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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE CARRIER ASSOCIATION, et al., Complainant,)	UT-031472
v.)	Volume II
LOCALDIAL CORPORATION, an Oregon corporation.)	Pages 69-85

A prehearing conference in the above-entitled matter was held at 1:32 p.m. on Monday, January 12, 2004, at 1300 South Evergreen Park Drive, Southwest, Olympia, Washington, before Administrative Law Judge DENNIS MOSS.

The parties present were as follows:

LOCALDIAL CORPORATION, by Arthur A. Butler, Attorney at Law, Ater Wynne, LLP, 601 Union Street, Suite 5450, Seattle, Washington 98101.

WASHINGTON EXCHANGE CARRIER ASSOCIATION, by Richard Finnigan, Attorney at Law, 2405 Evergreen Park Drive, S.W, Suite B-1, Olympia, Washington 98502.

COVAD COMMUNICATIONS COMPANY and BROADBAND COMMUNICATIONS ASSOCIATION OF WASHINGTON, by Brooks Harlow, Attorney at Law, Miller Nash, 4400 Two Union Square, 601 Union Street, Seattle, Washington, 98101 (via teleconference bridge.)

COMMISSION STAFF, by Jonathan Thompson, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

QWEST CORPORATION, by Elizabeth Weber, 1600 Seventh Avenue, Room 3206, Seattle, Washington 98191 (via teleconference bridge.)

Barbara L. Nelson, CCR

Court Reporter

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1 PUBLIC COUNSEL, by Robert Cromwell,
2 Assistant Attorney General, 900 Fourth Avenue, Suite
2000, Seattle, Washington, 98164 (via teleconference
bridge.)

3 VERIZON, by Timothy J. O'Connell,
4 Attorney at Law, Stoel Rives, L.L.P., 600 University
Street, Suite 3600, Seattle, Washington, 98101.

5 MCI/WORLDCOM, by Michel Singer Nelson,
6 Attorney at Law, 707 17th Street, Suite 4200, Denver,
Colorado 80202 (via teleconference bridge.)

7 AT&T COMMUNICATIONS OF THE PACIFIC
NORTHWEST, TCG SEATTLE, and TCG OREGON, by Letty
8 Friesen, Attorney at Law, 1875 Lawrence Street, Suite
1575, Denver, Colorado 80202 (via teleconference
bridge.)

9 SPRINT, by William E. Hendricks, III,
Attorney at Law, 902 Wasco Street, Hood River, Oregon
97031 (via teleconference bridge.)

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1 JUDGE MOSS: Let's come to order and be on
2 the record, please. This is Dennis Moss speaking.
3 We are convened this afternoon in the matter styled
4 WECA v. LocalDial, Docket Number UT-031472.

5 We'll take appearances here in the room
6 momentarily, and then we'll also takes appearances
7 from those who are participating or monitoring by
8 means of the conference bridge line. I'll just note
9 that those of you who are parties, of course, should
10 be sure to enter your appearance, whether you're here
11 in person or on the phone. Those of you who are
12 interested persons, it's not absolutely necessary
13 that you enter an appearance, but I invite you to do
14 so if you choose.

15 As long as our communications remain clear,
16 even though we have a large number, I think,
17 relatively large number of participants on the
18 conference bridge line, as long as the technology
19 supports our efforts, it doesn't give us some of the
20 interference that we sometimes experience, I will
21 leave the mute caller switch unengaged.

22 That means, however, that we can hear you if
23 you're on the conference bridge line, so you need to
24 mute your phone if you're going to engage in any
25 conversation there at your end or what have you, and

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1 if you have an automated telephone music system or
2 something like that, you'll need to take steps to
3 ensure that that doesn't interfere with us. If we do
4 have technical problems, then I will announce that I
5 am engaging the mute caller switch, and that means
6 you won't be able to be heard. If it becomes
7 necessary, I'll take steps to let you chime in.

8 As I mentioned, I think, we are here for a
9 prehearing conference today, and we do have
10 representatives from the principal parties, and so
11 we'll start our appearances with you, Mr. Finnigan.

12 MR. FINNIGAN: Thank you. Richard Finnigan,
13 appearing on behalf of the Washington Exchange
14 Carrier Association and the delineated member
15 companies that are listed in the complaint.

16 JUDGE MOSS: Mr. Butler.

17 MR. BUTLER: Arthur A. Butler, appearing on
18 behalf of LocalDial.

19 JUDGE MOSS: Mr. O'Connell.

20 MR. O'CONNELL: Timothy J. O'Connell, with
21 the Stoel Rives Law Firm, appearing on behalf of
22 intervenor Verizon Northewest, Inc.

23 MR. THOMPSON: Jonathan Thompson, Assistant
24 Attorney General, appearing on behalf of Commission
25 Staff.

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1 JUDGE MOSS: I might be operating with an
2 old list here, but I had you down as an interested
3 person. Are you a party, intervenor?

4 MR. O'CONNELL: I thought we intervened as a
5 party in this one.

6 JUDGE MOSS: May have. I may have an old
7 list.

8 MR. O'CONNELL: We've been fairly careful
9 about which one we were parties and which one we were
10 interested persons in some other dockets.

11 JUDGE MOSS: Well, I have my order here, so
12 we'll know, but you might want to check with me
13 afterwards and we'll see what the order says.

14 MR. O'CONNELL: I will, thank you. I
15 thought we had.

16 JUDGE MOSS: All right. Let's see how this
17 works out. I don't know how many people are on the
18 bridge line, but I don't want to call roll, because
19 I've got so many here, so let's just see if we can
20 get started with the bridge line, and maybe you all
21 can sort of proceed carefully, not talking over one
22 another, so any volunteers?

23 MR. CROMWELL: This is Robert Cromwell, with
24 Public Counsel section, Your Honor.

25 JUDGE MOSS: Thank you.

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1 MS. FRIESEN: This is Letty Friesen, with
2 AT&T, Your Honor.

3 JUDGE MOSS: All right.

4 MR. HARLOW: This is Brooks Harlow, on
5 behalf of Covad, which is an interested person, and
6 Broadband Communications Association of Washington,
7 party.

8 JUDGE MOSS: Okay.

9 MS. WEBER: And this is Elizabeth Weber.
10 I'm sitting in for Adam Sherr and Lisa Anderl, for
11 Qwest, as an interested party.

12 MS. SINGER NELSON: Michel Singer Nelson is
13 here on behalf of MCI, and we're an interested party,
14 as well.

15 MR. HENDRICKS: Tre Hendricks, on behalf of
16 Sprint, and we are also an interested party.

17 JUDGE MOSS: All right. Does that complete
18 our appearances? And just to be precise, I've
19 emphasized this before, but we have interested
20 persons and we have parties. We don't have
21 interested parties. So the nomenclature is slightly
22 different, but it's important that we maintain that
23 distinction.

24 All right. So with that out of the way, my
25 understanding is that while we have previously

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1 thought we would be able to proceed in this matter on
2 stipulated facts, the principal parties have been
3 unable to achieve a stipulation, and therefore we
4 need to perhaps have some additional process and
5 we'll need a schedule for that.

6 So I would like to just hear from you all.
7 Perhaps you've designated a spokesman, or I'll hear
8 from both of you with respect to what you'd like to
9 do, what we need to do.

10 MR. BUTLER: This is Art Butler, speaking
11 for LocalDial. I think at this point we need to ask
12 for a traditional hearing process, the filing of
13 testimony and having witnesses appear and have
14 cross-examination hearings.

15 Mr. Finnigan and I had discussed a tentative
16 filing schedule, actually, in the context of an
17 Oregon proceeding. We're going to have one of these
18 tomorrow in Oregon, and we may need to be talking
19 about a different schedule there, but trying to work
20 around the Triennial Review and the obligations
21 there, what we had discussed was that we would be
22 able to -- we discussed the concept of having
23 simultaneous filing of opening testimony and
24 simultaneous filing of response testimony, and we
25 would be prepared to go ahead with that by filing the

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1 opening testimony on February 27th, with the response
2 testimony on March 29th, and hearings to accommodate
3 the Commission's schedule, but obviously with the
4 idea of trying to avoid any interference with
5 Triennial Review events.

6 MR. FINNIGAN: And I concur in that
7 statement.

8 JUDGE MOSS: Okay, thank you. Does having
9 the response testimony on March 29th move us beyond
10 the Triennial Review? I've got my calendar here, but
11 --

12 MR. BUTLER: It moves us beyond the second
13 week of hearings.

14 JUDGE MOSS: Ah, good, uh-huh. And then we
15 have --

16 MR. BUTLER: It's slightly before the briefs
17 start getting --

18 JUDGE MOSS: Is that sometimes referred to
19 as a TRO?

20 MR. BUTLER: Yes, the TRO.

21 JUDGE MOSS: All right. Just to make sure
22 I'm looking at the right thing. I see the initial
23 briefs are due on April 15th, and response briefs on
24 the 30th.

25 MR. BUTLER: Yes.

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1 JUDGE MOSS: Now, being mindful of that, I
2 am frankly unfamiliar with that proceeding, except in
3 the broadest terms, and so I will put to you the
4 question of whether we need to avoid the month of
5 April, essentially, in order to not interfere with
6 your briefing?

7 MR. BUTLER: Yes, I think so.

8 JUDGE MOSS: So we're probably -- since
9 we're talking about response testimony on March 29th,
10 we're probably skipping on over into the May time
11 frame.

12 MR. BUTLER: Early May would be fine.

13 MR. FINNIGAN: We'd ask that we try and
14 schedule as early as we can in May. This --

15 MR. BUTLER: That's fine.

16 MR. FINNIGAN: I did want to accommodate
17 their schedule related to the TRO, but we are much
18 later than I had hoped.

19 JUDGE MOSS: Sure. Well --

20 MR. BUTLER: And that's fine, from our
21 perspective.

22 JUDGE MOSS: Well, just -- I've got the
23 calendar out through the next 12 months. Now, this
24 calendar, I will alert you, does not have absolutely
25 everything on it in terms of the Commissioners'

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1 schedules. And at this juncture, I am assuming,
2 which is always a bold thing to do, that they will
3 want to sit, rather than have me process a record for
4 them, but we'll -- I'll talk to them about that.

5 As far as my schedule is concerned, I could
6 accommodate you in either the first or the second
7 week of May, and it appears, from what I have before
8 me, that the Commissioners could also -- what are we
9 looking at, do you think, two days?

10 MR. BUTLER: Two days, I think. Or do you
11 think more?

12 MR. FINNIGAN: I think it would be -- we
13 could probably do it in two days.

14 JUDGE MOSS: All right. I will be prudent
15 and block three.

16 MR. FINNIGAN: Okay.

17 MR. BUTLER: Yeah, that's probably prudent.

18 JUDGE MOSS: Okay. Well --

19 MR. BUTLER: We may not use it, but --

20 JUDGE MOSS: Yeah, I'm going to target the
21 week of May 3rd, and if I can get three days in a row
22 that week, we'll go for that, particularly because
23 there's an open meeting during the week of May 10th,
24 and of course that always disrupts us by at least a
25 half a day if we're trying to do three days. So I'll

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1 try for that first week of May. And I'll have to
2 check with the Commissioner support staff and see if
3 that's doable.

4 And as far as I'm concerned, the testimony
5 dates you propose are fine. Does anybody else need
6 to be heard on that? Is that going to work for you,
7 Mr. Thompson?

8 MR. THOMPSON: I see Mr. Williamson nodding
9 back there.

10 JUDGE MOSS: He's nodding from the potential
11 witnesses back there, or support, at least. And how
12 about Mr. Cromwell? Would you be putting on a
13 witness in this case? I wouldn't -- well --

14 MR. CROMWELL: I would not anticipate that,
15 Your Honor.

16 JUDGE MOSS: Yeah. Is that schedule going
17 to work for you, then, I guess?

18 MR. CROMWELL: I have no objection to it.

19 JUDGE MOSS: Yeah, okay. Good. Anybody
20 else need to be heard on that?

21 MR. HARLOW: This is Brooks Harlow, Your
22 Honor, and the schedule looks fine. We probably will
23 not have a witness. If we did, it would probably be
24 a limited amount of response, more on policy issues
25 than on the specific facts that I think the parties

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1 are disputing, so that schedule sounds fine.

2 JUDGE MOSS: I would anticipate -- do we
3 have a sense -- the more information we can get out
4 at this juncture, the better, perhaps. Do the
5 principal parties have any sense about how many
6 witnesses we're talking about?

7 MR. BUTLER: From our standpoint, we're
8 hoping to keep it to one or two.

9 MR. FINNIGAN: And from us, it would depend
10 upon whether we would need to put a witness on from
11 each company, and that's something we'll have to work
12 out with Mr. Butler as to what we need to put
13 forward, so we'll try and keep it down as best we
14 can, but worst case, we'd have to have at least one
15 witness from each --

16 JUDGE MOSS: How many individual companies
17 are named?

18 MR. FINNIGAN: Off the top of my head, I
19 think eight.

20 JUDGE MOSS: Eight, yeah. Well, I think, if
21 we can avoid that, that would be best. I'm not --
22 just sitting here thinking through what the evidence
23 might need to be, I'm not sure we would need to have
24 them, even if it's necessary for them to file an
25 affidavit or something concerning an individual

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1 tariff or operations or something like that, it could
2 probably be handled without a live witness. So you
3 all do work on that, because I wouldn't want to have
4 to -- just putting on eight witnesses takes up a lot
5 of time.

6 MR. BUTLER: Right. And we might be able to
7 get one that can act as a spokesperson.

8 JUDGE MOSS: Spokesperson.

9 MR. FINNIGAN: Yeah, we'll try and do that.

10 JUDGE MOSS: All right. Are you in a
11 position at this juncture to give me some sense of
12 what the sticking points are in terms of facts that
13 we're going to need to be exploring, or would it be
14 premature for me to ask?

15 MR. BUTLER: I think it's probably premature
16 at this point.

17 MR. FINNIGAN: It would --

18 MR. BUTLER: We have some -- part of the
19 problem is the fact that there's been some change in
20 the form in which they do business, and we haven't
21 had an opportunity for Mr. Finnigan to explore that,
22 and we have some fundamental disagreements about how
23 things are described.

24 So rather than poison the well one way or
25 the other at this point, I think it's probably best

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1 just to leave it for the testimony.

2 JUDGE MOSS: Okay. I assume, then, there
3 will need to be some additional discovery?

4 MR. FINNIGAN: Yes, and --

5 MR. BUTLER: Yes, some discovery has been
6 ongoing, but there may be some --

7 MR. FINNIGAN: I think the suggestion Ms.
8 Rackner had made to me back in early December was
9 that it might be advantageous for me to retake one of
10 the depositions that I had taken earlier this year to
11 find out what their change in operations have been,
12 and -- but beyond that, I don't know that there's
13 going to be a lot of additional discovery. We've had
14 a fair amount of discovery in the federal court case
15 that preceded this, and then -- and LocalDial has
16 propounded some data requests that we've responded
17 to, and so I think we're -- I think we're in pretty
18 good shape, but there will be a need for some
19 additional discovery.

20 MR. BUTLER: And I think the testimony that
21 will be filed will help eliminate some of those
22 issues.

23 JUDGE MOSS: Yeah, it may indeed precipitate
24 a little further discovery, as it sometimes does in
25 that first round. So it sounds to me as if things

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1 are proceeding smoothly on that front and we don't
2 need to address anything further on that today.

3 I'll set testimony dates for direct,
4 February 27th, and response March 29th, and we'll
5 make arrangements for the hearing dates along the
6 lines we discussed. I'll put out an order in the
7 next day or two, whenever I can get all the
8 information I need with respect to hearing dates.

9 Is there anything else that I can do for you
10 today in terms of facilitating the process? I should
11 mention that, of course, you can still present
12 stipulated facts, to the extent you've been able to
13 reach some agreements, or do as you go forward, and
14 of course that may reduce the time for
15 cross-examination and so forth.

16 MR. BUTLER: I expect that would probably
17 come maybe after the first round of testimony.

18 JUDGE MOSS: Probably so.

19 MR. FINNIGAN: And by moving down this
20 track, too, at least from our perspective, we didn't
21 want to foreclose the possibility of bringing a
22 motion for summary disposition if it's within the
23 Commission's rules for either side to do that and it
24 may be appropriate or may not, but it's still a
25 possibility.

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1 JUDGE MOSS: Yeah, at any point in time that
2 a party feels that there is sufficient development
3 that they can assert in good faith that there are no
4 material facts in dispute, then it's appropriate to
5 do that. I encourage you, if you're thinking about
6 that, however, to be mindful of the schedule, because
7 that sort of thing does have a tendency to disrupt
8 procedural schedules if they come at inappropriate
9 moments, because, of course, then the Commission has
10 to take that under consideration.

11 And I just note, in that connection, that
12 the Commissioners' calendars are quite full in
13 February and March. So it's actually worked out well
14 to push it to this particular schedule. There's a
15 lot of hearings going on during that time frame, so
16 -- but, of course, again, a petition for -- I guess
17 it is a motion for summary disposition is something
18 that will require my interaction with them, and so if
19 that comes in February or March, it could take more
20 than a day or two to turn it around.

21 All right. Anything else I can do for you
22 today? Well, that was mercifully brief. Thank you
23 all very much for being here, and I appreciate the
24 participation of those of you who came by
25 teleconference bridge today and look forward to

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1 working with you all as we go forward.

2 MR. HARLOW: Thank you, Your Honor.

3 MR. CROMWELL: Thank you.

4 (Proceedings adjourned at 1:48 p.m.)

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