup>15</sup> Telescape states that it sent notice of the change to these customers on March 4, 2008.<sup>16</sup> In addition, Telescape states that on February 15, 2008, Fones4All received a notice of foreclosure and, therefore, the subscribers must be transferred to Telescape less than 30 days prior to the transfer to avoid loss of dial tone.<sup>17</sup>

7. Under the Commission's rules, no later than 30 days prior to the transfer, an acquiring carrier must self-certify its compliance with the required procedures to the Commission and must give the affected subscribers notice of, and certain information about, the transfer.<sup>18</sup> Given the special circumstances Telescape has described, however, compliance with the 30-day advance notice requirement would result in the loss of local service for Fones4All customers during the 30-day period. Moreover, Telescape states that the CaPUC has ordered Fones4All to transfer its customers or apply for authority to discontinue service.<sup>19</sup> As noted above, the streamlined procedures were designed to permit affected subscribers to experience a "seamless transition of service from the original carrier to the acquiring carrier."<sup>20</sup> We find that, in the special circumstances described by Telescape, waiver of the 30-day advance notice requirement would more effectively achieve this goal and would therefore serve the public interest. We find that the affected subscribers are unlikely to suffer harm from receiving less than 30 days' notice of the transfer, and that any such harms would be outweighed by the benefits of a seamless

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<sup>9</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>10</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>11</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>12</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>13</sup> *Streamlining Order* at para. 20, 16 FCC Rcd at 11226.

<sup>14</sup> *See Petition* at 2 (citing CaPUC case number 07-12-030).

<sup>15</sup> *See id.* at 1.

<sup>16</sup> *See id.*

<sup>17</sup> *See id.* at 2.

<sup>18</sup> 47 C.F.R. §§ 64.1120(e)(1) & (e)(3).

<sup>19</sup> *See Petition* at 2.

<sup>20</sup> *Streamlining Order*, 16 FCC Rcd at 11222, para. 10.

transfer of service and the benefit of continuing to provide service to low income customers who otherwise might be without vital communications services including emergency 911 service.

8. For the foregoing reasons, we grant Telescape a waiver of the 30-day advance notification requirements of 47 C.F.R. §§ 64.1120(e)(1) and (e)(3) for the limited purposes described above. The grant of this waiver is conditioned upon Telescape providing customer notification and certification to the Commission that complies with all requirements of section 64.1120(e), except that the 30-day timeframes for doing so are waived herein.

#### **IV. ORDERING CLAUSES**

9. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, the waiver request filed by Telescape Communications, Inc., on March 5, 2008, IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Erica H. McMahon, Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau