

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON EXCHANGE	)	
CARRIER ASSOCIATION,	)	DOCKET NO. UT-031472
	)	
Complainant,	)	ORDER NO. 01
	)	
v.	)	
	)	
LOCALDIAL CORPORATION,	)	PREHEARING CONFERENCE
	)	ORDER
Respondents.	)	
.....	)	

1     **PREHEARING CONFERENCE:** On September 4, 2003, the United States District Court, Western District of Washington at Tacoma, Judge Ronald B. Leighton presiding, entered its Stay Order and Order of Referral to WUTC [Washington Utilities and Transportation Commission], in Case No. C03-5012, a civil complaint proceeding styled *Washington Exchange Carrier Association, et al., Plaintiffs, v. LocalDial Corporation, an Oregon Corporation, Defendant*. The Commission conducted a prehearing conference on October 20, 2003, before Chairwoman Marilyn Showalter, Commissioner Patrick J. Oshie, and Administrative Law Judge Dennis J. Moss.

2     **PARTIES:** Richard A. Finnigan, attorney, represents the Washington Exchange Carrier Association (WECA). Arthur Butler and Lisa Rackner, Ater Wynne Hewitt Dodson & Skeritt, Seattle, Washington and Portland, Oregon represent LocalDial Corporation (LocalDial). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Office of Washington Attorney General. Jonathan Thompson, Assistant Attorney

General, represents the Commission's regulatory staff ("Commission Staff" or "Staff").<sup>1</sup>

3 **PETITIONS TO INTERVENE; REQUESTS FOR INTERESTED PERSON**

**STATUS:** The following persons filed petitions to intervene:

1. Level 3 Communications, LLC, ("Level 3"), represented by Rogelio Peña, Peña & Associates, Boulder, Colorado;
2. AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T"), represented by Letty S.D. Friesen, AT&T Law Department, Denver, Colorado;
3. Javelin, Inc. ("Javelin"), represented by John Schnelz, President, Bellevue, Washington;<sup>2</sup>
4. United Telephone Company of the Northwest d/b/a Sprint ("Sprint"), represented by William E. (Tre) Hendricks III, Sprint Corporation, Hood River, Oregon;
5. Voice on the Net Coalition ("VON"), represented by Susan M. Hafeli, Shaw Pittman LLP, Washington, DC;
6. Verizon Northwest, Inc. ("Verizon"), represented by Kendall J. Fisher, Stoel Rives LLP, Seattle, Washington; and
7. WorldCom, Inc., n/k/a MCI ("MCI"), represented by Michel L. Singer Nelson, MCI.

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<sup>1</sup> In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

<sup>2</sup> Javelin filed a Petition to Intervene, but did not enter an appearance at the prehearing conference.

4 The following persons requested status as interested persons (“IP”):<sup>3</sup>

1. Net2Phone, Inc. (“Net2Phone”), represented by Elana Shapochnikov, Net2Phone Legal Department, Newark, New Jersey;
2. ICG Communications, Inc., represented by Ronald W. Del Sesto, Jr., Swidler Berlin Shereff Friedman, LLP, Washington, DC;
3. Vonage Holdings Corp. (“Vonage”), represented by Michael Sloan, Swidler Berlin Shereff Friedman, LLP, Washington, DC;
4. 8x8, Inc. (“8x8”), represented by Cary Kunin, Grey, Washington, DC;
5. Focal Communications Corporation (“Focal”) and XO Washington, Inc. (“XO”), represented by Greg Kopta, Davis Wright Tremaine, Seattle, Washington; and
6. Qwest Corporation (“Qwest”), represented by Lisa A. Anderl and Adam Sherr, Qwest, Seattle, Washington.

5 The Commission’s process decisions and decisions concerning the scope of this proceeding, summarized below, militate in favor of allowing all petitioners and those requesting IP status an extended opportunity to consider whether they wish to participate as parties, or as IPs. Petitioners and those requesting IP status at the prehearing conference are required to inform the Commission by November 3, 2003, whether they wish to intervene, or to be included on the Commission’s IP list for this proceeding. Any other person that intended to seek intervention by oral petition, or request IP status at prehearing, also must file by November 3, 2003, for their petition or request to be deemed timely.

6 Any party may file an objection to any pending petition to intervene that is confirmed or filed by November 3, 2003. Any petitioner to whom an objection is directed may file a response by November 17, 2003.

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<sup>3</sup> The Commission establishes a list of IPs in individual proceedings. IPs are entitled to receive documents served by the Commission during the course of the proceeding, including notices and orders, but are not parties.

7 All persons listed in this part of this Order, or who file a petition to intervene or  
request for IP status by November 3, 2003, will be afforded IP status until the  
Commission determines any petitions to intervene that are pending on  
November 17, 2003.

8 **SCOPE OF THIS PROCEEDING; PROCESS:** This proceeding attracted  
widespread interest in the industry because, as framed by the Federal District  
Court, and portrayed in the trade and popular press, it potentially queued up for  
decision various policy issues concerning so-called voice over internet protocol  
(VoIP) service. VoIP is an emerging regulatory issue with myriad dimensions on  
both the state and federal levels.

9 On the other hand, this proceeding is fundamentally a dispute between private  
companies concerning a single service provided by LocalDial in Washington.

10 The Commission invited the participants at its prehearing conference to address  
what should be the scope of this proceeding. The participants all argued that the  
Commission should not use this proceeding as a broad-based, generic-type  
proceeding to resolve the many aspects and nuances of the emerging regulatory  
debate over VoIP service. Instead, the participants urged the Commission to  
limit its inquiry and determination in this proceeding to the specific service  
offered by LocalDial in Washington of which WECA complains in the  
underlying Federal District Court case.

11 The Commission's general powers and duties are set forth in RCW 80.01.040.  
Under that statute, the Commission is required to:

Regulate in the public interest, as provided by the  
public service laws, the rates, services, facilities, and  
practices of all persons engaging within this state in the  
business of supplying any utility service or commodity  
to the public for compensation, and related activities;

including, but not limited to, . . . telecommunications companies.

12 According to RCW 80.04.010:

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

and

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

13 RCW 80.04.015 provides in relevant part:

Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission . . .

After investigation, the commission is authorized and directed to issue the necessary order or orders declaring the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are

found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

14 Considering the Federal District Court’s referral of issues to us in the context of these governing statutes and the parties’ arguments, we conclude that this proceeding should be limited in scope to the particular service offering by LocalDial that WECA asserts is “telecommunications” making LocalDial a “telecommunications company” subject to the Commission’s jurisdiction. We will consider in this proceeding only the service placed at issue by WECA’s complaint, regardless of whether LocalDial offers other services that may or may not be subject to our jurisdiction. Thus, we perceive that we will fulfill the Federal District Court’s need in the context of the case it has stayed pending our determination of underlying issues concerning our jurisdiction and what the exercise of our jurisdiction, if any, requires vis-à-vis the particular service offering at issue.

15 In other words, we will answer the following questions:

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

We expect to address these questions on cross-motions for summary determination grounded in stipulated facts concerning the precise nature of the service LocalDial offers. The parties may argue whether the service LocalDial offers meets the definition of telecommunications in RCW 80.04.010. The parties may argue whether, even if the service meets that definition, it is removed from our jurisdiction and regulatory authority by another provision of state law, or whether federal law preempts our exercise of jurisdiction and regulatory authority.

16 **DISCOVERY; PROTECTIVE ORDER:** The parties initiated discovery in the underlying proceeding in Federal District Court. Discovery will continue pursuant to the Commission's discovery rule, WAC 480-09-480. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

17 The parties anticipate that discovery will include the exchange of confidential information. They request that the Commission enter a protective order. The request is granted.

18 **PROCEDURAL SCHEDULE:** The Commission establishes the procedural schedule that is attached to this Order as Appendix 1, which is incorporated into the body of this Order by this reference.

19 **FILING; COPIES OF MATERIALS:** Parties must submit an original and 16 copies of all documents filed. All filings must be mailed to the Commission Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Executive Secretary at the Commission's records center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504.

Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.

- 20 An electronic copy of all filings must be provided by e-mail delivery to <[records@wutc.wa.gov](mailto:records@wutc.wa.gov)>. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format.
- 21 All paper copies of testimony, exhibits, and briefs are required to conform to the publication guidelines attached to this Order as Appendix 2 and to the Commission's procedural rules governing filings. The Commission may require a party to refile any document that fails to conform to these standards.
- 22 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 24th day of October 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Administrative Law Judge



**APPENDIX 1**

**PROCEDURAL SCHEDULE**  
**DOCKET NO. UT-031472**

<b>EVENT</b>	<b>DATE</b>	<b>INTERVAL</b>
Referral from Federal District Court filed with the Commission	September 15, 2003	
First Prehearing Conference	October 20, 2003	
Deadline for IP requests; deadline for timely petitions to intervene	November 3, 2003	
Objections to petitions to intervene	November 10, 2003	7 days
Responses to objections	November 17, 2003	7 days
Dispositive Motions (cross-motions for summary determination on stipulated facts)	February 6, 2004	
Responses to Dispositive Motions	February 27, 2004	21 days
Replies to the extent of new material raised in the Responses	March 17, 2004	19 days

## APPENDIX 2

### I. Requirements for ALL paper copies of testimony, exhibits, and briefs

A. All paper copies of briefs, prefiled testimony, and original text in exhibits **must** be

- On 8 ½ x 11 paper, punched for insertion in a 3-ring binder,
- Punched with **OVERSIZED HOLES** to allow easy handling.
- Double-spaced
- 12-point or larger text and 10-point or larger footnotes, Palatino Linotype, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- **SEQUENTIALLY NUMBERED** (all pages). **THIS INCLUDES EXHIBITS.** It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- **DATED ON THE FIRST PAGE OF EACH ITEM** and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled (**REVISED**), with the same title, and with the revision date clearly shown.

### II. Identifying exhibit numbers; Exhibits on cross-examination.

A. **Identifying exhibits.** Parties are required to mark prefiled testimony and exhibits for identification. Parties must mark all written testimony and exhibits for identification prior to submission as follows:

- (i) Identify the sponsoring witness by including the witness's initials,
- (ii) Place a hyphen after the witness's initials and insert a number; beginning with Arabic numeral 1, and sequentially number each

subsequent exhibit (including any subsequent written testimony) throughout the proceeding;

- (iii) Place the letter “C” after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding.

For example, John Q. Witness's prefiled testimony and accompanying exhibits should be marked as follows:

Testimony or Exhibit	Marked for identification
John Q. Witness's prefiled direct testimony	Exhibit No. ____ (JQW- 1)
First exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-2)
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exhibit No. ____ (JQW- 3C)
Third exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-4)
John Q. Witness's prefiled rebuttal testimony	Exhibit No. ____ (JQW-5)
First exhibit to John Q. Witness's prefiled rebuttal testimony (non-confidential)	Exhibit No. ____ (JQW-6)

Counsel and other party representatives who are unfamiliar with this method of marking testimony and exhibits for identification should ask the presiding officer for further guidance.

- B. **Exhibit List:** Prepare a list of your exhibits with their premarked designations and descriptions in digital form and in a format specified by the Commission. You will be required to submit your exhibit list to the presiding officer prior to the evidentiary hearing. This will simplify identification and ease administrative burdens.

**NOTE: Be prepared to submit all of your possible exhibits on cross-examination several days prior to the hearing.** We will schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require pre-filing.

**PARTIES' REPRESENTATIVES**  
 (\*Lead Counsel designated for receipt of official service)

DOCKET NO. UT-031472

updated 10/23/2003

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