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May 26, 2004

TIMOTHY J. O'CONNELL
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VIA E-MAIL AND U.S. MAIL

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

**Re: WECA, et al. v. LocalDial Corporation
WUTC Docket No. UT-031472**

Dear Ms Washburn:

On behalf of Verizon Northwest Inc., an "interested party" in this proceeding, enclosed for filing in the above-referenced docket is Verizon's Response to LocalDial's Motion to Strike Verizon Northwest Inc.'s Response to Staff's Motion for Summary Disposition and 16 copies. A copy of this document has also been sent to the parties on the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Veronica Moore".

Veronica Moore
Secretary for Timothy J. O'Connell

Enclosures

cc: Parties of Record

(a) In its First Response, Verizon demonstrated that the parties and potential parties at the Prehearing Conference in this case fully discussed the prospects of the submission of "amicus" briefing and did so cognizant of the fact that stipulated facts were not a certainty. See, Transcript of Prehearing Conference at 39-40, 43. LocalDial does not respond to this analysis at all.

(b) In its First Response, Verizon demonstrated that LocalDial was an active participant in the Prehearing Conference during which amicus participation was discussed. Verizon pointed out that any error in this discussion was invited by LocalDial, and that LocalDial should therefore not be permitted to make a motion to strike *amicus*-type pleadings. LocalDial makes no response in the Second Motion to Strike.

(c) In the First Response Verizon demonstrated that ¶5 of Order No. 3, Prehearing Order Concerning Intervenor and Interested Person Status, merely provided a mechanism for amicus participants to enter into the Protective Order. Verizon demonstrated that a fair reading of that Order, when considered in the context of the Prehearing Conference from which it arose, rendered illogical LocalDial's contention that the submission of amicus briefing was contingent on stipulated facts. LocalDial makes no response to that analysis.

5. To the degree that the Second Motion to Strike offers any analysis, it proves nothing. LocalDial points to WAC 480-07-380(c) which discusses responses to motions by parties. That rule does not, however, say anything one way or the other regarding briefing by other interested persons. As Verizon demonstrated in the First Response, amicus briefing has a traditional, long-established place in American

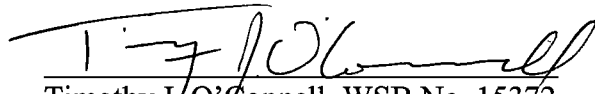
jurisprudence. Moreover, the submission of comments by non-parties is well recognized by the Utilities and Transportation Commission—as the ALJ assigned to this very case has recognized. See, e-mail from ALJ Dennis Moss to Brianne Niemann of Nuvio Corp., May 20, 2004 (attached as Exhibit 1). As the ALJ noted in response to a question of whether a party who had missed the intervention deadline could "still file comments," the ALJ responded by observing that "there is nothing in our rules that expressly forbids anyone from filing anything they wish in any proceeding. However, we have the discretion to not consider a filing that does not meeting the procedural and schedule requirements in a context of an adjudicate proceeding." LocalDial makes no suggestion that Verizon's pleading does not meet the "procedural and schedule requirements" in this proceeding.

6. Finally, LocalDial reiterates its complaints made in its First Motion to Strike, directed at Verizon's submission of FCC materials. Verizon notes that this complaint, ¶5 of the Second Motion to Strike simply does not apply to at all to the pleading against which the Second Motion to Strike is allegedly directed. Rather, LocalDial appears to wish to reargue an issue raised in their First Motion to Strike. This is erroneous, for all reasons identified in Verizon's Response—and moot, given the numerous additional filings that have addressed the very FCC action identified by Verizon.

For all the foregoing reasons, the Second Motion to Strike should be denied.

Respectfully submitted,

STOEL RIVES LLP



Timothy J. O'Connell, WSB No. 15372
Attorneys for Verizon Northwest Inc.

EXHIBIT 1

O'Connell, Timothy J.

From: Dennis Moss [dmoss@wutc.wa.gov]
Sent: Thursday, May 20, 2004 4:22 PM
To: bniemann@nuvio.com
Cc: XUT-031472 - External Mail Group
Subject: WECA v. LocalDial, No. UT-031472: Response to Procedural Questions

Mr. Williamson forwarded your e-mail to me. My responses to your procedural questions are interspersed in a copy of your original message, as follows:

Mr. Williamson,
My name is Brianne Niemann and I am with Nuvio Corporation, a Kansas City based VoIP provider. There is currently a case before the Washington Commission, WECA v. LocalDial, addressing whether a VoIP provider has to register as a telecommunications company. We are an interested party to this matter. I was wondering if we could file comments addressing the same issues the Commission is currently addressing. Procedurally, I was wondering how to do this.

Can we still make a petition to intervene? Our procedural rules, chapter 480-07 Washington Administrative Code (WAC), include provisions governing intervention. These rules are available on our web site (www.wutc.wa.gov). I refer you specifically to WAC 480-07-355. Any petition you elect to file at this late date in the proceedings would be treated as a "late-filed petition to intervene," as described in WAC 480-07-355(1)(b).

Do interested parties, and potential intervenors have to be represented by counsel? We recognize "interested persons" in our proceedings but they are not parties. The implications of interested person status versus intervenor (i.e., party) status are discussed in the prehearing orders in this proceeding. These orders are available on the Commission's web pages that concern this proceeding. There are no representation requirements for interested persons; they are, by and large, observers. Our procedural rules govern appearance and practice before the Commission for parties. The specific rule is WAC 480-07-345.

What is the deadline to intervene? We extended the opportunity for persons to file a timely petition to intervene in this proceeding until November 3, 2003, recognizing that it is a proceeding of widespread interest in the

industry. This is discussed in our first prehearing order.

If we cannot intervene, is there any way to still file comments. There is nothing in our rules that expressly forbids anyone from filing anything they wish in any proceeding. However, we have the discretion to not consider a filing that does not meet the procedural and schedule requirements in the context of an adjudicative proceeding. Otherwise, we would lose the ability to manage our processes in an orderly and meaningful way so as to ensure due process to the parties. Any filing you might make at this time would be outside of the process and schedule established for this proceeding.

If so, Do comments have to address the two issues presented on your website? (Do WECA's access charge tariffs apply to LocalDial's VoIP telephone calls, and, if they do apply, to what extent should the UTC regulate the relatively new VoIP technology?) Please refer to the orders entered in this proceeding for a better understanding of the issues.

Any other requirements I should know about? Please see WAC 480-07-345 concerning appearance and practice before the Commission. In general, it is important that those who would appear before us familiarize themselves with our rules of practice and procedure (i.e., chapter 480-07 WAC) and with the substantive body of law governing the matter under consideration.

If this email should be directed to another member of the Commission's staff, would you be so kind as to forward it to him or her? I will be guided by your response. Thank you for your time.

Respectfully,
Brienne Niemann

If you have other procedural questions, you may direct them to me. I cannot, however, discuss with you in any way the substantive issues that are pending in this proceeding. I refer you in this connection to WAC 480-07-310 governing ex parte communication.

Thank you for your interest in this proceeding.

Sincerely,

Dennis J. Moss
Senior Review Judge
Washington Utilities and Transportation Commission

1300 So. Evergreen Park Drive, S.W.

P.O. Box 47250

Olympia, WA 98504-7250

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fax: (360) 664-2654

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of May, 2004, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn, Executive Secretary	<input type="checkbox"/>	Hand Delivered
Washington Utilities & Transportation	<input checked="" type="checkbox"/>	U.S. Mail (1 st class, postage prepaid)
Commission	<input type="checkbox"/>	Overnight Mail
1300 S. Evergreen Park Drive SW	<input type="checkbox"/>	Facsimile (360) 586-1150
Olympia, WA 98503-7250	<input checked="" type="checkbox"/>	Email (records@wutc.wa.gov)

I hereby certify that I have this 26th day of May, 2004, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

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I declare under penalty under the laws of the State of Washington that the foregoing is correct and true.

DATED this 26th day of May, 2004 at Seattle, Washington.


Veronica Moore