

Exhibit T-__ (TWZ-RT1)
Docket No. UT-031472
Witness: Timothy W. Zawislak

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE
CARRIER ASSOCIATION, et. al.,

Petitioners,

v.

LOCALDIAL CORPORATION, an
Oregon Corporation,

Respondents.

DOCKET NO. UT-031472

RESPONSE TESTIMONY OF

Timothy W. Zawislak

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

March 29, 2004

1 **Q. Please state your name and business address.**

2 A. My name is Timothy W. Zawislak, and my business address is 1300 South
3 Evergreen Park Drive Southwest, P.O. Box 47250, Olympia, Washington 98504.
4 My business e-mail address is tim@wutc.wa.gov.

5
6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Washington Utilities and Transportation Commission
8 (Commission) as a Senior Telecommunications Regulatory Analyst. My
9 participation in this case is on behalf of Commission Staff.

10
11 **Q. What are your education and experience qualifications?**

12 A. In December of 1989, I earned a Bachelor of Arts Degree in Accounting from
13 Saint Martin's College. In January of 1990 I began my career with the
14 Commission which has included the provision of expert witness testimony on
15 telecommunications issues such as Access Charges, Universal Service, Extended
16 Area Service, the 1995 U S WEST General Rate Case, and Payphone Deregulation
17 pursuant to the Telecommunications Act of 1996.

18

1 **Q. Did you file direct testimony earlier in this case?**

2 A. No, I did not. Mr. Williamson sponsored Staff's only direct testimony
3 in this case.

4
5 **Q. What is the scope of your testimony at this time?**

6 A. At this time I am providing response to assertions made in the direct testimony
7 by LocalDial's witness Mr. William Page Montgomery. Mr. Montgomery makes
8 a number of statements about different forms of intercarrier compensation,
9 including: (1) that all of LocalDial's offerings are already subject to one or more
10 forms of intercarrier compensation, and (2) that different types of traffic are
11 subject to several forms of pricing by local exchange companies (LECs) that
12 depend on the type of service and not the "routing." Staff's concern is that
13 without some additional context, these assertions could confuse the record. My
14 response testimony therefore includes, for context, an overview of intercarrier
15 compensation between and among telecommunications companies in the state of
16 Washington, including intrastate access charges applicable to traditional long
17 distance service providers (interexchange carriers or IXCs). In response to Mr.
18 Montgomery's assertion, at pages 5 and 6 of his direct testimony, that LocalDial
19 cannot or should not pay access charges to WECA's members because it is not a

1 “customer” of WECA’s members, I explain how access charges should be applied
2 to LocalDial if the Commission classifies its service as long distance
3 “telecommunications.”

4
5 **Q. For context, what is intercarrier compensation?**

6 A. Intercarrier compensation is the term typically used to refer to the mechanisms
7 through which telecommunications companies (or carriers) compensate each
8 other for the use of each others’ networks. The telecommunications industry is
9 extremely interdependent and the need for interconnection is essential to the
10 ability to provide a useful service to customers. For customers on one carrier’s
11 network to reach customers on another carrier’s network interconnection is
12 required; and because most networks are owned by private businesses, they
13 expect compensation for the other carriers’ use of their facilities. For example,
14 long distance companies have traditionally paid local exchange companies (or
15 LECs—in this case the complainants) per minute access charges (or exchange
16 access) for originating and terminating toll calls that are carried over the long
17 distance companies’ networks, since the divestiture of the Bell System in 1984.

1 **Q. Besides access charges, is there any other form of intercarrier compensation**
2 **that applies to telecommunications companies in the state of Washington?**

3 A. Yes. Another form of intercarrier compensation is the “reciprocal compensation”
4 that applies between LECs. Local¹ interconnection² agreements³ govern
5 reciprocal compensation for the transport and termination of local traffic
6 exchanged between LECs.

7
8 **Q. What governs the application of access charges?**

9 A. Intrastate access charge tariffs,⁴ price lists, and/or contracts typically govern
10 origination, transport, and termination of *intrastate*, inter-local-calling-area (or

¹ What constitutes a “local,” as opposed to a “long distance” call is defined in each local exchange telecommunications company’s tariff through the provision of local calling areas or “rate centers” within which customers are permitted to place calls without incurring “toll” charges. Toll calls are also the calls to which access charges apply. Interexchange carriers such as AT&T, MCI, and Sprint pay the access charges to the local exchange carrier, such as the complainants, who originate and terminate the calls on their local transport, switching, and loop facilities. However, the FCC has defined the term “local” for purposes of CMRS (“commercial mobile radio services” or cellular) providers in 47 CFR 51.701(b)(2) as the major trading area (MTA). MTAs are generally the size of a state--much larger than the ILEC’s local calling areas. The consequence is that wireless carriers pay access charges to ILECs for PSTN-to-wireless or wireless-to-PSTN calls only when the call crosses an MTA boundary.

² 47 U.S.C. 251(b)(5) and 252 govern these agreements. 47 U.S.C. 251(g) maintains the pre-Telecom-Act-of-1996 categories and enforcement of exchange access and interconnection requirements, until the FCC explicitly designs a new system (which it is currently underway within its “Unified Intercarrier Compensation” rulemaking [NPRM issued in FCC 01-132]).

³ Agreements may include explicit interconnection agreements on file with the Commission as well as implicit non-filed arrangements (such as bill and keep) that the rural incumbent complainants are accustomed to with the non-rural RBOCs such as Qwest (explained in WECA’s response to Staff DR #7).

⁴ The Commission authorized the complainant LECs in Cause No. U-85-23, et al., to file tariffs establishing the intrastate access charge compensation mechanism for interexchange (or inter-local-calling-area) traffic. In fact, the 18th supplemental order in U-85-23, et al., states at page 21, Finding of

1 basic traditional “long distance” telecommunications) traffic. In the case of the
2 complainants, it is their intrastate access charge tariffs and industry practice that
3 govern the applicability of intrastate access charges on their own networks.⁵
4 Interstate access charge tariffs, rules, and/or contracts typically govern
5 origination, transport, and termination of *interstate*, long distance traffic. These
6 interstate access charges are subject to the regulation of the FCC and are
7 generally not subject to state regulation.

8
9 **Q. Why is it that the voice-mail service providers, the providers of the services**
10 **used by credit card slide machines, and Internet service providers do not have**
11 **to pay access charges for their use of the local exchange company facilities?**

12 A. “Enhanced” or “information” service providers like those Mr. Montgomery
13 mentions in his testimony are allowed by the FCC⁶ to purchase local exchange

Fact 11, “To be applied on a nondiscriminatory basis, access charges must be applied to all interexchange carriers uniformly (emphasis added).”

⁵ For example CenturyTel Tariff WN U-4, Sheet Second Revised Sheet No. 7, governs the application of its intrastate access charges (see Exhibit ____ (TWZ-2)). Standard industry practice, as evidenced by CenturyTel’s interconnection agreement with Level 3 Communications in Docket UT-023043 (see Exhibit ____ (TWZ-3), Article IV, Section 4.3.3 for the relevant excerpt), is to require separate trunk groups for long distance traffic.

⁶ “Although the [Federal Communications] Commission has recognized that enhanced service providers (ESPs), including [internet service providers], use interstate access services, since 1983 it has exempted ESPs from the payment of certain interstate access charges. Pursuant to this exemption, ESPs are treated as end users for purposes of assessing access charges, and the Commission permits ESPs to purchase their links to the public switched telephone network (PSTN) through intrastate business tariffs rather than through interstate access tariffs. Thus, ESPs generally pay local business exchange rates and interstate subscriber line charges for their switched access connections to local exchange company central

1 business circuits in order to originate and terminate traffic on the local exchange
2 company's facilities. This enables the information service providers to avoid (or
3 bypass) the per minute interstate access charges that would normally be applied
4 to this traffic.⁷ This access charge exemption, granted by the FCC, in theory
5 applies to all *interstate information services*, but not to telecommunications
6 services.

7
8 **Q. Aside from compensating the LEC for the use of its network by long distance**
9 **companies, do access charges serve any other purpose?**

10 A. Yes. This Commission has authorized local exchange companies to recover costs
11 for support of universal access to basic telecommunications service through
12 additional, explicit universal service rate elements applied to terminating access
13 service. *WAC 480-120-540(3)*. Ever since the divestiture of the Bell System and
14 the advent of traditional long distance (or toll) service competition, access
15 charges have been used as a way to make sure that local rates in Washington

offices." Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, paragraph 5 (February 26, 1999). "[Enhanced Service Providers] subscribe to LEC facilities in order to receive local calls from customers who want to access the ISP's data, which may or may not be stored in computers outside the state in which the call was placed. An IXC, in contrast, uses the LEC facilities as an element in an end-to-end long-distance call that the IXC sells as its product to its own customers." *Southwestern Bell Telephone Co. v. F.C.C.*, 153 F.3d 523, 542 fn. 9 (1998).

⁷ The FCC has held that the provision of Internet access is "largely interstate" and therefore within the FCC's jurisdiction. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-98 (rel. Feb. 26, 1999).

1 remain affordable and that rates in rural Washington remain comparable to those
2 in urban Washington despite higher per-customer costs in those areas.⁸

3
4 **Q. Does LocalDial's service fit within either of these intercarrier compensation**
5 **mechanisms (reciprocal compensation or access charges)?**

6 A. Yes, based on Mr. Williamson's analysis that LocalDial's service is functionally
7 the same as traditional long distance service, access charges should apply. This
8 is not only true because LocalDial's service functions the same as traditional long
9 distance service, but also because the traffic is interexchange (inter-local-calling-
10 area traffic) that uses the complainants' local end-office switching function at
11 either end of each call. The complainants' intrastate access charge tariffs have
12 established rates that apply to the use of this function for calls of this nature.⁹

⁸ The Commission, in Cause U-85-23, et al., established access charges and the traditional universal service fund (or USF) through a series of adjudicative orders, which recognized the importance of maintaining and protecting universal service in the State of Washington. In Docket UT-970325 the Commission updated and memorialized this policy in a rule by adopting WAC 480-120-540 (specifically subsection (3), in order to make this amount explicit and to accommodate the new competition unleashed by the Telecommunications Act of 1996 (while still continuing to protect universal service to the extent authorized). Indeed the access charge mechanism, although not perfect, has enabled universal service to be realized (and flourish) in the State of Washington for the last 20 years. The Commission's November 1998 Report to the Legislature, which was derived from information gathered in Docket UT-980311, outlines much of the basis for this statement. Additionally, as WECA's witnesses Mr. Smith and Mr. Phillips recognize, *see* Exhibit ____ (RAS-2); Docket UT-971140 also updated portions of Cause U-85-23, et al.

⁹ 47 CFR 69.5 (b) states that, "Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services." Just as LocalDial's customers make domestic interstate long distance calls they also make *intrastate* long distance calls. This Commission has generally followed this federal model

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Q. Why does Mr. Montgomery state at page 4 of his direct testimony that, “LocalDial is not a carrier itself” and therefore assume that LocalDial is eligible for end-user type local services (and/or local interconnection) rather than access charges?

A. Because Mr. Montgomery’s basic premise is that LocalDial’s service is like that of an information service provider eligible for the FCC’s access charge exemption. However, Mr. Williamson debunks that position and explains that LocalDial’s service is really a telecommunications service. Because it is a telecommunications service the application of access charges will naturally follow.¹⁰ The FCC has ruled that information services and telecommunications services are mutually exclusive.¹¹ Therefore, LocalDial’s misclassification of itself as an information service provider needs to be corrected so that intercarrier compensation flows and the complainants’ networks are supported, in the way the Commission intended.

and authorized local exchange companies to assess carrier’s carrier charges on all interexchange carriers that use local switching facilities for the provision of intrastate, interexchange telecommunications services.

¹⁰ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, at paragraph 362.

¹¹ In Matter of Federal-State Joint Board on Universal Service cc Docket No. 9645, 13 FCC RD 11501, release Number 98-67 released April 10, 1998, at footnote # 79.

1 **Q. What intrastate access charges should apply to LocalDial's intrastate traffic?**

2 A. Mr. Montgomery states at page 6 of his direct testimony that requiring LocalDial
3 to pay access fees "could lead to the unprecedented situation of a telephone
4 company trying to charge an entity that is not even its customer." What the
5 Commission should understand is that LocalDial has so far avoided becoming a
6 "customer" of the WECA companies only because it found a way to originate
7 and terminate its interexchange traffic over LEC facilities that are dedicated to
8 use by local traffic. It should have come to the various LECs and arranged for
9 the purchase of switched access services. It is Staff's opinion that at least the
10 complainants' intrastate local end office switching, carrier common line, interim
11 terminating universal service, line extension surcharge, and traditional universal
12 service access charges (as they currently exist) should be applied to LocalDial's
13 traffic which originates and/or terminates on the complainants' networks, based
14 on the absolute (number of minutes) and relative (jurisdictional) nature of the
15 usage.¹²

¹² That is, inter-local-calling-area calls made within the state should be assessed intrastate access charges and calls made between states should be assessed interstate access charges.

1 As an IXC, LocalDial should be responsible for the access services it uses
2 in providing its retail long distance service.¹³ LocalDial also should be
3 responsible for reconfiguring its own network in order to comply with the
4 complainants' tariffs and currently effective industry practices (e.g. routing
5 traffic only over the proper jurisdictional trunk groups—local traffic over local
6 interconnection trunks and interexchange traffic over switched access service
7 trunks). *See* Exhibit _____ (TWZ-3)(interconnection agreement between
8 competitive local exchange carrier Level 3 and incumbent local exchange carrier
9 CenturyTel describing trunking requirements for local and ISP-bound traffic
10 versus interexchange traffic). Routing long distance traffic over switched access
11 trunks enables the complainant (as well as other ILECs like Qwest and Verizon)
12 to be able to measure and bill for the appropriate access charges. LocalDial's use
13 of local trunks (or, in this case, its CLEC-Partners' local trunks) effectively
14 precluded the complainants from being able to perform these functions.
15

¹³ Indeed, LocalDial already does pay terminating access charges indirectly on some calls through the use of its reseller partners. The direct use of the complainants' services for the remainder of its traffic supports the direct assessment of access charges.

1 **Q. At page 6 of his direct testimony, Mr. Montgomery discusses the “retroactive”**
2 **application of access charges. Does Staff believe that is an issue in this case?**

3 A. No, Staff does not believe that LocalDial’s possible liability for past access
4 charges is an issue that is before the Commission. Rather, the court appears to
5 have retained jurisdiction over that question.

6
7 **Q. Does Staff believe that the quantity of damages or liability for past access**
8 **charge payments is an issue in this case?**

9 A. No, Staff does not believe that the amount of any possible liability for past access
10 charge payments or damages that may be due to the complainants is an issue in
11 this case, either. The court appears to have retained jurisdiction over that
12 question, as well.

13
14 **Q. Should the Commission apply a materiality test in this case as Mr.**
15 **Montgomery seems to suggest at page 8 and elsewhere in his direct testimony?**

16 A. No, although LocalDial may be a relatively small provider (according to Mr.
17 Montgomery), the principle regarding the use of the complainants’ facilities is a
18 relatively large one given the fact that universal service in Washington is
19 predicated on it and that other IXCs have been supporting (and continue to

1 support) universal service through access charges for the last 20 plus years. Just
2 because universal service needs reform in Washington, does not mean that it
3 should be avoided in the meantime. The parties, and other carriers, should work
4 together to arrive at a mutually acceptable new program to replace the current
5 intrastate access charge mechanism. Until then, the complainants' intrastate
6 terminating access tariffs remain in place.

7

8 **Q. Does this conclude your testimony?**

9 **A.** At this time, yes it does. Thank you.