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**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

**SUPPLEMENTAL LEGAL AUTHORITY
IN SUPPORT OF MOTION FOR
RESTRAINING ORDER**

SUPPLEMENTAL LEGAL AUTHORITY - 1

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

- 1 1. The Washington Utilities and Transportation Commission (“Commission”) has well-
2 established authority to establish the routing and compensation for access traffic.
3 Specifically, RCW 80.36.160(2) grants the Commission authority to prescribe the routing of
4 toll messages and conversations over connections between companies and the practices and
5 regulations to be followed with respect to such routing. The Commission has done precisely
6 that.
- 7 2. The Commission has long-standing precedent on these matters. In Washington Exchange
8 Carrier Association, et al. v. Pacific Northwest Bell Telephone Company, et al, Docket No.
9 U-85-23, Eighteenth Supplemental Order (December 30, 1986), the Commission found that
10 it has the authority to require telecommunications companies to provide toll services jointly
11 and may establish a reasonable division of reasonable “joint rates” under RCW 80.36.160.
12 Eighteenth Supplemental Order at page 20. This case created the system of access tariffs
13 and charges that are in effect today as an exercise of the Commission’s responsibilities
14 under RCW 80.36.160. As part of that system, interexchange traffic must be routed using
15 access services. This is the basis of the Eighteenth Supplemental Order in U-85-23.
- 16 3. Marathon Communications Incorporated (“Marathon”) is a telecommunications company
17 subject to the Commission’s authority under RCW 80.36.160. As such, Marathon is subject
18 to the Commission’s decisions under RCW 80.36.160.
- 19 4. In the case involving the same type of services and routing used by Marathon, the
20 Commission ruled that the access tariff regime in Washington is mandated by RCW
21 80.36.160. Washington Exchange Carrier Association, et al. v. LocalDial Corporation,
22 Docket No. UT-031472, Order No. 8 (June 11, 2004) (“LocalDial Order”). The
23 Commission held:

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25 SUPPLEMENTAL LEGAL AUTHORITY - 2

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

1 Complainants' tariffs, once approved by the Commission, have the force and effect
2 of law. They must be applied uniformly to all interexchange carriers to avoid giving
3 undue preference under RCW 80.28.090 or allowing for the application of
discriminatory rate practices under RCW 80.28.100. LocalDial Order at ¶64.

4 5. The Commission ruled that LocalDial Corporation's ("LocalDial") service was
5 "telecommunications service," which was functionally identical to the interexchange area
6 service that is provided by other interexchange carriers that pay access charges. LocalDial
7 Order at ¶ 64. The Commission held that LocalDial obtained the same access to networks as
8 other interexchange carriers and therefore imposed the same burdens on the local exchange
carriers as other interexchange carriers did. LocalDial Order at ¶ 64.

9
10 6. As described in the LocalDial Order, the service used by LocalDial "leases T-1 PRI
11 (Primary Rate ISDN) facilities from a competitive local exchange company (CLEC). The
12 CLEC has a switch in Seattle from which it provides local exchange access services in a
13 number of Qwest wire centers throughout the state. Through this arrangement, LocalDial is
14 able to provide its customers in many parts of Washington with a telephone number in their
15 local calling area that connects them to LocalDial's leased T-1 trunk facilities via CLEC
16 switch." LocalDial Order at ¶ 25. The passage goes on to describe in more detail other
17 aspects of the transport used by LocalDial. The important point for this case is the access
18 through the PRIs. Marathon admits that it is using some of the same PRIs used by
19 LocalDial. It is this transport mechanism that allowed LocalDial, and now allows Marathon,
to avoid ordering access services from a company's access tariff.

20 7. Marathon is the successor-in-interest to LocalDial in providing service to those customers.
21 Marathon is using the same improper routing that LocalDial used. Marathon's conduct
22 should not be allowed to continue.

1 8. WECA and its member companies respectfully request that the Commission issue a
2 restraining order against Marathon continuing to use PRI service as an access service bypass
3 and instruct Marathon to order proper access services.
4

5 RESPECTFULLY SUBMITTED, this 26th day of August, 2004.
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8 RICHARD A. FINNIGAN, WSBA #6443
9 Attorney for the Washington Exchange Carrier
10 Association and its affected members
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25 SUPPLEMENTAL LEGAL AUTHORITY - 4
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Law Office of
Richard A. Finnigan
2405 Evergreen Park Dr. SW
Suite B-1
Olympia, WA 98502
(360) 956-7001