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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

CORRECTED ANSWER OF
BROADBAND COMMUNICATIONS
ASSOCIATION OF WASHINGTON

Intervenor Broadband Communications Association of Washington (“BCAW”) conditionally supports respondent LocalDial Corporation’s (“LocalDial’s”) Petition for Reconsideration and/or Clarification of Order No. 01 submitted on November 3, 2003 (the “Petition for Clarification and/or Reconsideration”). Specifically, BCAW concurs with LocalDial’s position that the Stay Order and Order of Referral to WUTC issued by the District Court in WECA v. LocalDial, Case No. C03-5012 (U.S. District Court, W.D. Washington, September 4, 2003) (the “Stay Order and Order of Referral”) directs the Commission to examine certain “policy considerations” relevant to this docket. In particular, BCAW supports LocalDial’s request that the Commission clarify the Prehearing Conference Order issued in this docket on October 24, 2003 (the “Prehearing Conference Order”) to specify that the Commission will consider certain matters of policy. In the alternative, and to the extent that the Commission intended in its order to preclude consideration of matters of policy, BCAW supports LocalDial’s request for reconsideration of the Prehearing Conference Order, as further discussed below.

As LocalDial notes in its Petition for Clarification and/or Reconsideration, BCAW urged the Commission during the prehearing conference to consider only a narrow range of issues relevant to this proceeding:

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1 [W]e'd like to see it [the proceeding] be narrowly addressed to the issue of
2 intrastate access charges on the fact-specific facts of this particular case. . . .

3 Tr. at 24 (quoting counsel for BCAW). In other words, BCAW believed during the prehearing
4 conference, as it continues to believe now, that the Commission's inquiry must focus exclusively
5 on whether LocalDial should pay WECA members access charges for the specific IP phone
6 services offered by LocalDial in Washington. That decision does not necessarily require a
7 determination of whether or not LocalDial should be classified as a "telecommunications
8 company." The foregoing approach would be consistent with the court's directive to the
9 Commission to consider the "core questions" of whether

10 the plaintiffs' tariffs apply to the IP phone intrastate telephone calls made by
11 LocalDial's customers using the plaintiffs' facilities? And, if they do so apply, to
12 what extent, if any, should the WUTC regulate the relatively new VoIP
13 technology?

14 Stay Order and Order of Referral at 4.

15 Conversely, BCAW urges the Commission *not* to expand this proceeding to include
16 issues outside the scope of the court's order such as (1) whether access charges should apply to
17 IP phone services other than those offered by LocalDial; (2) whether access charges should apply
18 to IP phone services generally; or (3) whether any number of other regulatory requirements
19 should apply to IP phone service generally. Examination of those issues would be impractical at
20 this time because the Federal Communications Commission ("FCC") currently has at least three
21 open dockets under way on many of the same issues and has announced its intention to open a
22 fourth docket imminently (i.e., an NPRM). State policymakers, regulators, service providers and
23 taxpayers would be best served if the Commission were to await the outcome of those federal
24 proceedings before investing valuable resources to create a state-specific framework or state-
25 specific rules applicable to IP phone services generally. By awaiting the outcome of those
26 federal proceedings, state policymakers and regulators can avoid the creation of a disparate
intrastate regulatory regime which would have to be revisited and, potentially, overhauled, at the
conclusion of the interstate proceedings. Accordingly, BCAW urges the Commission to limit its


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1 inquiry in this docket to the narrow facts of LocalDial's IP phone service in Washington State,
2 the narrow issues raised in the WECA's complaint with respect to LocalDial, and the specific
3 policy considerations associated with those particular facts and issues.

4 In sum, BCAW conditionally supports LocalDial's request for clarification and/or
5 reconsideration, requesting that the Commission weigh "policy considerations" in this
6 proceeding. However, as noted above, BCAW believes that those "policy considerations"
7 should be focused on the specific facts presented by LocalDial's operations in Washington State
8 and in the WECA's complaint. BCAW believes that the court did not intend those "policy
9 considerations" to extend to an evaluation of the regulatory classification of IP phone services
10 generally, the application of intrastate access charges to IP phone services generally, or other
11 matters not related specifically to LocalDial's services or the WECA complaint.

12 DATED this 17th day of November, 2003.

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