

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

WASHINGTON EXCHANGE CARRIER
ASSOCIATION, et al.,

Complainants,

v.

LOCALDIAL CORPORATION,

Respondent.

Docket No. UT-031472

REPLY TESTIMONY OF

ROBERT A. SMITH

ON BEHALF OF

WASHINGTON EXCHANGE CARRIER ASSOCIATION

March 29, 2004

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?**

2 A. My name is Robert A. Smith. I am Director of Regulatory and Governmental
3 Affairs for the Tenino and Kalama Telephone Companies.

4

5 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

6 A. The purpose of this testimony is to rebut some of the many misstatements and
7 mischaracterizations contained in the Testimony of Mr. William Page
8 Montgomery.

9

10 **Q. WHAT DO YOU MEAN BY MISCHARACTERIZATIONS?**

11 A. Let me give you an example. At page 4 of his Testimony, lines 14-16, Mr.
12 Montgomery states: “However, the FCC has never ruled that a service with the
13 characteristics of LocalDial’s service is not an information service.” Apparently,
14 Mr. Montgomery would like the reader to draw the inference that LocalDial’s
15 service is an information service. However, the FCC has never ruled that a
16 service with the characteristics of LocalDial’s service is an information service.
17 In fact, every indication is that the FCC is about ready to rule that AT&T’s phone-
18 to-phone IP service is subject to access charges. I will note that AT&T’s IP
19 service uses the Internet far more extensively for the provision of its service than
20 LocalDial does.

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**LOCALDIAL’S SERVICE FUNCTIONS AS
A LONG DISTANCE SERVICE**

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Q. MR. MONTGOMERY DESCRIBES WECA’S CONCERNS AS FOCUSING ON THE ROUTING OF CALLS. DO YOU AGREE?

A. No. This is another example of Mr. Montgomery’s misstatement or mischaracterization of the issues. When Mr. Montgomery describes one of the major concerns of WECA in this case as routing of traffic, he is mischaracterizing WECA’s position.¹ WECA’s primary concern is not routing. The descriptions of how LocalDial routes its calls are simply to provide an understanding of how LocalDial is providing its service.

Instead, WECA is focusing on the function of LocalDial’s service, not its routing. WECA’s contention is that LocalDial is holding itself out to the public as providing a long distance service and is, in fact, providing a long distance service through the means of a two-call system. If one looks at LocalDial’s own web site, the web site states that LocalDial is providing a long distance service. The excerpts from LocalDial’s web site are attached as Exhibit ____ (RAS-6) to my opening testimony. Clearly, LocalDial is holding itself out to the public for hire as a long distance carrier. The idea that LocalDial uses other carriers’ facilities to provide that service is no different than what many long distance providers do.

¹ Montgomery Testimony at p. 4, l. 1-4, p. 5, l. 20 and p. 21, l. 5, et seq.

1 In fact, as LocalDial itself admits, many times it is simply reselling a long distance
2 service by handing the service off to another interexchange carrier for call
3 termination.

4
5 WECA is focusing on what is being provided. That is, the essential function of
6 LocalDial's service. The routing simply explains the how.

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8 **Q. AT PAGE 5, LINES 4 AND 5, MR. MONTGOMERY ASSERTS THAT**
9 **LOCALDIAL IS NOT A CARRIER. DO YOU AGREE?**

10 A. No. Mr. Montgomery apparently argues that because LocalDial purchases
11 services from other carriers, LocalDial itself is not a carrier. That assertion is
12 incorrect. All long distance resellers provide a service that "rides" on other
13 providers' telecommunications services. A reseller purchases telecommunications
14 services from another entity and packages those services for sale to the public.
15 This is all that LocalDial has done.

16
17 **Q. DOES THE ISSUE OF ANOTHER CARRIER'S PRI SERVICE MAKE A**
18 **DIFFERENCE?**

19 A. No. As I said, this sort of arrangement is merely the arrangement of facilities to
20 make the service LocalDial is offering to the public more widely available.

21
22 For example, it may be the case that a reseller might receive a price break if it
23 meets a long distance carrier in the Westin Building in Seattle instead of at the

1 exchange boundaries where it wants to offer service. In that case, the reseller
2 would purchase some sort of direct trunk service, just as LocalDial purchases PRI
3 service, to get to the Westin Building, and then hand the traffic off to an IXC in a
4 “meet-me” room.

5

6 **LOCALDIAL’S SERVICE IS SUBJECT**
7 **TO ACCESS CHARGES**

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9 **Q. DO YOU AGREE WITH MR. MONTGOMERY’S ASSERTION AT PAGE**
10 **6 THAT LOCALDIAL IS AT THE PRESENT TIME NOT A CUSTOMER**
11 **OF WECA’S MEMBERS ACCESS TARIFFS?**

12 A. I do, but that characterization misstates the issue. LocalDial is not a customer of
13 WECA’s members under their access tariffs because LocalDial has found a way to
14 bypass access services using a combination of EAS routes and a two-call scheme.
15 The point is not whether LocalDial is a customer, the point is whether LocalDial
16 should be a customer. Under this Commission’s prior orders, LocalDial should be
17 a customer and should be ordering services out of the access tariff.

18

19 The Commission has previously ruled that an EAS bridging scheme and the two-
20 call scheme used to bypass access charges is improper. See, In the Matter of
21 Determining the Proper Classification of U.S. MetroLink Corp., Docket No. U-
22 88-2370-J, Second Supplemental Order (May 1, 1989). MetroLink was no more a
23 customer of WECA members than LocalDial. Mr. Montgomery misstates the
24 issue and then argues to the conclusion he favors. The fact that LocalDial has

1 chosen to try to avoid access charges by the way it configures its service is not an
2 excuse for its behavior. Mr. Montgomery misstates the issue.

3
4 Mr. Montgomery uses the same argument beginning at page 27, line 13 and
5 carrying over to page 28. In fact, Mr. Montgomery asserts at page 28, lines 7-8
6 that if WECA’s access tariffs apply to LocalDial, “the company would in effect be
7 paying for services that it never received nor had any need for.” Again, the only
8 reason for this situation is due to LocalDial’s own behavior. LocalDial has
9 improperly bypassed the access services it should have purchased. Mr.
10 Montgomery’s argument is a misstatement of the issues before the Commission.

11
12 **LOCALDIAL’S SERVICE IS NOT**
13 **AN INFORMATION SERVICE**

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15 **Q. MR. MONTGOMERY ASSERTS THROUGHOUT HIS TESTIMONY**
16 **THAT LOCALDIAL IS AN INFORMATION SERVICE PROVIDER. DO**
17 **YOU AGREE?**

18 A. No.

19
20 **Q. PLEASE EXPLAIN.**

21 A. Certainly. Before proceeding, however, I do note that even Mr. Montgomery
22 appears a little uneasy about this assertion. At page 6, lines 16-18, he states “In
23 fact, voice signals (or any audio or video signal) transmitted by packet switching

1 might be unintelligible without the information service functions LocalDial’s
2 equipment uses.”

3

4 The reason the voice signals “might be” unintelligible is if LocalDial’s equipment
5 causes the problem. The call starts as a voice, circuit switched call and ends as a
6 voice call. The only thing that could make it unintelligible is if LocalDial’s own
7 equipment caused the malfunction.

8

9 I note that Mr. Montgomery’s statement is predicated on the use of packet
10 switching. However, the call originates as a circuit switched call. It does not
11 appear that LocalDial does any packet switching itself, unless Mr. Montgomery is
12 arguing that LocalDial’s own equipment connects a circuit switched call to a
13 packet switched call. However, since LocalDial admits every call is a TDM call
14 for call termination, that does not appear to be the case.

15

16 In any event, a LocalDial call begins with the customer taking the telephone line
17 off hook and dialing numbers associated with the North American Numbering
18 Plan (in this case to reach LocalDial) which is switched by the local exchange
19 company and carried as a voice call to the Westin Building. At that point, a
20 second number associated with the North American Numbering Plan is dialed and
21 LocalDial’s equipment routes the call to either a dedicated facility headed towards
22 the destination or to another interexchange carrier which carries the call under an

1 arrangement between LocalDial and that interexchange carrier. LocalDial's
2 equipment serves a function no different than the function of a tandem.

3

4 **Q. DO YOU AGREE WITH MR. MONTGOMERY'S CHARACTERIZATION**
5 **OF WHAT HE CALLS THE STEVENS REPORT?**

6 A. Yes and no. At page 15 of his testimony, beginning at line 22, Mr. Montgomery
7 agrees that the FCC described four conditions associated with phone-to-phone IP
8 telephony and admitted at least some of those applied to LocalDial. He argues
9 that under those standards there might be a future requirement for assessment of
10 universal service contributions. Mr. Montgomery does not set out the four
11 conditions and he downplays their possible effect.

12

13 I will agree that the FCC has not made a definitive ruling on this issue. As I said,
14 all signs point to a conclusion that phone-to-phone IP telephony will be subject to
15 most, if not all, telecommunications regulations and requirements, including
16 access charges.

17

18 In any event, the FCC stated as follows in the Stevens Report: "In using the term
19 "phone-to-phone" IP telephony, we [the FCC] tentatively intend to refer to
20 services in which the provider meets the following conditions: (1) it holds itself
21 out as providing voice telephony or facsimile transmission service; (2) it does not
22 require the customer to use CPE different from that CPE necessary to place an
23 ordinary touch-tone call (or facsimile transmission) over the public switched

1 telephone network; (3) it allows the customer to call telephone numbers assigned
2 in accordance with the North American Numbering Plan, and associated
3 international agreements; and (4) it transmits customer information without net
4 change in form or content.” Stevens Report at ¶88.

5

6 LocalDial’s service meets all four of these factors. Clearly, LocalDial holds itself
7 out as providing voice telephony. LocalDial’s service uses regular customer
8 premise equipment. LocalDial’s service not only uses numbers in the North
9 American Numbering Plan for routing of calls it relies on such numbers to
10 operate. Finally, the call starts as a voice call and ends as a voice call: there is no
11 net change in form or content to the end user. Despite Mr. Montgomery’s
12 extensive efforts to try to demonstrate to the contrary, the simple fact is that the
13 call starts as voice and ends as voice. There is no net change in form or content to
14 the end user. The FCC stated in the Stevens Report that “...our discussion of the
15 regulatory status of phone-to-phone IP telephony is not affected by a resolution of
16 the protocol processing issue. The protocol processing that takes place incident to
17 a phone-to-phone IP telephony does not affect the services classification, under
18 the Commission’s current approach, because it results in no net protocol
19 conversion to the end user.” Stevens Report at ¶52. Nothing could be more clear.
20 LocalDial’s service is not an information service.

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**WECA MEMBER COMPANY ACCESS
RATES ARE NOT THE ISSUE**

1 **Q. WHAT IS YOUR OPINION OF MR. MONTGOMERY’S ARGUMENTS**
2 **CONCERNING THE LEVEL OF THE LOSSES SUFFERED BY WECA’S**
3 **MEMBERS AND THE EFFECT OF THE APPLICATION OF ACCESS**
4 **CHARGES TO LOCALDIAL?**

5 A. First, I do not think the testimony concerning the amount of loss is relevant for
6 this proceeding. I recognize that WECA has filed a motion to strike that portion
7 of Mr. Montgomery’s testimony and if granted, then these comments on the level
8 of losses should likewise be stricken. However, I find it interesting that Mr.
9 Montgomery appears to be arguing that if somehow WECA’s members’ losses
10 were within a range, which is not defined, of some level of acceptability, then
11 LocalDial should not be made to pay access charges. I guess this is the equivalent
12 of arguing it is ok to injure someone as long as you do not kill them. Clearly, this
13 is not an acceptable argument.

14
15 Mr. Montgomery also argues that if access charges had applied, LocalDial would
16 not have gone into business and therefore WECA’s members would not have
17 suffered the losses they suffered. The conclusion Mr. Montgomery would like the
18 reader to draw from that testimony is that it is then acceptable that LocalDial is
19 not paying access charges. However, that argument is completely circular. The
20 fact is that if LocalDial had not been in business, WECA’s members would not
21 have suffered the loss caused by LocalDial and they would have received more
22 revenue in access charges from the traditional IXC carriers than they did.

23

1 **Q. WHAT IS YOUR OPINION OF MR. MONTGOMERY'S STIMULATION**
2 **EFFECT ARGUMENTS BEGINNING AT PAGE 46?**

3 A. Again, it is circular in nature. To argue that the effect on WECA's members is ok
4 because without LocalDial, the number of minutes would have been much smaller
5 still misses the fact that WECA's members have suffered a real loss.

6

7 You need to remember that these calculations are based on LocalDial's own
8 minutes as reported by LocalDial. If you look at what they have reported, see
9 attached Exhibit ____ (RAS-8C), you can see that their growth in minutes is
10 tremendous. What Mr. Montgomery is arguing is that WECA's members should
11 continue to subsidize LocalDial's business at an amount approaching
12 \$1,000,000.00 a year, and growing.

13

14 **Q. DO YOU AGREE WITH MR. MONTGOMERY'S CONCLUSION THAT**
15 **THE EFFECT ON WECA'S MEMBERS IS MINIMAL?**

16 A. No. This is very real money at issue. In addition, what LocalDial is essentially
17 arguing is that it wants to have an unfair competitive advantage over
18 interexchange carriers that pay access charges. That is not appropriate and is not
19 good public policy.

20

21 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

22 A. Yes.

23

