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4 **BEFORE THE WASHINGTON UTILITIES**  
5 **AND TRANSPORTATION COMMISSION**  
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7 WASHINGTON EXCHANGE  
8 CARRIER ASSOCIATION, et al.

9 Complainants,

10 v.

11 LOCALDIAL CORPORATION, an  
12 Oregon corporation,

13 Respondent.  
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DOCKET NO. UT-031472

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

15 COMES NOW the Washington Exchange Carrier Association and its members listed as  
16 Complainants in this proceeding ("WECA"), by and through their attorney of record, Richard A.  
17 Finnigan, attorney at law, and files this Response in Opposition to LocalDial's Motion to Set April  
18 9, 2004, as the Date for Responding to Complainants Motion for Summary Disposition (LocalDial's  
19 motion is referred to herein as "Motion").  
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21 **INTRODUCTION**

22 Respondent LocalDial Corporation ("LocalDial") contends that it can avoid unnecessary  
23 duplication of effort and generate greater efficiencies if it is allowed to file its responsive testimony  
24 before filing its formal response to WECA's Motion for Summary Disposition. LocalDial also  
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26 RESPONSE IN OPPOSITION TO  
LOCALDIAL'S MOTION - 1

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1 suggests that if the Washington Utilities and Transportation Commission (“Commission”) grants the  
2 Motion, there will be sufficient time to resolve WECA’s Motion for Summary Disposition before  
3 the May 5, 2004 scheduled start of hearings in this matter.

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5 **ARGUMENT**

6 WECA filed its Motion for Summary Disposition with the Commission on February 26,  
7 2004. WAC 480-07-380(2)(b) unambiguously provides that the responding party must file “its  
8 answer and any cross-motion for summary determination within twenty days after the motion is  
9 served, unless the commission establishes by order a different specific date for a response to be  
10 filed.” In this case, that would give LocalDial a firm deadline of Thursday, March 18, 2004 to file  
11 its response to WECA’s Motion for Summary Disposition. Unless there is proper justification, the  
12 Commission should not deviate from the scheduling requirements of WAC 480-07-380(2)(b).

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15 **1. Equity Does Not Favor Granting LocalDial’s Request:**

16 LocalDial suggests that by granting its Motion, the Commission will still have ample time to  
17 rule on WECA’s Motion for Summary Disposition. In presenting its arguments, LocalDial  
18 contends that equity and fairness weigh in favor of its request. This is simply not the case. Rather,  
19 WECA will suffer needless delay and inefficiency if LocalDial’s request is granted. If the  
20 Commission allows LocalDial to delay its response to April 9, it may be difficult for the  
21 Commission to issue an order significantly in advance of the May 5 hearing date. This means that  
22 WECA and its members will expend considerable resources preparing for the hearing. The very  
23 purpose in filing a motion for summary disposition is to attempt to resolve the issues without the  
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1 expense of preparing for hearing (and, of course, the hearing itself). A good portion of this purpose  
2 may be lost by delaying the response date to April 9.

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4 **2. Efficiency Will Not Be Served by Granting LocalDial's Request:**

5 In its Motion, LocalDial contends that allowing it to file its response to WECA's Motion of  
6 Summary Disposition after the filing of response testimony will lead to greater efficiency.  
7 LocalDial appears to argue that the delay will allow it to develop the support that there are issues of  
8 material fact. However, at the same time, LocalDial argues that the content of Mr. Montgomery's  
9 pre-filed direct testimony demonstrates the existence of issues of material fact. Under this  
10 argument, no delay is needed.

11 WECA can find no justification for postponing the deadline for the filing of the response to  
12 WECA's Motion for Summary Disposition. LocalDial has already filed its initial testimony. Any  
13 reply testimony is likely to only elaborate on the points addressed in LocalDial's initial testimony.  
14 There does not appear to be an undue burden for LocalDial to put forth arguments of issues of  
15 material fact prior to filing its reply testimony. Indeed, CR 56 contemplates that the responding  
16 party will file appropriate affidavits along with its response. It does not follow then that the  
17 Commission need deviate from the current schedule in order to afford LocalDial additional time to  
18 prepare its response to WECA's Motion for Summary Disposition. For these reasons, efficiency  
19 will not be served by granting LocalDial's Motion.

1 **3. LocalDial Will Not Be Burdened by the Oregon Filing Requirements:**

2 LocalDial also argues that it needs time because it must submit initial testimony to the  
3 Oregon Public Utility Commission (“OPUC”) in a similar proceeding on April 5, 2004.<sup>1</sup> However,  
4 LocalDial has failed to demonstrate that the OPUC filing presents a genuine hardship or  
5 justification for delaying the filing of its response before this Commission. More specifically,  
6 LocalDial has 18 days from the due date for its response to WECA’s Motion for Summary  
7 Disposition to file its initial testimony before the OPUC. This should provide adequate time.

8 Moreover, the proceedings in Washington and Oregon are nearly identical. The basic issues  
9 presented to each of the respective Commissions are: Is LocalDial offering a telecommunications  
10 service; is it a telecommunications company; should it be required to register with the appropriate  
11 state Commission; and is the LocalDial service subject to tariffed access charges. Therefore, it is  
12 highly likely that the initial testimony filed with the OPUC will be very close to LocalDial’s  
13 testimony before this Commission in form and content. If anything, the factual issues in Oregon are  
14 less complex than in Washington, since no Oregon traffic flows between Seattle and Portland where  
15 in Washington there is some traffic that goes between Portland and Seattle. Therefore, based on  
16 both content and the reasonableness of the deadlines presented by both Commissions, it is difficult  
17 to see how LocalDial will be unduly burdened by having to prepare testimony for filing with the  
18 OPUC while preparing its response to WECA’s Motion for Summary Disposition.

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24 <sup>1</sup> OECA, et al. v. Local Dial, Docket No. UCB 19.

1 **CONCLUSION**

2 There is no justification for granting LocalDial’s Motion. LocalDial has failed to  
3 demonstrate any sound basis for deviating from the clearly defined time constraints of WAC 480-  
4 07-380(2)(b). Neither the efficiency nor hardship arguments present a sufficient basis for granting  
5 LocalDial’s request. Nor is it apparent that equity and fairness lie with LocalDial. WECA would  
6 likely be burdened by unnecessary costs of preparation for hearing by the delay (assuming WECA’s  
7 motion is granted). Therefore, WECA respectfully requests that the Commission deny LocalDial’s  
8 Motion.  
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11 Respectfully submitted this 12th day of March, 2004.  
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16 RICHARD A. FINNIGAN, WSBA #6443  
17 Attorney for Washington Exchange Carrier  
18 Association and its affected Members  
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