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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE CARRIER
ASSOCIATION, et al.,

Complainant,

v.

LOCALDIAL CORPORATION, an Oregon
Corporation,

Respondent.

Docket No. UT-031472

ANSWER OF BROADBAND
COMMUNICATIONS ASSOCIATION
OF WASHINGTON TO WECA MOTION
FOR SUMMARY DETERMINATION

10 Intervenor Broadband Communications Association of Washington (“BCAW”)
11 takes no position on the motion of WECA for summary determination, except to the extent it
12 seeks to broaden the issues in this docket. Thus, BCAW would oppose a grant of the motion to
13 the extent the ruling were any broader than necessary to a determination of the issues in the Stay
14 Order and Order of Referral to WUTC issued by the District Court in WECA v. LocalDial, Case
15 No. C03-5012 (U.S. District Court, W.D. Washington, September 4, 2003) (the “Stay Order and
16 Order of Referral”), as incorporated in Order No. 1 in this docket.

17 The court’s directive to the Commission was to consider the “core questions” of
18 whether

19 the plaintiffs’ tariffs apply to the IP phone intrastate telephone calls made by
20 LocalDial’s customers using the plaintiffs’ facilities? And, if they do so apply, to
21 what extent, if any, should the WUTC regulate the relatively new VoIP
22 technology?

23 Stay Order and Order of Referral at 4. In Order No. 1, the Commission cast the issues as
24 follows:

- 25 1. Is LocalDial’s service that is challenged by WECA telecommunications
26 service offered to the public in Washington for compensation within the
 meaning of chapter 80 RCW?
- 2. Is LocalDial’s service that is challenged by WECA a form of intrastate
 long distance telecommunications service that subjects LocalDial to the

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1 obligation to pay access charges payable to originating and terminating
2 local exchange carriers under those carriers' tariffs?

3 Id., ¶ 15. Further, the Commission cautioned, "We will consider in this proceeding *only the*
4 *service placed at issue by WECA's complaint*, regardless of whether LocalDial offers other
5 services that may or may not be subject to our jurisdiction." Id., ¶ 14 (emphasis added). Thus, at
6 the urging of many of the parties, the Commission intentionally focussed this proceeding very
7 narrowly.

8 Based on WECA's motion it appears that as of the time WECA filed its complaint
9 *and* at the time the court entered its order of referral to the Commission, LocalDial was offering
10 a service that *did not transit the public Internet*.¹ It appears that all calls that were the subject of
11 WECA's complaint at the time the case was referred to the Commission were converted to
12 "internet protocol" or "IP," but were transported in IP only for a short distance, over dedicated
13 facilities in the Westin building in Seattle. *See* WECA Motion, ¶ 11. Thus, the Commission
14 should take care to distinguish between **VoIP**, which is at issue in this case, and **VoInternet**,
15 which is not. VoIP is merely a voice service that at some point uses a particular protocol called
16 "IP" but that need not have any connection at all to the "Internet."

17 The Commission expressly stated it would *not* expand this proceeding to address
18 any service other than the "service placed at issue by WECA's complaint." WECA's complaint
19 placed at issue a service that originates calls on PSTN-based PRI circuits, converts the calls to
20 and from IP in the Westin Building, and terminates the calls on the PSTN via leased PRIs or an
21 IXC. *See* WECA motion, ¶ 11. Accordingly, despite discussion in WECA's motion of recent
22 changes that apparently route some unknown fraction of LocalDial's calls via the Internet,² the
23 Commission should not enter an order that addresses such calls, either on WECA's motion or at
24 the conclusion of this docket.

25 ¹ *See* WECA Motion, ¶ 11. WECA notes that "in October of 2003" LocalDial began to transport
26 certain of its calls between the southwestern part of the state and the rest of the state over the
public Internet. The Stay and Order of Referral was entered on September 4, 2003.

² WECA Motion, ¶ 53, *et seq.*

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1 It is not necessary to address calls that transit the public Internet, since the issue
2 referred by the court related only to “VoIP technology” as used by LocalDial to carry the calls
3 for which WECA’s complaint sought compensation. *See* Stay and Order of Referral. All of
4 those calls were merely VoIP, not VoInternet. The court could not have referred the issue of
5 access charges for VoInternet calls to the Commission because no such calls had been provided
6 by LocalDial up to the time of referral.

7 Even today a relatively small portion of LocalDial’s purportedly “intrastate” calls
8 traverse the Internet.³ Moreover, the issues regarding LocalDial’s service as it existed at the time
9 of referral by the court are relatively well-developed. In contrast the issues regarding VoInternet
10 are almost an afterthought and poorly developed. WECA discusses the VoInternet calls only
11 very briefly at the end of its motion.⁴ Thus, if the Commission expands the issues unnecessarily
12 to VoInternet calls it risks adverse and unintended consequences. It could invite or strengthen
13 efforts at preemption, appeals, and late interventions. An overly broad order is at greater risk of
14 being at odds with future FCC and federal court rulings.

15 Finally, if the Commission issues an order that addresses a type of service other
16 than what the court referred, such as voice over the Internet, it could have chilling effects on
17 competitive entry and development of new technology, particularly if the Commission signals a
18 heavy-handed regulatory approach. As BCAW noted in its intervention, the order in this case
19 can “impact the decisions of BCAW’s members on whether and when to begin offering VoIP
20 services.” BCAW’s members have the potential to offer something that is currently in very short
21 supply in Washington: facilities-based residential voice telephony service in competition with
22 ILECs. The Commission should avoid creating even the impression of a regulatory disincentive
23 to the investment in and development of such a promising new source of competitive entry.

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26 ³ BCAW does not concede that such calls are in the intrastate jurisdiction.

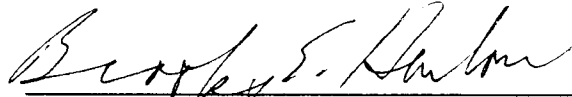
⁴ WECA Motion, ¶ 53, *et seq.*

1 CONCLUSION

2 If the Commission does not deny WECA's motion, its order should only address
3 the service that was at issue between WECA and LocalDial at the time the federal court referred
4 this case to the Commission. Specifically, the Commission should only rule on a service that is
5 converted to IP on a LAN and does not transit the public Internet. Likewise, consistent with its
6 Order No. 1, the Commission should not speculate or hint how it might rule on any other type of
7 service not provided by LocalDial at the time of the court's referral.

8 DATED this 9th day of April 2004.

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CERTIFICATE OF SERVICE
Docket No. UT-031472

I hereby certify that a true and correct copy of the foregoing was sent by electronic mail and United States first-class mail in sealed envelopes, postage fully prepaid to the following parties:

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DATED at Seattle, Washington, this 7th day of April, 2004.



Carol Munneflyn, Secretary