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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 COMPUTER 5\*, INC., d/b/a )  
4 LOCALTEL COMMUNICATIONS, )  
5 Complainant, )

6 vs. ) DOCKET NO. UT-040018

7 ) Volume I  
8 AT&T COMMUNICATIONS OF THE ) Pages 1 - 11

9 PACIFIC NORTHWEST, INC., )  
10 Respondent. )

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13 A prehearing conference in the above matter  
14 was held on March 5, 2004, at 9:32 a.m., at 1300 South  
15 Evergreen Park Drive Southwest, Olympia, Washington,  
16 before Administrative Law Judge THEODORA MACE.

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The parties were present as follows:

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20 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,  
21 by LETTY FRIESEN, Senior Counsel (via bridge line),  
22 1875 Lawrence Street, Suite 1500, Denver, Colorado,  
23 80202; telephone (303) 298-6475.

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25 LOCALTEL COMMUNICATIONS, by MARK NYHUS,  
Attorney at Law, 2405 Evergreen Park Drive Southwest,  
Suite B-1, Olympia, Washington 98502; telephone (360)  
956-7211.

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30 Kathryn T. Wilson, CCR  
31 Court Reporter

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1 PROCEEDINGS

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3 JUDGE MACE: Let's be on the record in the  
4 complaint of Computer 5, Inc., d/b/a, Localtel  
5 Communications -- have I recited that correctly, or do  
6 you style yourself, Computer 5 Star, Inc?

7 MR. NYHUS: They go by Localtel.

8 JUDGE MACE: -- against AT&T Communications  
9 of the Pacific Northwest. This is Docket No.  
10 UT-040018. The Complaint alleges that AT&T is refusing  
11 to pay the Complainant's tariffed rates for carrier  
12 access services.

13 We are convened here for a prehearing  
14 conference at the offices of the Washington Utilities  
15 and Transportation Commission on March 5th, 2004. My  
16 name is Theodora Mace, and I'm the administrative law  
17 judge who has been assigned to hold the hearings in  
18 this case. I would like to have the appearances of  
19 counsel now, and I will begin with the complainant's  
20 counsel.

21 MR. NYHUS: My name is Mark Nyhus. I'm with  
22 the law offices of Richard A. Finnigan. My address is  
23 2405 Evergreen Park Drive Southwest, Suite B-1,  
24 Olympia, Washington, 98502.

25 JUDGE MACE: Would you please also recite for

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1 purposes of the transcript your phone number, fax  
2 number, and e-mail address?

3 MR. NYHUS: My direct line is (360)  
4 956-7211. The fax number is (360) 753-6862. E-mail  
5 address is mnyhus@ywave.com.

6 JUDGE MACE: For AT&T?

7 MS. FRIESEN: Good morning, Your Honor,  
8 Counsel. I'm Letty Friesen on behalf of AT&T  
9 Communications of the Pacific Northwest, Inc. My  
10 address is 1875 Lawrence Street, Denver, Colorado,  
11 80202. I apologize. The suite number is 1500. My  
12 telephone number is (303) 298-6475. My fax number is  
13 (303) 298-6301. My e-mail address is  
14 lsfriesen@att.com.

15 JUDGE MACE: Thank you. There are no  
16 petitions to intervene in this proceeding, unless there  
17 is someone on the conference bridge who seeks to  
18 intervene. Is there anyone else who seeks to enter an  
19 appearance? I hear no response. My understanding is  
20 that the two parties to this proceeding are AT&T and  
21 Localtel. Commission staff and the attorney general  
22 will not be participating in this proceeding.

23 I would like to turn next to the issue of  
24 discovery and whether or not the parties will be  
25 conducting discovery in this proceeding. Do you have

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1 any idea whether you will at this time be needing to  
2 conduct discovery? I'll turn to Mr. Nyhus.

3 MR. NYHUS: Your Honor, we would like to go  
4 ahead and request that discovery be part of this  
5 proceeding and invoke the Washington Administrative  
6 Code provisions 480-07-400, 405, and 410.

7 JUDGE MACE: Ms. Friesen?

8 MS. FRIESEN: Similarly with AT&T. We  
9 believe discovery will be required.

10 JUDGE MACE: As is usually the case in these  
11 proceedings, the Commission urges the parties to work  
12 together cooperatively with regards to discovery and to  
13 consult each other prior to filing any motions with  
14 regard to discovery. Hopefully, we won't get to that  
15 point, but I just wanted to caution the parties about  
16 that.

17 And then let's turn to the question of  
18 protective order, whether the parties would request a  
19 protective order in this docket. Mr. Nyhus?

20 MR. NYHUS: Your Honor, we are going to  
21 request the protective order pursuant to Washington  
22 Administrative Code provisions 480-07-420 and 423.

23 JUDGE MACE: Ms. Friesen?

24 MS. FRIESEN: Yes, we would require a  
25 protective order as well.

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1                   JUDGE MACE: Thank you. The next question is  
2 the issues, and I have had a chance to read both the  
3 Complaint and the Response, and it appears from that  
4 reading that the amount in controversy here is not very  
5 high, relatively speaking, and I'm wondering if the  
6 parties could talk briefly about what they see as the  
7 issue in this case, and you might also discuss how you  
8 might try to resolve these in some way absent a  
9 hearing, if possible, in the interest of trying to  
10 preserve Commission's resources, given the nature of  
11 the case. Mr. Nyhus?

12                   MR. NYHUS: Localtel, my client, sees the  
13 issue as being primarily one of access charges for  
14 termination of traffic that are due to them pursuant to  
15 AT&T's status as an interexchange carrier within the  
16 State of Washington.

17                   As far as any type of settlement or mediation  
18 is concerned about prejudicing my client's complaint,  
19 we are firm. Our client is in talks right now with  
20 representatives of AT&T to try to get this matter  
21 resolved, and if that isn't fruitful, we will have to  
22 move forward with the adjudicative proceeding.

23                   JUDGE MACE: Thank you. Ms. Friesen?

24                   MS. FRIESEN: Your Honor, Localtel does not  
25 have the appropriate tariffs on file. It was also

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1 violating interstate tariff and access for  
2 requirements. That said, the Localtel complaint goes  
3 beyond the jurisdiction of this regulatory body, among  
4 other things. So not only does AT&T deny Localtel's  
5 assertions, we have affirmative defenses, which I'm  
6 confident you've read, and we have counter-claims for  
7 money owed AT&T and among others, MCI and Sprint.

8           That said, Mr. Nyhus does represent, in fact,  
9 and without prejudicing AT&T, that we are currently in  
10 settlement negotiations. Again, if they are not  
11 fruitful, we will have to go forward with the complaint  
12 proceedings.

13           JUDGE MACE: Have the parties discussed the  
14 possibility of mediating this in some way? We have  
15 available at the Commission law judges who do mediation  
16 complaints of this type. I would, of course, have to  
17 check whether or not a mediator would be available, but  
18 just because of the size of the amount in controversy,  
19 I was wondering if the parties had explored that at  
20 all. Mr. Nyhus?

21           MR. NYHUS: I may have inadvertently used the  
22 word "mediate" in my last response; however, that's not  
23 something that we've formally considered or informally  
24 considered at this point. I am prepared, however, to  
25 take it under advisement and return to my client and

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1 discuss it with them.

2 JUDGE MACE: Ms. Friesen?

3 MS. FRIESEN: As Mr. Nyhus suggests, we have  
4 not discussed mediation. We are, however, in  
5 settlement negotiations at this juncture. I would  
6 anticipate if those settlement negotiations are not  
7 successful that mediation would not be successful  
8 either. That said, however, I will take it to my  
9 client and see if my client is interested in mediation  
10 as opposed to a hearing.

11 JUDGE MACE: Let me just say that the  
12 mediation would not necessarily supplant the hearing.  
13 Just so you are aware, we have judges who could work  
14 with you to try to achieve a settlement, and they would  
15 be acting in the role of mediator, but if that failed,  
16 you would not lose the opportunity to have a hearing.  
17 Just so you are aware, it's not an either-or situation,  
18 and sometimes it's helpful to have an outside party  
19 come in and talk with those who are in conflict, and  
20 maybe the conflicts can be resolved.

21 MS. FRIESEN: That may well be the case, but  
22 I certainly don't want to foreclose that option. In  
23 terms of resources, my client will need to look at  
24 whether it wants to go through with mediation if the  
25 settlement is unsuccessful and then likely through a

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1 hearing as well, so that was really the point I was  
2 working towards.

3 JUDGE MACE: If you should get to the point  
4 where you would think about asking for a mediator from  
5 the Commission, we need to have some advance notice so  
6 that that could be inserted into the Commission's  
7 schedule and the judges' schedule. So if you get to a  
8 point where you think that might be something you would  
9 want to do, please be sure to notify us as soon as you  
10 can.

11 I guess the next thing we should turn to is  
12 the question of a schedule of proceedings, and my hope  
13 would be that, number one, that you would incorporate  
14 in a schedule enough opportunity for you to discuss  
15 settlement. The second thing would be if you determine  
16 that you can't settle this case, is there a way that  
17 this case would be resolved on paper, so to speak. In  
18 other words, would the issues be enough defined so you  
19 could by filing briefs and perhaps affidavits or  
20 exhibits eliminate the need for a hearing, so I want  
21 you to think about that as well.

22 If you feel that you must have a hearing, I  
23 would like to schedule one today, even though I would  
24 prefer to handle this other than through an oral  
25 hearing, but if you need a hearing, I'm going to



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1 schedule it today. So you are going to have to think  
2 about when that would be, and I will let you talk about  
3 it a little bit. There is very limited time in the  
4 schedule over the next few months when I won't be  
5 available, but rather than go through the list of those  
6 dates when I'm either in hearing or away from the  
7 office, I will let you talk about what you think the  
8 schedule should be, and then we can come back and  
9 refine it so it works for everyone. Is there anything  
10 else that we should discuss at this point before we  
11 adjourn while I let you discuss scheduling?

12 MR. NYHUS: As you suggest, Your Honor, we  
13 would like to keep this moving forward in terms of  
14 having paper filings with the Commission, so we do  
15 intend to file prefiled testimony. I want to make you  
16 aware of that.

17 JUDGE MACE: Yes. If we are going to have a  
18 hearing, then I guess -- the truth is the nature of the  
19 case is such that it might be possible to do it without  
20 prefiled testimony, but I'll let you talk about that.  
21 I just want to convey that the simplest way we can  
22 address this, I think, would be best.

23 MS. FRIESEN: Your Honor, and I agree. I  
24 think when Mr. Nyhus and I have an opportunity to  
25 discuss this, because these are largely legal issues

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1 with a smattering of facts, I think it can be done with  
2 affidavits and counter-affidavits.

3 JUDGE MACE: Let me indicate we'll have an  
4 adjournment now for 15 minutes. I'll be right in my  
5 office. If you conclude earlier, just come and get me  
6 and we can talk more about the scheduling on the  
7 record. We are adjourned.

8 (Discussion off the record.)

9 JUDGE MACE: We are back on the record in the  
10 complaint of Localtel against AT&T. The parties have  
11 discussed scheduling and have indicated that they are  
12 pursuing settlement negotiations. They will waive oral  
13 hearing in this case in hopes that they will come to a  
14 settlement. If they do not come to a settlement, they  
15 will file initial affidavits in support of their  
16 positions on April 22nd, and they will file responsive  
17 affidavits on May 6th.

18 Initial briefs would be filed on May 20th and  
19 reply briefs on June 4th. There are two discovery  
20 cut-off dates as well. April 16, that pertains to the  
21 initial filing of affidavits, and May 3rd, which  
22 pertains to the responsive filing of affidavits.

23 The parties talked about whether or not there  
24 would be a cut-off date for settlement, and I advised  
25 them the best thing would be to work to get settlement

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1 as quickly as possible but that I didn't want to  
2 foreclose any opportunity for settlement as the  
3 proceedings wore on, and again, heartily encourage the  
4 parties to work towards settling this matter. Is there  
5 anything else that we need to address at this point?  
6 If not, then I look forward to hearing from you, and I  
7 hope you are successful in your negotiations.

8 MR. NYHUS: Your Honor, I'm just wondering if  
9 we go could go off the record for just five minutes  
10 before closing this matter.

11 JUDGE MACE: Surely. Let's be off the  
12 record.

13 (Discussion off the record.)

14 JUDGE MACE: Anything else? We are finished  
15 for the day then. Thank you very much.

16 (Prehearing conference concluded at 10:06 a.m.)

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