

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE)	
CARRIER ASSOCIATION, et al.,)	DOCKET NO. UT-031472
)	
Complainant,)	LEVEL 3 COMMUNICATIONS LLC’s
)	RESPONSE TO PETITION FOR
v.)	RECONSIDERATION AND/OR
)	CLARIFICATION OF
LOCALDIAL CORPORATION, an)	ORDER NO. 01 (PREHEARING
Oregon Corporation,)	CONFERENCE ORDER)
)	
Respondent.)	

I. INTRODUCTION

1. In accordance with the November 5, 2003, Notice of Opportunity to Answer Petition for Interlocutory Review of Order No. 01 (Prehearing Conference Order), Level 3 Communications, LLC (“Level 3”), as an Interested Person, hereby files this response to the Local Dial Corporation (“LocalDial”) Petition for Reconsideration and/or Clarification of Order No. 1 (“Petition”).

II. BACKGROUND

2. In its Petition, LocalDial requests that the issues put forth in the Prehearing Conference Order issued in this docket on October 24, 2003, (“Prehearing conference Order”) be reframed “in order to reflect the core public policy issues raised by this case.” Petition at 6, ¶ 13. LocalDial asserts that the WUTC’s statement of the issues is “unduly narrow and insufficient to allow the parties to address the question referred to the [WUTC] by the United States District Court.” Petition at 1, ¶ 1. Level 3 supports LocalDial’s Petition.

III. DISCUSSION

3. As a preliminary matter, Level 3 again emphasizes that the scope of the proceeding be

limited to the specific service offerings of LocalDial and not be extended to an analysis of all VoIP service offerings. As the Federal Communications Commission (“FCC”) has noted in considering whether such services fall within the definition of “telecommunications service” under the Communications Act of 1934, as amended (the “Act”), it would be overreaching to conclude that all VoIP services are telecommunications services. *Federal-State joint Board on Universal Service, Report to Congress*, 13 FCC Rcd. 11501(1998) (“*Report to Congress*”). Instead, after considering the language of the Act and the likelihood for advances in the area of IP-based communications, the FCC concluded that, at most, certain forms of “phone-to-phone IP telephony” might fall within the definition of “telecommunications services” under the Act. *Id.* at ¶ 89. The FCC then stated its reluctance to categorize even phone-to-phone IP telephony as a telecommunications service. *Id.* at ¶ 90. Because VoIP technology has different capabilities, applications and service offering, to take a “one-size-fits-all” approach would have a limiting effect on innovation and, therefore, consumer choice.

4. At a minimum, the WUTC’s analysis must allow for a three-prong approach. First, the WUTC must determine if the LocalDial service a “telecommunications service” under Washington law. Second, if the service offered by LocalDial is found to in fact be a “telecommunications service” under Washington law, the WUTC must then address whether it has been preempted by federal law from regulating LocalDial’s service. Finally, only if the WUTC has not been preempted by federal law or is otherwise removed from regulatory authority, it is necessary to address “what intercarrier charges should apply to the intrastate calls made by LocalDial’s customers using WECA’s facilities.” Petition at 6, ¶ 12. Level 3 believes that the issues as set out in LocalDial’s Petition allows for such an analysis.

Dated this 17th day of November, 2003.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that the original and 16 copies of the foregoing Response to Petition for Reconsideration and/or clarification of Order No. 01 (Prehearing Conference Order) of Level 3 Communications, LLC was sent via Federal Express on this 17th day of November, 2003, addressed to the following:

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