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4 **BEFORE THE WASHINGTON UTILITIES**
5 **AND TRANSPORTATION COMMISSION**
6

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

RESPONSE IN OPPOSITION TO
LOCALDIAL'S MOTION TO STRIKE
VERIZON NORTHWEST INC.'S RESPONSE
TO COMPLAINANTS' MOTION FOR
SUMMARY DISPOSITION

15 COMES NOW the Washington Exchange Carrier Association and its members, listed as
16 Complainants in this proceeding (collectively referred to as "WECA"), by and through their
17 attorney of record, Richard A. Finnigan, attorney at law, and files this Response in Opposition to
18 LocalDial's Motion to Strike Verizon Northwest Inc.'s Response to Complainants' Motion for
19 Summary Disposition (LocalDial's motion is referred to herein as "Motion" and Verizon's
20 Response is referred to as "Brief").
21

22 **INTRODUCTION**

23 Respondent LocalDial Corporation ("LocalDial") contends that Verizon Northwest Inc.
24 ("Verizon") is not permitted to file a response to WECA's Motion for Summary Disposition.
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26 RESPONSE IN OPPOSITION TO
LOCALDIAL'S MOTION - 1

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1 LocalDial makes this assertion through a narrow and ultimately flawed interpretation of the
2 Commission's rules and orders. For reasons outlined below, LocalDial's Motion should be denied.

3
4 **ARGUMENT**

5 LocalDial's Motion is based on two premises: (1) Verizon is not a party to the complaint
6 filed by WECA and should not be entitled to file a response to WECA's motion; and (2) Verizon
7 may not otherwise file an amicus brief.¹ In reaching its conclusion – that Verizon's Brief should be
8 struck from the record – LocalDial misinterprets both the meaning and intent of the rules and the
9 Commission's orders.

10 As noted by LocalDial, Verizon's status as an interested person was confirmed by the
11 Commission's Order No. 03 in this docket. From Order No. 03, LocalDial then extrapolates that an
12 interested person is only entitled to file an amicus brief to the extent that WECA's complaint is
13 resolved by stipulated facts.² Specifically, LocalDial relies upon that portion of Order No. 03 that
14 relates to Discovery and the Protective Order:

15 Only parties are entitled to discovery. Interested persons that may wish to file an
16 amicus brief may subscribe to, and be bound by, the Protective Order in this
17 proceeding for the limited purpose of obtaining access to any confidential information
included in the stipulated facts upon which it is anticipated this proceeding will be
determined.³ (Emphasis added.)

18 LocalDial seizes upon the references to interested persons and amicus briefs and concludes that an
19 interested person is limited to filing such a brief under the narrow set of circumstances of
20 commenting on stipulated facts. The clear and unambiguous language of the order, however, only
21 relates to situations in which an interested person would need to be bound by the Protective Order

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23 ¹ See LocalDial Motion at ¶ 2.

24 ² LocalDial Motion at ¶ 8.

25 ³ Order No. 03 at ¶ 5.

1 “for the limited purpose of obtaining access to confidential information included in the stipulated
2 facts”⁴ The passage from Order No. 3 is not a limit on filing a brief, it is instead instructions
3 on when and how to obtain access to confidential information. It is, therefore, an extreme leap on
4 the part of LocalDial to conclude that the only circumstances under which an interested person may
5 file an amicus brief is when the proceeding will be determined upon stipulated facts. Such a
6 conclusion is both contrary to the plain reading of Order No. 03 and common sense.

7 LocalDial goes on to argue that, because WECA’s Motion for Summary Disposition is
8 dispositive and the Commission has established rules governing party responses, Verizon’s Brief
9 should not be allowed into the record. This time LocalDial seizes upon language contained in WAC
10 480-07-380(2)(c):

11 A party that answers a motion for summary determination must file its answer and
12 any cross-motion for summary determination within twenty days after the motion is
13 served, unless the commission establishes by order a different specific date for a
14 response to be filed.

14 In focusing its attention upon this provision, LocalDial merely attempts to obscure and confuse the
15 matter. LocalDial is correct in pointing out that WAC 480-07-380(2)(c) relates to parties and
16 formal responses to motions for summary determination. LocalDial misses the mark, however, in
17 presuming that this provision precludes interested persons from filing amicus briefs. There is
18 nothing in WAC 480-07-380 or elsewhere that precludes the filing of an amicus brief. Reasoning
19 by analogy to the court rules, an amicus brief is allowed if it would assist the Commission. See,
20 RAP10.6(a). Verizon’s Brief provides that assistance.

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24 ⁴ Ibid.

1 Lastly, LocalDial has requested that the Commission strike Verizon’s Brief on the basis that
2 it seeks to expand the issues before the Commission.⁵ Specifically, LocalDial singles out Verizon’s
3 reference to AT&T’s then-pending Petition for Declaratory Ruling before the Federal
4 Communications Commission (“FCC”) concerning AT&T’s phone-to-phone “IP” service.⁶
5 However, as noted by Verizon, WECA referenced the same proceeding in its Brief in Support of
6 Motion for Summary Disposition (“WECA Brief”).⁷ The FCC has since issued an order denying
7 AT&T’s petition. See, In the Matter of AT&T Petition for Declaratory Ruling That AT&T’s
8 Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket 02-361,
9 Order (Rel. Apr. 21, 2004) (“AT&T Order”).⁸

10 More to the point, the reference to IP technology in the context of AT&T’s Petition does not
11 broaden the scope of this proceeding as it is illustrative of at least one of the issues facing the
12 Commission. Specifically, it addresses the issue of whether or not LocalDial’s offerings –
13 including the use of IP technology – constitute the offering of a telecommunications service to the
14 public for hire.

15 Regarding the latter, there is little doubt that LocalDial holds itself out to the public as a
16 long-distance telecommunications service provider.⁹ Moreover, the statutory definition of
17 telecommunications is sufficiently broad to encompass LocalDial’s service, including its use of IP
18 technology:

19 “Telecommunications” is the transmission of information by wire, radio, optical
20 cable, electromagnetic, or other similar means. As used in this definition,

21 ⁵ LocalDial Motion at ¶ 15.

22 ⁶ LocalDial Motion at ¶ 15.

23 ⁷ See, e.g., WECA Brief at iv.

24 ⁸ The Commission has recently issued a revised schedule to allow the parties to discuss the effect of the AT&T Order. WECA will defer substantive comments until then. However, for purposes of this Motion, it is clear that reference to the AT&T Petition is relevant.

25 ⁹ WECA Brief at ¶ 21.

1 “information” means knowledge or intelligence represented by any form of
2 writing, signs, signals, pictures, sounds, or any other symbols.¹⁰ (Emphasis
added.)

3 There is nothing in the statute that exempts the use of IP technology from the definition of
4 telecommunications. Moreover, by LocalDial’s own admission, LocalDial is still using the public
5 switched telephone network (“PSTN”) to both originate and terminate its calls, regardless of any IP
6 conversion that might take place.¹¹ As WECA outlined in its Brief, the use of IP technology in the
7 transmission of long-distance calls does not remove LocalDial from the Commission’s
8 jurisdiction.¹²

9
10 In a prior decision involving United & Informed Citizens Advocates Network (“U&I
11 CAN”), the Commission found that the use of a computer to transmit calls was still subject to
12 Commission jurisdiction and did not relieve the company from the payment of access charges.¹³
13 The striking similarity between LocalDial and U&I CAN was noted in both the WECA and Verizon
14 briefs.¹⁴

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16 Accordingly, rather than broaden the discussion, Verizon’s reference to AT&T’s phone-to-
17 phone IP telephone service both illustrates and amplifies issues already before the Commission in
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¹⁰ RCW 80.04.010.

21 ¹¹ *Ibid.* at ¶ 11. Additionally, both WECA and Verizon note that under the FCC’s Universal Service Report one of the
22 conditions of determining whether or not a service is IP phone-to-phone telephony – a “telecommunications service”
under the FCC’s analysis – is that there be no net change with regard to form or content from an end user’s perspective.
WECA Brief at ¶ 48 and Verizon Brief at 4. See In re Federal-State Joint Board on Universal Service, Report to
Congress, 13 FCC rcd. ¶ 43, at 11521 (April 10, 1998).

23 ¹² *See*, e.g., WECA Brief at ¶¶ 11 and 53.

24 ¹³ U&I CAN v. Pacific Northwest Bell Telephone Co., Docket No. UT-960659, Third Supplemental Order (Feb. 4,
1998).

25 ¹⁴ WECA Brief at ¶ 18 and Verizon Brief at 3.

1 this proceeding, especially given the FCC's recent decision. Clearly, if LocalDial is offering a
2 telecommunications service to the public for hire, then LocalDial should be compelled to register as
3 a telecommunications company and be subject to the access charges contained in WECA's
4 lawfully-filed access tariffs.

5
6 **CONCLUSION**

7 LocalDial has failed to present a compelling basis for striking Verizon's Brief from the
8 record in the proceeding. Under the WAC and the Commission's orders, Verizon's Brief is not
9 deficient in form or content so as to justify granting LocalDial's Motion. WECA requests that the
10 Commission deny LocalDial's Motion.

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

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17 Attorney for Washington Exchange Carrier
18 Association and its affected Members