

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE)	
CARRIER ASSOCIATION,)	DOCKET NO. UT-041244
)	
Complainant,)	
v.)	ORDER NO. 01
)	
MARATHON COMMUNICATIONS,)	
INC.)	PREHEARING CONFERENCE
)	
Respondent.)	
.....)	

1 **PROCEEDINGS:** On July 12, 2004, the Washington Exchange Carrier Association (WECA) filed a Complaint against Marathon Communications, Inc. (Marathon). Marathon filed its Answer and Counterclaim on August 2, 2004. The Commission conducted a prehearing conference on August 13, 2004, before Administrative Law Judge Dennis J. Moss.

2 **PARTY REPRESENTATIVES:** Richard A. Finnigan, attorney, Olympia, Washington, represents WECA. Henry K. Hamilton and Jeffrey M. Grieff, Grieff & Hamilton, PLLC, Seattle, Washington, represent WebTel. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).¹

3 **PETITIONS TO INTERVENE:** No one petitioned to intervene.

¹ In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding ALJ, and the Commissioners’ policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

4 **DISCOVERY; PROTECTIVE ORDER:** The Commission determines that this proceeding requires the opportunity for discovery in accordance with

5 WAC 480-07-400. The parties may commence discovery using the methods described, and subject to the requirements of, WAC 480-07-400 – 415.

6 WECA filed its Motion for Protective Order on July 28, 2004. WECA’s Motion identifies for production under a protective order a certain “Independent Contractor Agreement” between Marathon and LocalDial Corporation that has been provided to WECA subject to a protective order in proceedings before the United States District Court, Western District of Washington at Tacoma. WECA has pending in the Court a motion to remove the document from the constraints of the protective order or, in the alternative, to allow for its production in this proceeding subject to a Commission protective order.

7 Marathon objects to the entry of a protective order in this proceeding and resists production of the subject agreement for our record.

8 The Commission finds that Marathon’s objection is not well taken. The so-called Independent Contractor Agreement reflects the business arrangement between Marathon and LocalDial that is at the heart of WECA’s Complaint. It concerns the arrangements LocalDial made “to switch its customers to Marathon Communications” following LocalDial’s decision to cease doing business in Washington following the Commission’s final order requiring LocalDial to register with the Commission as a telecommunications company². The document Marathon resists producing clearly is relevant and probably is essential to the Commission’s understanding of the matter pending in this proceeding.

² WECA v. LocalDial, Order No. 08, Final Order Granting Motion for Summary Determination, Docket No. UT-031472 (June 11, 2004).

9 The Commission will enter a protective order pursuant to WAC 480-07-420 and 423 following a brief opportunity for Marathon to propose any amendments to the Commission's "standard form" of protective order, a copy of which has been furnished to all parties.

10 **PROCEDURAL SCHEDULE:** The Commission establishes the procedural schedule that is attached to this Order as Appendix 1, which is incorporated into the body of this Order by this reference. All dates are for service by electronic means. The original and required copies must be delivered to the Commission by the following business day for official filing.

11 **FILING; COPIES OF MATERIALS:** Parties must file with the Commission an original plus 14 copies of all pleadings, motions, briefs, and other prefiled materials to meet the Commission's requirements for official filing and internal distribution. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

12 All filings must be mailed to the Commission Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Executive Secretary at the Commission's records center at the street address indicated above. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.

13 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>, or by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The

Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).

14 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this prehearing conference order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 17th day of August 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

APPENDIX 1

PROCEDURAL SCHEDULE DOCKET NO. UT-041244

EVENT	DATE	INTERVAL
Complaint Filed	July 13, 2004	
Answer Filed	August 2, 2004	
Prehearing Conference	August 13, 2004	
Complainant's Prefiled Testimony Staff's Prefiled Testimony (if aligned with Complainant)	October 8, 2004	
Respondent's Prefiled Testimony Staff's Prefiled Testimony (if aligned with Respondent)	November 5, 2004	28 days
Complainant's Prefiled Rebuttal Testimony Staff's Prefiled Rebuttal Testimony (if aligned with Complainant)	December 3, 2004	28 days
Last day for filing a timely dispositive motion (WAC 480-07-380)	January 4, 2005	
Evidentiary Hearing	February 3 – 4, 2005	62 days

APPENDIX 2				
PARTIES' REPRESENTATIVES			DOCKET NO. UT-041244	
PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
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