

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE CARRIERS
ASSOCIATION, *et al.*,

Complainants,

v.

LOCALDIAL CORPORATION, an Oregon
corporation,

Respondent.

Docket No. UT-031472

**LOCALDIAL'S MOTION TO SET
APRIL 9, 2004, AS THE DATE FOR
RESPONDING TO
COMPLAINANTS' MOTION FOR
SUMMARY DISPOSITION**

I. RELIEF REQUESTED

1. Respondent LocalDial Corporation ("LocalDial"), by and through its counsel Ater Wynne LLP, respectfully requests that the Washington Utilities and Transportation Commission (the "Commission") set April 9, 2004, as the date for filing a response to Complainants' Motion for Summary Disposition. That would allow LocalDial to file its response after responsive testimony is filed, thereby avoiding unnecessary duplication of work. It would also allow the Commission sufficient time to resolve the motion before hearings are scheduled to begin. This motion is supported by the Declaration of Arthur A. Butler, counsel for LocalDial, submitted herewith.

II. BASIS FOR MOTION AND ARGUMENT

A. LocalDial's Request to Extend the Response Time Is Reasonable and Consistent With the Schedule Adopted By the Commission

2. On February 27, 2004, LocalDial was served with Complainants' Motion for Summary Disposition. On that same date, as ordered by the Commission, the parties filed and served direct testimony. WECA filed the direct testimony of Robert Smith, Director of Regulatory and Governmental Affairs for the Tenino and Kalama Telephone Companies; Terry Martin, Senior Consultant with GVNW Consulting, Inc.; and Craig Phillips, Administrator for the Washington Exchange Carrier Association ("WECA"). This filed testimony forms the basis for the Complainants' factual claims in the complaint filed before the Commission.

3. LocalDial filed direct testimony of William Page Montgomery in support of its factual claims before the Commission.

4. The essential question raised in any Motion for Summary Disposition is whether any material facts are in dispute. Complainants' motion asserts that none are. LocalDial disagrees and believes Mr. Montgomery's prefiled direct testimony reveals there are a number of issues of material fact in dispute between the parties. However, it is premature to require a response to Complainants' motion and a full briefing on the legal issues that are raised in the case before all parties' response testimony has been filed. Indeed, a fair determination of whether there are issues of material fact in dispute cannot be made until after that response testimony has been filed.

5. According to WAC 480-07-380(2)(c), LocalDial has 20 days to respond to the Motion for Summary Disposition, unless the Commission establishes by order a different specific date for a response to be filed. Without a change in the response date, LocalDial's response would be due on Tuesday, March 18, 2004. Pursuant to the schedule adopted by the Commission

for this case, response testimony is due 11 days later, on Monday, March 29, 2004. LocalDial is now in the position where at the same time it must prepare both responsive testimony, as well as a full response to the issues and arguments raised by Complainants' in their motion. Since much of the work would be duplicative, the effect is essentially to shorten the time LocalDial has to file response testimony under the existing case schedule. This is both inefficient and unfair. Further, during this same general time period, LocalDial and its witness must prepare opening testimony to be filed in a similar complaint proceeding before the Oregon Public Utility Commission ("OPUC"). Specifically, opening testimony in that case is due April 5, 2004.

6. LocalDial requests that the Commission allow it to file its response to Complainants' motion on April 9, 2004, which is approximately two weeks after response testimony is filed. This will provide the parties sufficient time to prepare the response testimony and to evaluate all of the evidence to be offered, as well as fully brief the issues raised by Complainants' motion, without interfering with the preparation of the OPUC testimony. It would also provide the Commission ample opportunity to decide the issues and determine whether a hearing should take place. Moreover, there is no prejudice to any of the parties if the Commission extends the time a response is due.

7. In sum, extending the time of LocalDial's response to Complainants' motion until April 9, 2004, would be more efficient for the parties and more efficient for the Commission in determining whether there are disputed issues of material fact.


III. CONCLUSION

8. LocalDial respectfully requests that the Commission set April 9, 2004, as the date for responding to Complainant's Motion for Summary Disposition. The response to Complainants' motion then would be due after responsive testimony has been filed, and after

direct testimony is to be filed before the OPUC in the related litigation. This relief allows the issues raised by Complainants to be preserved, is efficient for the parties and the Commission, and leaves ample time to allow the Commission to act on Complainants' motion before hearings are scheduled to begin.

DATED this 9th day of March, 2004.

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By 

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CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of March, 2004, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 9th day of March, 2004, at Seattle, Washington.