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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE CARRIER
ASSOCIATION, et al.,

Complainant,

v.

LOCALDIAL CORPORATION, an Oregon
Corporation,

Respondent.

Docket No. UT-031472

ANSWER OF BROADBAND
COMMUNICATIONS ASSOCIATION
OF WASHINGTON

Intervenor Broadband Communications Association of Washington (“BCAW”) answers Respondent’s petition for reconsideration and/or clarification of the prehearing conference order by conditionally supporting it. BCAW interpreted the prehearing conference order consistent with the LocalDial’s requested clarification. To the extent BCAW’s interpretation was correct, then clarification may be helpful. To the extent the prehearing conference order did intend to preclude consideration of policy issues relating to application of access charges to VoIP services, then BCAW supports reconsideration.

As respondent’s petition noted, BCAW urged taking a narrow approach to this case: “[W]e’d like to see it be narrowly addressed to the issue of intrastate access charges on the fact-specific facts of this particular case...” Tr. at 24. In other words, the issue could be framed thusly: “Based on the facts in this case should LocalDial have to pay WECA members access charges.” This is consistent with the specific ordering language of the US District Court, which stated it was referring the “core questions” of whether

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1 the plaintiffs' tariffs apply to the VoIP intrastate telephone calls made by
2 LocalDial's customers using the plaintiffs' facilities? And, if they do so apply, to
3 what extent, if any, should the WUTC regulate the relatively new VOIP
4 technology?

5 Stay Order and Order of Referral at 4.

6 If the prehearing conference order is read literally, it is potentially both broader
7 and narrower than the court's referral. It is broader in that it contemplates a classification type
8 proceeding to determine whether or not LocalDial is subject to the WUTC's jurisdiction as a
9 "telecommunications company." The Commission might find it essential to undertake to classify
10 LocalDial to determine the proper interpretation and application of WECA's tariffs, or it might
11 not. For example, had a court referred a complaint by WECA against an insurance agency
12 regarding proper application of WECA's tariffs and charges the WUTC could certainly
13 determine such questions notwithstanding the lack of jurisdiction over insurance agencies. Read
14 literally, the prehearing conference order is also narrower than the referral in that clearly the
15 court, by using the term "should" more than once, intended that the WUTC would address the
16 policy question raised by this case of first impression; i.e. should access charges be applied to the
17 type(s) of VoIP services at issue.

18 BCAW supported a narrow case. In particular, the Commission should not
19 address "flavors" of VoIP that are not teed up in this case by the facts of LocalDial's operations
20 and the scope of WECA's complaint. Moreover, to the maximum extent possible, the
21 Commission should not establish a precedent regarding application of other traditional telephony
22 regulatory requirements to VoIP services, *including* the types of services offered by LocalDial.
23 However, in the event the Commission's analysis leads it to the possibility of finding liability to
24 WECA for access charges, the Commission should not exclude the policy considerations
25 regarding imposing intrastate access charges, for the first time, on a VoIP service.

26 As WECA noted in its complaint, tariffs are like laws. Courts are very adept at
interpreting and applying laws to the facts of a case. This case was referred for something more

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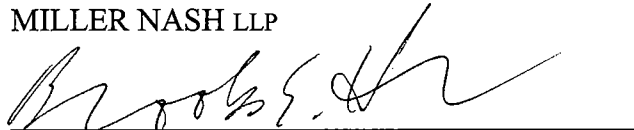
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1 than that. It was referred to allow for a policy determination. BCAW interprets the prehearing
2 conference order as broad and flexible tool that encompasses both of the issues the court referred
3 as well as any sub-issues the Commission determines are essential to decide those issue, which
4 might include proper classification of LocalDial. If the intent of the Commission was otherwise,
5 then LocalDial's petition for reconsideration should be granted.

6 DATED this 13th day of November, 2003.

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