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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.
14

DOCKET NO. UT-031472

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

15 The Washington Exchange Carrier Association and its members (collectively “WECA”), by
16 and through their attorney of record, Richard A. Finnigan, attorney at law, file this Reply to the
17 Answer of Broadband Communications Association of Washington to WECA’s Motion for
18 Summary Determination (“BCAW Answer”).
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20 **INTRODUCTION**

21 Intervenor Broadband Communications Association of Washington (“BCAW”)
22 misconstrues the issues before the Commission and the substance of WECA’s position in its Motion
23 for Summary Determination and associated Brief (“WECA Brief”). In short, the Commission may
24 properly consider Internet protocol (“IP”) technology and Internet transport as they relate to the
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26 REPLY TO BCAW’S ANSWER - 1

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1 definition of telecommunications service and the Commission’s jurisdiction over such services. To
2 do so does not impermissibly broaden the issues before the Commission. Rather, review of
3 LocalDial Corporation’s (“LocalDial”) use of IP technology and the Internet is crucial to
4 understanding how LocalDial has attempted to avoid both the Commission’s jurisdiction and the
5 payment of access charges under WECA’s filed tariffs.

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7 **ARGUMENT**

8 BCAW tries to distinguish voice over Internet protocol (“VoIP”) from voice over Internet,
9 which BCAW labels as VoInternet.¹ Any such distinction, however, is irrelevant to this
10 proceeding.

11 In Order No. 1, the Commission listed the issues as follows:

- 12 1. Is LocalDial’s service that is challenged by WECA telecommunications
13 service offered to the public in Washington for compensation within the
14 meaning of Chapter 80 RCW?
15 2. Is LocalDial’s service that is challenged by WECA a form of intrastate long
16 distance telecommunications service that subjects LocalDial to the obligation
17 to pay access charges payable to originating and terminating local exchange
18 carriers under those carriers’ tariffs?

19 In considering these two issues, it is essential that the Commission evaluate the technology
20 used by LocalDial to provide its services. To do otherwise would result in an incomplete and
21 piecemeal review. At the pre-hearing conference, LocalDial’s counsel announced that there had
22 been some change in the way LocalDial transported a portion of its calls. That announcement,
23 contained in a letter from LocalDial’s counsel and distributed at the pre-hearing conference, places

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¹ See BCAW Answer at 2.

1 the use of Internet transport clearly at issue in this case. More importantly, this fact does not
2 fundamentally alter the issues before the Commission. Nor, does it change the substance of
3 WECA's contention that LocalDial is offering a telecommunications service and is subject to
4 WECA's tariffs. This is the basis of WECA's complaint, beginning with the federal proceeding.²

5 The use of the Internet and IP technology does not change the fact that LocalDial is using
6 the public switched telephone network ("PSTN") to both originate and terminate its calls.³ Nor
7 does it alter the fact that, from an end user's perspective, LocalDial is providing an intrastate toll
8 telecommunications service.⁴

9 As defined in RCW 80.04.010, "telecommunications" is defined as follows:

10 "Telecommunications" is the transmission of information by wire, radio, optical
11 cable, electromagnetic, or other similar means. As used in this definition,
12 "information" means knowledge or intelligence represented by any form of
13 writing, signs, signals, pictures, sounds, or any other symbols. (Emphasis added.)

14 On its face, the statutory definition of "telecommunications" is broad based. It does not preclude IP
15 technology or the Internet from the definition.

16 What BCAW's position really does is to argue that subtle differences in use of IP
17 technology results in the need for completely new costs. Under BCAW's advocacy, each
18 permutation of the use of IP technology requires a separate proceeding. Each permutation would
19 require a lengthy proceeding. For example, LocalDial's service up to October, 2003 would be the
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23 ² See, e.g., WECA's Complaint for Damages and Declaratory Injunctive Relief in WECA, et al. v. LocalDial, Case No.
C03-5012 (U.S. District Court, W.D., Washington, December 11, 2002)

24 ³ WECA Brief at ¶ 11.

25 ⁴ WECA Brief at ¶ 21.

1 only issue before the Commission and the Court. Under BCAW's approach, a separate proceeding
2 would be needed to address LocalDial's transport from Clark and Cowlitz Counties after October,
3 2003 – even if there is no change in the practical effect of phone-to-phone service. This obvious
4 tactic is meant to exhaust the limited resources of WECA's members and promote continued access
5 bypass.

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7 The position of BCAW has recently been rejected by the Federal Communications
8 Commission (FCC) decision denying the petition of AT&T.⁵ The FCC held that use of IP transport
9 for a phone-to-phone service is a telecommunications service.

10 CONCLUSION

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12 WECA has clearly and concisely demonstrated that LocalDial's service offerings, including
13 those portions of its service that utilize the Internet and IP technology, are subject to Commission
14 jurisdiction and WECA's tariffs. These are the two principal issues before the Commission, despite
15 BCAW's efforts to obscure the issues with irrelevant distinctions between VoIP and VoInternet.
16 WECA requests that the Commission continue to focus on the real issues in this matter, as
17 articulated in Order No. 1. To that end, the Commission should consider, among other things, the
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23 ⁵ In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from
24 Access Charges, WC Docket No. 02-361, Order, FCC 04-97 (Released April 21, 2004). This case is the subject of
25 further briefing under the Commission's Notice Amending Procedural Schedule issued April 23, 2004. Therefore,
26 broader discussion of the case is reserved for the filings under the April 23, 2004 Notice.

1 facts of LocalDial's operations, the statutory guidelines and the Commission's past rulings in
2 similar matters.⁶

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4 Respectfully submitted this 26th day of April, 2004.

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9 Attorney for Washington Exchange Carrier
10 Association and its affected Members
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⁶ See, e.g., U&I CAN v. Pacific Northwest Bell Telephone Co., Docket No. UT-960659, Third Supplemental Order,
24 (Feb. 4, 1998) and In the Matter of Determining the Proper Classification of U.S. MetroLink Corp., Docket No. U-88-
2370-J, Second Supplemental Order (May 1, 1989).