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 INITIAL ARGUMENTS OF COMMISSION STAFF CONCERNING ORDER FCC 04-97

1 In its April 21, 2004 Order FCC 04-97, *In the Matter of Petition for a Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges,* WC Docket No. 02-361 (*AT&T Order*), the FCC confirmed that under its current rules, including the rule requiring interexchange carriers to contribute to universal service support mechanisms, 47 C.F.R. Sec. 69.5(b),[1] as well as the rules adopted pursuant to the Computer line of inquiries (distinguishing enhanced from basic services), AT&T's phone-to-phone Internet protocol telephony service is not

[1] "Carrier's carrier charges [i.e., access 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."

an “enhanced” or “information” service, but is a telecommunications service to which interstate access charges apply.

2 AT&T stated in its petition to the FCC that the decision would provide guidance to those states that mirror federal rules in assessing intrastate access charges, *AT&T Order* at n. 1, and it does. In fact, the FCC’s decision confirms the reasoning of Staff’s motion for summary determination in the instant case in a number of important respects.

1. The *AT&T Order* confirms that it is appropriate to apply the Stevens Report’s criteria for phone-to-phone VoIP service to distinguish telecommunications services that utilize Internet Protocol from true information services.

3 In the *AT&T Order*, the FCC employs a description of the salient characteristics of AT&T’s service that is essentially the same as the test that it had earlier employed in the Stevens Report to describe the phone-to-phone VoIP services that lack “the characteristics that would render them information services.”[2]

> We emphasize that our decision is limited to the type of service described in this proceeding, i.e., an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net

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[2] 13 FCC Rcd at 11544, para. 89.

> protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology.

AT&T Order at 1, 2. These three criteria represent a condensed version of the four criteria that the FCC used in the Stevens Report to describe phone-to-phone VoIP[3] and on which Staff's Motion for Summary Determination relies. The only difference is that in the *AT&T Order*, the FCC has dropped the Stevens Report's criteria regarding the use of numbers assigned in accordance with the North American Numbering Plan. That criteria is subsumed within the requirement that the service originates and terminates on the PSTN.

4 While AT&T's service is not precisely identical to LocalDial's service, it is the same in every respect that matters under the FCC's stated rationale for its decision.[4]

5 AT&T terminates calls in exactly the same manner as LocalDial, that is, over PRI business trunks purchased from a LEC. *Id.* at 8, nn. 48, 49. The only difference is in how AT&T originates its calls. Unlike LocalDial, AT&T originates its calls over

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[3] The Steven's Report , at paragraph 88, 13 FCC Rcd at 1543-44, states that a "phone-to-phone" IP telephony provider is one that meets the following conditions: (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (4) it transmits customer information without net change in form or content.

[4] Despite having stated that its decision applies to the type of service that meets the three criteria it announces on the first page of the Order, the FCC states in footnote 58 that "Because AT&T's specific service does utilize 1+ dialing, other VoIP services that do not are beyond the scope of this proceeding."

Feature Group D trunks, and therefore pays originating access to the calling party's LEC. On the terminating end, however, AT&T, like LocalDial, attempts to avoid terminating access charges by terminating calls over local business lines (PRI trunks) that it purchases from a LEC in the called party's local calling area. *Id.* In those areas in which AT&T purchases its PRI trunks from a CLEC (instead of from the ILEC), the CLEC delivers the traffic to the called party's LEC (assuming it was not that same CLEC) over reciprocal compensation trunks, instead of toll trunks. *Id.* at n. 49. This exactly mirrors how LocalDial's traffic avoids detection and billing as interexchange traffic. But unlike AT&T, LocalDial not only terminates, but also originates its traffic over PRI trunks purchased from a CLEC.

It is plain however, that the mere act of trying to bypass the purchase of access services by routing traffic over PRI trunks does not turn a telecommunications service into an information service. Despite the fact that AT&T uses the PRI trunk arrangement at the terminating end instead of purchasing access services (e.g., Feature Group D[5]) from the terminating LEC, the FCC stated that

[5] As a result of "equal access" requirements, the Bell local exchange companies filed tariffs in 1979 with the FCC that set out four different types of connections that the new long-distance carrier's could buy from the Bell's local exchange companies. These have since evolved into four standardized "feature groups." Depending on which access package they buy, carriers may connect on the "line side" or the "trunk side" of a local exchange switch; they may be accessed with shorter (1+) or longer (950-IXXX) access codes; and they may receive more or less additional electronic information. Feature Group A provides carriers with a line-side connection to the local switch and a local 7-digit access number. Feature Group D provides every carrier with

"AT&T's specific service uses the LEC's terminating switching facilities in the same manner as traditional circuit-switched long-distance calls that are subject to access charges." Staff's motion applies this same logic.

> LocalDial's service, ". . . uses the complainants' local end-office switching function at either end of each call. The complainants' intrastate access charge tariffs have established rates that apply to the use of this function for calls of this nature."[6]

6 The FCC also stated that "To the extent that terminating LECs seek application of access charges, these charges should be assessed against interexchange carriers and not against any intermediate LECs that may hand off the traffic to the terminating LECs, unless the terms of the relevant contracts or tariffs provide otherwise." *Id.* at n. 92. Thus, any argument that LocalDial may make that it should not have to pay access charges to the WECA companies because it is not in privity with them, or does not actually use the WECA companies' access services are without merit under the FCC's reasoning. LocalDial should identify itself as an interexchange carrier and pay for access services.

7 It is safe to assume that the FCC would reach the same conclusion with regard to LocalDial's use of the LEC's originating switching facilities as it did with respect to AT&T's use of the LEC's terminating switching facilities. As Mr.

1+ service and a 10XXX access code, a trunk-side connection to the switch, and several additional features. Huber, Kellog and Thorne, *Federal Telecommunications Law*, Sec. 9.4.4.1, p. 768, (2d. Ed. 1999).

[6] Page 7 of Zawislak Response.

Williamson testified, *Williamson Response* at 11, LocalDial originates its calls in the same manner as circuit-switched long-distance calls that utilize Feature Group A, another of the access service packages that the Bell local exchange companies have historically offered to long distance carriers in compliance with FCC equal access requirements. Unlike Feature Group D, which allows a customer to reach a pre-subscribed interexchange carrier by dialing a "1" plus the called party's number, Feature Group A requires the customer to first dial a local access number to reach the long distance carrier's network, and then to dial the number of the person they wish to call. This is what LocalDial's customer's do. *Williamson Response* at 11. In short, LocalDial, like AT&T, uses both the originating and terminating facilities of the LECs in the same manner as traditional circuit-switched long-distance calls.

2. The fact that an IP-enabled telecommunications service uses the Internet rather than a private IP network as a transmission medium does not render that service an information service.

8 The FCC expressly rejected the argument that "AT&T's specific service should not be assessed interstate access charges because it utilizes the Internet rather than a private IP network." *AT&T Order* at 12. This holding should put to rest any argument that LocalDial should avoid access charges as a result of transmitting some of its calls over the public Internet (e.g., between its Seattle and Portland gateways).

9 In summary, the FCC's recent declaratory ruling provides additional authority that LocalDial's variety of phone-to-phone VoIP service does not meet the FCC's definition of an enhanced or information service. As such, this Commission should classify LocalDial's service as an intrastate, interexchange service telecommunications service to which access charges should apply.

DATED this 3rd day of May, 2004.

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