

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

Washington Exchange Carrier Association,  
a Washington non-profit corporation,  
CenturyTel of Washington, Inc., a  
Washington corporation, Hood Canal  
Telephone Company, a Washington  
corporation, Kalama Telephone Company, a  
Washington corporation, Tenino Telephone  
Company, a Washington corporation,  
Mashell Telecom, Inc., a Washington  
corporation, McDaniel Telephone Company  
d/b/a TDS Telecom, a Washington  
corporation, Lewis River Telephone  
Company, d/b/a TDS Telecom, a Washington  
corporation, The Toledo Telephone Co., Inc.,  
a Washington corporation, Inland Telephone  
Company, a Washington corporation, YCOM  
Networks, Inc., a Washington corporation,  
and Ellensburg Telephone Company,  
a Washington corporation,

Complainants,

v.

Marathon Communications Incorporated,  
d/b/a Marathon Communications of  
Washington, a Delaware corporation,

Respondent.

DOCKET NO. UT- 041244

MOTION FOR  
RESTRAINING ORDER

(EXPEDITED TREATMENT REQUESTED)

MOTION FOR RESTAINING ORDER - 1

Law Office of  
Richard A. Finnigan  
2405 Evergreen Park Dr. SW  
Suite B-1  
Olympia, WA 98502  
(360) 956-7001

1 1. The Complainants hereby file this Motion for issuance of a restraining order in accordance  
2 with WAC 480-07-375. The purpose of this Motion is to seek a restraining order, that  
3 would restrain the Respondent from continuing to bypass the Complainants' access charges  
4 by originating and terminating traffic in a way that does not comport with the requirements  
5 of access tariffs and restrain the Respondent from use of EAS trunks and other local circuits,  
6 such as PRI circuits, that avoid originating and terminating access charges. The  
7 Respondent's actions are in violation of the prior order of this Commission and the  
8 complainants' access tariffs..  
9

10 STATEMENT OF FACTS

11 2. The Complaint in this matter was filed on July 13, 2004. The Complaint alleged that  
12 Marathon Communications ("Marathon") was successor-in-interest to LocalDial  
13 Corporation ("LocalDial") and was providing service to LocalDial's customer base. The  
14 Complaint against Marathon alleged that Marathon was continuing to bypass the  
15 Complainants' access charges after having obtained the customer base of LocalDial. The  
16 Complaint alleged that there was a contract in place related to the transaction between  
17 LocalDial and Marathon which has been styled an "Independent Contractor Agreement."  
18

19 3. The Complaint alleged that LocalDial's service was a two-call service that used two-way  
20 Primary Rate Interface (PRI) service between hubs in extended area service (EAS) areas and  
21 LocalDial's facilities in Seattle. The Complaint alleged that calls from the areas served by  
22 WECA's members would originate over the EAS network to what appeared to be a local  
23 number, the call was transported to LocalDial's facilities in Seattle, the customer was asked  
24

1 by voice prompt to enter the destination number and once that number was dialed, the call  
2 was transported to the called number for call completion. The Complaint alleged that calls  
3 were both originated and terminated over these two-way PRIs and through the use of the  
4 EAS networks. Routing traffic in this manner avoided the access charges of WECA and its  
5 members.

6  
7 4. The Complaint alleged that Marathon began serving LocalDial customers on or about 12:01  
8 a.m., June 22, 2004. The Complaint alleged that for a period of time after such time, traffic  
9 both originated and terminated over the LocalDial facilities, continuing to avoid both  
10 originating and terminating access charges. The Complaint alleged that after some time,  
11 Marathon moved some, but not all, of the originating traffic to 800 numbers which should  
12 alleviate the originating access issues. However, Complainants believe that some of the  
13 originating traffic is still being transported over a PRI service that avoids originating access.

14  
15 5. In its Answer to the Complaint, Marathon admitted that it had an agreement with LocalDial  
16 entitled "Billing and Services Plus Independent Contractor Agreement." Marathon also  
17 admitted that it is providing intrastate interexchange service to certain customers who  
18 previously received service from LocalDial.

19  
20 6. In its Answer, Marathon admitted that it initiated service to certain LocalDial customers on  
21 or about June 22, 2004. Marathon also admitted that for a time it used LocalDial facilities in  
22 some instances and that it moved some originating traffic to 800 numbers.

#### 23 STATEMENT OF ISSUES

24  
25 MOTION FOR RESTAINING ORDER - 3

26  
Law Office of  
Richard A. Finnigan  
2405 Evergreen Park Dr. SW  
Suite B-1  
Olympia, WA 98502  
(360) 956-7001

1 7. The issue is whether Marathon should continue to operate, without restraint, and without  
2 paying the Complainants for tariffed access rates and charges applicable to the toll calls  
3 Marathon is originating and terminating through the LocalDial's facilities until the  
4 resolution of this case. To put it simply, should Marathon simply continue where LocalDial  
5 left off until the case is completely resolved?  
6

7 EVIDENCE RELIED UPON

8 8. The evidence that the Complainants rely upon is the Respondent's Answer and Washington  
9 Exchange Carrier Association, et al. v. LocalDial Corporation, Docket No. UT-031472,  
10 Order No. 8 (June 11, 2004) ("LocalDial Order").  
11

12 ARGUMENT

13 9. In the LocalDial Order, the Commission concluded "LocalDial's service is a form of  
14 intrastate interexchange (i.e., long distance) telecommunications service that subjects  
15 LocalDial to the obligation to pay access charges applicable to originating and terminating  
16 local exchange carriers, including Complainants, to the extent required of interexchange  
17 carriers by those carriers' tariffs." LocalDial Order at ¶76 .

18 10. Marathon's service is a form of intrastate, interexchange telecommunications service that  
19 subjects Marathon to the obligation to pay access charges contained in Complainants' access  
20 tariffs.

21 11. Marathon has admitted that it had an agreement with LocalDial, that it has used and is using  
22 LocalDial facilities. Based on Respondent's answer, Complainants should prevail in this  
23 action. However, resolution of the action may take some time and while the action is  
24

25 MOTION FOR RESTAINING ORDER - 4

26 Law Office of  
Richard A. Finnigan  
2405 Evergreen Park Dr. SW  
Suite B-1  
Olympia, WA 98502  
(360) 956-7001

1 progressing towards final resolution, the Respondent is continuing to route traffic to avoid  
2 access charges. The Respondent should be restrained from this activity to avoid continuing  
3 to harm the Complainants. The Respondent is harming the Complainants each day this  
4 behavior continues.

5  
6 RELIEF REQUESTED

- 7 12. Therefore, Complainants respectfully request that the Commission issue a restraining order  
8 pursuant to WAC 480-07-375 at the earliest opportunity.

9  
10 RESPECTFULLY SUBMITTED, this 24th day of August, 2004.

11  
12 \_\_\_\_\_  
13 RICHARD A. FINNIGAN, WSBA #6443  
14 Attorney for the Washington Exchange Carrier  
15 Association and its affected members