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**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

IN THE MATTER OF THE PETITION OF  
THE WASHINGTON EXCHANGE  
CARRIER ASSOCIATION FOR ORDER  
FOR WEBTEL WIRELESS, INC. TO  
REGISTER AS A  
TELECOMMUNICATIONS COMPANY  
OR CEASE AND DESIST DOING  
BUSINESS AS A  
TELECOMMUNICATIONS COMPANY

DOCKET NO. UT-041239  
MOTION FOR SUMMARY DETERMINATION  
(EXPEDITED TREATMENT REQUESTED)

This Motion for Summary Determination is brought by the Washington Exchange Carrier Association (WECA) and its member companies. This Motion is based upon the Petition filed herein and the attached Declarations of Mr. Richard A. Finnigan and Mr. Bill Cowles.

**PROCEDURAL BACKGROUND**

On July 12, 2004, WECA and its member companies filed a Petition for Order Requiring WebTel Wireless, Inc. to Register as a Telecommunications Company or, in the alternative, for an Order Requiring them to Cease and Desist Doing Business for Failure To Comply With Washington Law ("Petition"). That Petition was served on WebTel's registered agent in its state of incorporation, Colorado. The Petition was also served on WebTel's primary business office as listed on its web site. WebTel does not maintain a registered agent within the state of Washington.

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1 WebTel has neither answered the Petition nor made an appearance in this matter.

2  
3 BASIS FOR MOTION

4 Much like the service offered by LocalDial Corporation (“LocalDial”), WebTel’s service  
5 appears to be, at best, an “Internet-in-the-middle” type of service where any use of IP technology is  
6 for transport only.

7 It is clear from viewing WebTel’s home page that they are holding themselves out to  
8 provide telecommunications service in the state of Washington. See the Declaration of Mr.  
9 Finnigan. As stated on WebTel’s web site, to use their service “All you need is a telephone and  
10 telephone service from your local company.” WebTel goes on to state “You do not need an Internet  
11 account or a computer.” Declaration of Mr. Finnigan at Paragraph 1.

12 WebTel describes its operations in much the same terms that LocalDial did. WebTel  
13 describes use of its service as follows: “First, you dial a WebTel™ local-access number to enter our  
14 system. Once the number is verified, a voice prompt will instruct you to enter the area code and  
15 phone number of the person you want to call--no need to dial a “1” first. The WebTel Voice over  
16 Internet Protocol (VoIP) gateway server seamlessly sends this call information over the network to  
17 the gateway server that’s closest to your call’s destination. The VoIP gateway server at the  
18 destination site dials the phone number you’ve entered. After the connection is established both  
19 you and the person you’re calling will be talking over the WebTel™ network. To use WebTel™  
20 services, you must establish a VoIP account with us, and the number you’re calling must be within  
21 the WebTel network-coverage area.” See Mr. Finnigan’s Declaration at Paragraph 5.

22 To verify the operation of the service, Mr. Bill Cowles, an employee of YCOM Networks,  
23 Inc., subscribed to the WebTel service. He made three test calls, each of which would normally be  
24

25 MOTION FOR SUMMARY  
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1 a long distance call. He dialed WebTel's local access number in Tacoma over EAS trunks. All  
2 calls were successfully completed. See, Declaration of Mr. Cowles.

#### 4 LEGAL ANALYSIS

5 From the foregoing facts, it is clear that there is little, if any, difference between WebTel's  
6 service and the service offered by LocalDial, which was recently addressed by this Commission.  
7 As to LocalDial, the Commission concluded that LocalDial's service constituted  
8 telecommunications service offered to the public in Washington for compensation within the  
9 meaning of Chapter 80 RCW. The Commission further concluded that LocalDial's service was  
10 subject to the obligation to pay access charges payable to originating and terminating local  
11 exchange carriers under those carriers' tariffs. The same is true for WebTel.

12 Perhaps the most succinct legal argument that can be made is to simply quote from Order  
13 No. 08 in Docket No. UT-031472 (LocalDial). At paragraphs 61 and 62, the Commission  
14 concluded that LocalDial's service was a telecommunications service under Washington law. The  
15 Commission concluded as follows:

16 WECA and Staff argue that LocalDial is a "telecommunications company" under RCW  
17 80.04.010. As Staff points out, the Washington statutory definition of telecommunicationos  
18 is broad and, like the federal definition, does not distinguish among transmission  
19 technologies. While the legislature has exempted certain services that otherwise would fall  
within the definition, such as cellular service and cable television, there currently is no  
exemption that would cover LocalDial's service.

20 Focusing on the terms of RCW 80.04.010, WECA states correctly that there is no question  
21 concerning LocalDial's status as a corporation doing business in Washington. Its business is  
22 the sale to the general public of telecommunications as discussed in this Order, and as  
23 evidenced by the company's own advertising. As Staff argues, LocalDial owns and operates  
24 the gateways, servers, and other equipment that are part of the network it uses to provide  
25 telecommunications service. In short, it is an inescapable conclusion under the undisputed  
26 facts before us that LocalDial offers telecommunications service for sale to the general  
public in Washington and is a telecommunications company subject to our jurisdiction under  
chapter 80 RCW.

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1 As to whether the service is subject to access charges, the Commission concluded as  
2 follows:

3 The access charge regime in Washington is mandated by RCW 80.36.160. It is  
4 implemented by the companies' tariffs. Complainants' tariffs, once approved by the  
5 Commission, have the force and effect of law. They must be applied uniformly to all  
6 interexchange carriers to avoid giving undue preference under RCW 80.28.090 or allowing  
7 for the application of discriminatory rate practices under RCW 80.28.100. LocalDial's  
8 phone-to-phone IP telephony service is 'telecommunications service,' and is functionally  
9 identical to the inter-local-calling area service that is provided by other interexchange  
10 carriers that pay access charges. LocalDial obtains the same access to the Complainants'  
11 networks as obtained by other interexchange carriers. LocalDial, therefore, imposes the  
12 same burdens on the local exchange carriers as do other interexchange carriers. LocalDial  
13 should bear its fair share of the associated costs, as reflected in the local exchange carriers'  
14 tariffs. [Footnote omitted.]

#### 15 CONCLUSION

16 Based upon WebTel's own representations contained on its web site, it is clear that WebTel  
17 is offering a telecommunications service for hire to the public in the state of Washington. That  
18 telecommunications service is interexchange service. It is clear that WebTel's interexchange  
19 service is subject to the lawfully tariffed access charges of WECA and its members.

20 WECA and its members respectfully request that the Commission issue an order holding  
21 that WebTel is offering a telecommunications service for hire in the state of Washington; that the  
22 service is an interexchange, long distance service; and, that, the service is subject to the access  
23 charges set forth in WECA and its member companies' tariffs. Further, WECA and its members  
24 respectfully request that the Commission issue an order requiring WebTel to register as a  
25 telecommunications company and comply with Washington laws within ten days of the date of the  
26 Commission's order or cease and desist doing business in the state of Washington.

MOTION FOR SUMMARY  
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RESPECTFULLY SUBMITTED, this 3rd day of August, 2004.

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RICHARD A. FINNIGAN, WSBA #6443  
Attorney for the Washington Exchange Carrier  
Association

MOTION FOR SUMMARY  
DETERMINATION - 5

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