

RECEIVED
RECORDS MANAGEMENT

03 NOV 18 PM 1:12

The Honorable Dennis J. Moss

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

WASHINGTON EXCHANGE CARRIER
ASSOCIATION, et al.,

Complainants,

v.

LOCALDIAL CORPORATION,

Respondent.

UT-031472

ANSWER TO PETITION FOR
RECONSIDERATION AND/OR
CLARIFICATION OF ORDER NO. 01
(PREHEARING CONFERENCE ORDER)

1. Pursuant to the Commission's letter dated November 5, 2003 granting parties an opportunity to submit an answer to the Petition for Reconsideration and/or Clarification of Order No. 1 (Prehearing Conference Order), referred to herein as Petition, the Washington Exchange Carrier Association and its member companies (collectively "WECA") submit the following Answer.

2. LocalDial Corporation ("LocalDial") complains that the issues as published by the Commission in its Prehearing Conference Order are drawn too narrowly. Essentially, LocalDial argues that the Federal Court was interested in whether, even though LocalDial's service might otherwise be subject to WECA and its member companies' tariffs, the Commission would exercise

ANSWER TO PETITION FOR
RECONSIDERATION - 1

Law Office of
Richard A. Finnigan
2405 Evergreen Park Dr. SW
Suite B-1
Olympia, WA 98502
(360) 956-7001

1 discretion to remove the application of those tariffs, in whole or in part, to LocalDial. Essentially,
2 LocalDial states that the issues as presented by the Commission precludes it from arguing the policy
3 issues surrounding the application of tariffs to LocalDial's service.

4 3. WECA disagrees with LocalDial's position. Issue No. 2 as published in the
5 Prehearing Conference Order is sufficiently broad to allow LocalDial to raise its "forbearance"
6 issues. Issue No. 2 is stated as follows:

7 Is LocalDial's service that is challenged by WECA a form of intrastate long distance
8 telecommunications service that subjects LocalDial to the obligation to pay access charges
9 payable to originating and terminating local exchange carriers under those carriers' tariffs?
(Emphasis added.)

10 The "subjects LocalDial to" language would allow LocalDial to make its arguments that even if
11 LocalDial is classified as a telecommunications service, it "should not" be subject to the tariffs.
12 WECA obviously disagrees with LocalDial on the substance of the argument and wonders how
13 such an argument can be sustained. Nonetheless, WECA does not believe such an argument is
14 precluded by the language the Commission has used to state the issues.
15

16 4. Further, WECA objects to the formulation of the issues advanced by LocalDial. In
17 particular, WECA objects to LocalDial's characterization that its services constitute "VoIP
18 services." It is not at all certain that LocalDial's services constitute Voice over Internet Protocol
19 calls as that term has been used in the past by the Federal Communications Commission. Issues
20 should not be written in a manner that contain an implied conclusion.

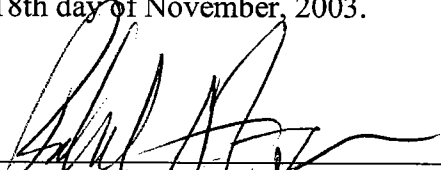
21 5. WECA also objects to the inclusion of the issue of federal preemption. The referral
22 from the Federal Court did not ask the Commission to rule on federal preemption. The Federal
23 Court has retained jurisdiction of this case to determine the issues once the Commission has ruled
24 on the referred questions. Obviously, federal preemption is an issue of law that will be argued to

1 and decided by the Federal Court. The same is true concerning the other formulation used by
2 LocalDial concerning whether "LocalDial's service [is] otherwise removed from the Commission's
3 regulatory authority by another provision of state law." Again, that is not within the Court's referral
4 order and would be an issue of law for the Court to resolve once this matter is returned to the Court.

5 6. Finally, WECA notes that it appears that a portion of LocalDial's argument is that
6 the Commission can somehow forbear from regulation once it finds that LocalDial is subject to the
7 Commission's jurisdiction. Although this is an issue that will be addressed in some detail at a later
8 point in this proceeding, it does not appear that the Commission has the same sort of "forbearance"
9 authority possessed by the Federal Communications Commission. While the Commission can
10 classify a company as competitive, if an entity is subject to the Commission's regulatory
11 jurisdiction, there does not appear to be a basis in statute by which the Commission can choose to
12 ignore its jurisdiction.

13 7. WECA respectfully requests that the Commission deny LocalDial's Petition.

14
15 RESPECTFULLY SUBMITTED this 18th day of November, 2003.

16
17 
18 RICHARD A. FINNIGAN, WSBA #6443
19 B. SETH BAILEY, WSBA #33853
20 Attorneys for Washington Exchange Carrier
21 Association, et al.

22
23
24
25 ANSWER TO PETITION FOR
26 RECONSIDERATION - 3

Law Office of
Richard A. Finnigan
2405 Evergreen Park Dr. SW
Suite B-1
Olympia, WA 98502
(360) 956-7001