

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE CARRIER
ASSOCIATION, et. al.,

Petitioners,

v.

LOCALDIAL CORPORATION, an
Oregon Corporation,

Respondents.

DOCKET NO. UT-031472

COMMISSION STAFF
RESPONSE TO LOCALDIAL 'S
PETITION FOR
RECONSIDERATION AND/OR
CLARIFICATION OF ORDER
NO. 1

- 1 The U.S. District Court referred to the Commission the following questions:
1. Do the plaintiffs' tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using plaintiff's facilities?
 2. And if they do apply, to what extent, if any, should the WUTC regulate the relatively new VoIP technology?

As the court itself observes, the first question raises issues that would ordinarily be addressed in a proceeding under RCW 80.04.015 ("the threshold question of whether LocalDial is conducting business subject to the WUTC's regulatory authority is a question of fact to be determined by the WUTC. [citing RCW 80.04.015]").

- 2 The second question, on the other hand, is very broad and may contain an

incorrect assumption about the Commission’s statutory authority Washington law, unlike its federal counterpart, does not authorize the regulatory commission to forbear from regulation even if doing so would seem to be in the public interest.¹ To the extent that it raises issues that are within the Commission’s authority, those issues would ordinarily have to be addressed in at least two different kinds of proceedings:

(1) a competitive classification application under RCW 80.36.320(2) (authorizing the commission to waive regulatory requirements when it determines that competition will serve the same purposes as public interest regulation) and

(2) a complaint against WECA’s access tariff under RCW 80.04.110 (Complaints) and RCW 80.36.030 (All rates (etc.) shall be fair, just, reasonable and sufficient).

While a competitive classification application provides a vehicle for deciding what regulations should apply to a particular company, a complaint proceeding conceivably could address the design of the WECA companies’ access charges and their application to companies like LocalDial.

3 Staff believes the Commission has appropriately defined the issues as: (1) Whether LocalDial’s service is telecommunications service subject to the Commission’s regulation and (2) Whether LocalDial is obligated to pay access charges to the WECA companies. While the court referred the question of whether LocalDial’s services *should* be regulated, the proper question regarding WECA’s access tariffs is whether they *do*

¹ Staff submits that the Commission’s statutory framework does not give it the latitude to decide whether a company meeting the definition of a “telecommunications company” under RCW 80.04.015 and not removed from state jurisdiction by federal law—as with providers of interstate services) should nonetheless be relieved of regulation because of the technology it uses.

apply to the service offered by LocalDial in the circumstances presented.

4 In its motion, LocalDial seeks to add another issue to those identified by the Commission: “[W]hat intercarrier charges should apply to the intrastate calls made by LocalDial’s customers using WECA’s facilities?” If LocalDial means what *level* of charges should apply, then it is attempting to include in this proceeding an inappropriate collateral attack on the WECA companies’ access charges. If LocalDial wants to question the access tariffs themselves and whether those tariffs comply with the provisions of Title 80, it should complain against them. LocalDial may well have valid criticisms of the access tariffs, but if it wants to raise those it should do so through a complaint.

DATED this 18th day of November, 2003.

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