

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of The
Washington Exchange Carrier
Association for Order Requiring WebTel
Wireless, Inc. to register as a
Telecommunications Company or Cease
and Desist Doing Business as a
Telecommunications Company

DOCKET NO. UT-041239

MEMORANDUM OF
COMMISSION STAFF IN
SUPPORT OF WECA'S MOTION
FOR SUMMARY
DETERMINATION

1 Commission Staff submits this memorandum and the accompanying
declarations of Robert Williamson and Robert Shirley in support of the Washington
Exchange Carrier Association's (WECA's) August 3, 2004, motion for summary
determination.

1. **There is no possible technical difference of any significance between the intrastate inter-local-calling area services provided by WebTel and those that were provided by LocalDial Corporation.**

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

3 The FCC stated that its AT&T Order applies to "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 protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology." Order FCC 04-97 at ¶ 1, *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*).

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."

4 On June 11, 2004, the WUTC issued its Order No. 8 in *Wash. Exchange Carrier Ass'n v. LocalDial Corp.*, Docket No. UT-031472 (*LocalDial Order*), in which it found that the phone-to-phone IP-in-the-middle service offered by LocalDial Corporation was subject to the Commission's jurisdiction and LocalDial should cease and desist from providing intrastate telecommunications service in Washington unless and until it registers with the Commission.

5 Robert Williamson is a telecommunications engineer with substantial professional experience dealing with the convergence of Internet Protocol and the public switched telephone network (PSTN). In Mr. Williamson's opinion, based on the way WebTel describes how its service works in its advertising materials and on his discussions with a competitive local exchange carrier that provides PRI service to WebTel, there is no possible technical difference of any significance between the service provided by WebTel and the service that was provided by LocalDial Corporation. Decl. of Robert Williamson at ¶ 7. That is, it appears that WebTel has purchased PRI service from a competitive local exchange carrier (or carriers) in order to receive local (toll free) calls from customers that it converts to Internet Protocol on its gateway equipment and then converts back to time division multiplexing protocol for completion of an inter-local-calling area call on the network of the called party's

local exchange carrier. *Id.* at ¶ 5. Customers use ordinary telephones and receive no service other than the transmission of their voice by phone. *Id.* Although there is a conversion in protocol from the time division multiplexing (TDM) protocol which is standard for the PSTN to Internet Protocol and then back to TDM for completion of the call on the PSTN, both the FCC and this Commission concluded that this is not a “net protocol conversion” and therefore such a service has no claim to exemption from access charges or regulation as an “enhanced service.” *LocalDial Order* at ¶ 56. In short, this kind of phone-to-phone IP-in-the-middle long distance service is not an enhanced service that is exempt from regulation and access charges but is instead a telecommunications service under both federal and Washington law. *LocalDial Order* at ¶ 59.

6 Even if Webtel were to discontinue offering service to customers in the WECA companies’ territories but not elsewhere in Washington, the WECA companies would still be harmed. This is because the WECA companies receive access revenues not only from originating access charges, but also, more significantly, from terminating access charges (when the called party is in a WECA company’s territory). Decl. of Robert Shirley at ¶¶ 17-19. The WECA companies also offset their overall revenue requirements with money from the “WECA pool” that includes access

charges collected on Washington intrastate calls even when the call neither originates nor terminates in a WECA company's territory. *Id.* at ¶¶ 20-22.

7 The Commission should order WebTel to register as a telecommunications carrier with respect to its service that allows customers to place calls between local calling areas within the state of Washington using ordinary analog telephone equipment and dial tone from the customer's local exchange company.²

2. In the event that the Commission orders WebTel to cease and desist from providing its IP-in-the-middle service, the Commission should order the company to first comply with the Commission's rule on cessation of service.

8 In addition to ordering WebTel to register with the Commission or cease and desist from providing telecommunications services in Washington, Staff urges the Commission to specifically order WebTel to comply with WAC 480-120-083 (cessation of telecommunications services) before ceasing to provide service.³ The primary purpose of the rule is to provide notice to customers of the impending cessation of service so that customers may have sufficient time to locate alternate service providers. Decl. of Robert Shirley at ¶ 7. There are many other providers of

² WebTel offers a number of services at least one of which requires the consumer to buy an "iBox" device and use a broadband connection to the Internet. The only service in question here requires no broadband connection and is the service advertised as providing "[a]ffordable, unlimited long-distance calling plans to and from major metropolitan areas and surrounding communities within one state for a flat rate of \$14.95 per month (Residential plan), \$29.95 per month (Business plan)." (<http://www.webtel.net>) Decl. of Robert Williamson at ¶ 5.

³ Staff acknowledges that some of the requirements of WAC 480-120-083 may be unnecessary with respect to the telecommunications service provided by WebTel.

intrastate long distance service, but consumers will still need time to make arrangements to use another provider. The rule is intended to give consumers sufficient time to make an unhurried search for an alternate provider. *Id.* at ¶ 8.

9 The same rule requires an explanation of how customers may receive a refund on any unused service. *WAC 480-120-083(4)(c)*. As demonstrated in the attached Declaration of Robert Shirley, WebTel requires prepayment for its intrastate long distance service and the result of a cessation of service will be that customers will have paid for service not received at the time of cessation. Decl. of Robert Shirley at ¶15. The amounts pre-paid, and for which a refund might be due, are not trifling; some residential and business customers could be due refunds of \$300 to \$500 dollars. *Id.* at ¶¶ 16, 17.

10 If the Commission finds WebTel is subject to Title 80 and is unregistered, the Commission must order WebTel to “cease and desist from providing jurisdictional services pending full compliance.” RCW 80.04.015. In the LocalDial decision, the Commission ordered LocalDial to register or cease and desist within 10 days of the order. LocalDial Order at ¶ 83. Staff’s position is that if a similar order issues in this case, it should require WebTel to register within 10 days or to give notice within 10 days that it will cease service thirty days from the date of the notice. Staff also requests that if an order to register or cease and desist issues, that the Commission be

explicit in the order with respect to the requirements concerning notice of how to obtain refunds in WAC 480-120-083(4)(c).

DATED this 27th day of August, 2004.

Respectfully Submitted,

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