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1 P R O C E E D I N G S

2 JUDGE MOSS: Good morning, everybody. My  
3 name is Dennis Moss. I'm an administrative law judge  
4 for the Washington Utilities and Transportation  
5 Commission, and we are convened this morning first in  
6 the matter of the petition of the Washington Exchange  
7 Carrier Association for an order for WebTel Wireless,  
8 Inc., to register as a telecommunications company or  
9 cease and desist doing business as a telecommunications  
10 company, in Docket No. UT-041239.

11 I will refer to the Washington Exchange  
12 Carrier Association as WECA. What I have is WECA's  
13 petition, and I don't believe we had an answer; is that  
14 right?

15 MR. HAMILTON: There has been no answer  
16 filed. We were retained as of early this week.  
17 Basically confirmed, I think, yesterday we were going  
18 to be here today.

19 JUDGE MOSS: You will all need to file a  
20 written appearance to the secretary, and let's do take  
21 our oral appearances, and then we will talk a little  
22 bit about the posture of the case and how to proceed.  
23 That's the purpose of our being here this morning, so  
24 Mr. Finnigan, it's your petition so we will begin with  
25 you.

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1           MR. FINNIGAN: I'm Richard A. Finnigan on  
2   behalf of the Washington Exchange Carrier Association  
3   and its member companies. My address is 2405 Evergreen  
4   Park Drive Southwest, Suite B-1, Olympia, Washington,  
5   98502. Telephone number is (360) 956-7001. The fax is  
6   (360) 753-6862. E-mail is rickfinn@ywave.com.

7           JUDGE MOSS: Appearing for WebTel?

8           MR. HAMILTON: My name is Henry Hamilton.  
9   With me is Jeffrey Grieff. Mr. Grieff and I practice  
10  at Grieff and Hamilton, PLLC. Our address is 520 Pike  
11  Street, Suite 1440, Seattle, 98101. Our telephone  
12  number is (206) 467-6969. Fax number is (206)  
13  467-6738. My e-mail is hamilton@jmg-law.com.

14          MR. THOMPSON: I'm Jonathan Thompson,  
15  assistant attorney general, representing Commission  
16  staff. My address is 1400 South Evergreen Park Drive  
17  Southwest, Post Office Box 40128, and it's in Olympia,  
18  Washington, 98504. My phone number is (360) 664-1225.  
19  Fax is 586-5522, and my e-mail is jthomps@wutc.wa.gov.

20          JUDGE MOSS: Thank you, and apparently,  
21  Public Counsel is not making an appearance in this  
22  proceeding. Actually, I never did turn this thing on.  
23  I guess I should.

24                   (Discussion off the record.)

25          JUDGE MOSS: Now, getting back to business.

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1 So we have the petition and we have a motion for  
2 summary determination, and I understand, Mr. Hamilton,  
3 that you have just been retained in this matter, that  
4 WebTel has not filed an answer, which is not obligatory  
5 in a case of a petition; although, it is allowed for.

6 Mr. Finnigan, let's hear from you. What's  
7 your recommendation on how to proceed? You asked for  
8 expedited treatment. The allegation is essentially  
9 that WebTel is conducting business in a fashion  
10 similar, identical, to Local Dial? We just had that  
11 case. I'll be blunt with you. I don't find the  
12 material in the record at this point the time adequate  
13 in terms of the factual support, so we need to talk  
14 about how that might need to be developed further.

15 MR. FINNIGAN: Based on WebTel's own  
16 description of how they operate, which is that they  
17 operate without the need of a computer. They say on  
18 their Web site, the question is, What do you need to  
19 operate? The answer is, A phone and service from your  
20 local phone company.

21 As indicated by the declaration of Mr. Cowls,  
22 they call a local access number and you then enter a  
23 destination number and are connected on a long-distance  
24 call by calling --

25 JUDGE MOSS: I understand the allegations in

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1 your complaint, but unless we have the Respondent  
2 coming forward and saying, Yes, we conduct our business  
3 in exactly the same way Local Dial did, and that makes  
4 it a fairly straightforward matter, we need to have  
5 some development in terms of the service and how it's  
6 provided and so forth.

7 MR. FINNIGAN: Your Honor, I take it the  
8 statements on their Web site are admissions against  
9 interest, and they pretty fully describe how they  
10 operate.

11 JUDGE MOSS: Let me turn to WebTel. You have  
12 now been confronted by a petition and a motion for  
13 summary determination, which requires a response within  
14 20 days, I think, under Commission procedural rules.  
15 What would WebTel's intention be in terms of responding  
16 to that.

17 MR. HAMILTON: WebTel isn't going to admit to  
18 anything. Having said that, they had 54 customers in  
19 the WECA area codes, in territory, I should say, and  
20 basically from a business standpoint, it's not worth  
21 continuing any dispute. So they are prepared to  
22 essentially stop doing business in WECA territory, and  
23 to tell 54 customers they are no longer customers and  
24 terminate service in that area, all of which we believe  
25 makes this whole situation moot.

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1                   JUDGE MOSS: It sounds like it may be a  
2 situation whereby it would appropriate for us to go off  
3 the record and allow you and Mr. Finnigan and  
4 Mr. Thompson, because the Commission may take an  
5 independent interest in this given the nature of the  
6 complaint, and see if the matter can be resolved  
7 without further process.

8                   It sounds like it might be possible to  
9 resolve the complaint, but Staff may have an  
10 independent interest and ask if there is an admission  
11 initiated phone complaint. I don't know. So the fact  
12 you would withdraw from the WECA territories may or may  
13 not moot the case. I'm seeing some negative  
14 headshaking from other parties. Maybe we should go  
15 ahead and pursue this on the record.

16                   MR. FINNIGAN: They had approached me with  
17 that offer a couple of days ago, and I already told  
18 them that that's not acceptable, and the reason it's  
19 not acceptable is if they continue to operate in Qwest  
20 and Verizon territory and bypass access charges, the  
21 universal service element that those carriers access to  
22 interchange carriers and remit to WECA would not be  
23 accomplished, and so WECA and my clients would lose a  
24 source of funding. So their offer, while it was  
25 appreciated, is not acceptable.

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1           MR. THOMPSON: I would say that the Staff's  
2 view would be that the Commission has an independent  
3 interest in assuring that all telecommunications  
4 companies are registered as such and complying with all  
5 the requirements of Title 80. So I don't view it as  
6 just an issue between WECA companies and the  
7 Respondent.

8           I think if the Commission has initiated a  
9 proceeding in 80.04.015, the classification statute,  
10 that it should make a record as to whether the Company  
11 is conducting business as a telecommunications company,  
12 and if so, to order them to comply with the  
13 requirements of Title 80.

14           JUDGE MOSS: Well then, it doesn't sound like  
15 my first inclination here to go off the record and  
16 pursue this is something that would bear any fruits at  
17 this point. Given the discussion we've had, Mr.  
18 Hamilton, it appears to me that what we need to do is  
19 give you an appropriate opportunity to respond to the  
20 pending motion for summary determination and supported  
21 by whatever affidavits or other suitable evidence you  
22 might wish to file. The normal period for that is, as  
23 I recall -- I didn't bring my procedural rules but I  
24 think it's 20 days. The motion was actually -- I don't  
25 have the date stamped copy.

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1 MR. GRIEFF: August 3rd, I believe.

2 MR. HAMILTON: Service date was August 5th  
3 per the copy I printed up yesterday.

4 JUDGE MOSS: That's the notice. The motion  
5 is what we are looking at. In any event, it's 20 days  
6 from whatever date that was, so is that adequate time  
7 or do you want to ask for some additional time?

8 MR. HAMILTON: I would ask for some  
9 additional time.

10 JUDGE MOSS: How much time do you need?

11 MR. GRIEFF: Because of vacation schedules in  
12 August...

13 MR. HAMILTON: 30 days?

14 JUDGE MOSS: That seems excessive to me.

15 Mr. Finnigan has asked for expedited treatment. He's  
16 also filed a motion for summary determination, which in  
17 effect forces our hand, if you will, and we tend to  
18 take care of business pretty promptly around here when  
19 we can. Since you normally would have 20 days to  
20 respond -- let me get my Commission calendar here.

21 JUDGE MOSS: Let's be off the record for a  
22 minute.

23 (Discussion off the record.)

24 JUDGE MOSS: We've had a brief off-the-record  
25 discussion, and September 3rd is the response date, and



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1 then Counsel has some comment. Go ahead, Mr. Hamilton.

2 MR. HAMILTON: The issue that came up, quite  
3 frankly, is Mr. Finnigan's response that WebTel's offer  
4 to stop doing any business in the WECA territory is  
5 unacceptable because of the, as I understand it, the  
6 federal universal service charge pooling account. Am I  
7 misstating something?

8 JUDGE MOSS: We don't really need to pursue  
9 it because we have Staff stating it has an independent  
10 interest in this matter. It's before us. It's  
11 jurisdictional to us, and so Mr. Finnigan's clients'  
12 specific interest is almost beside the point in that  
13 sense, so we will need to go forward with the  
14 proceeding in some fashion or another.

15 MR. HAMILTON: I want to know what we are  
16 responding to, because there is a threshold issue set  
17 forth in the motion. Beyond that, Mr. Finnigan has  
18 separately raised in telephone conversations with  
19 Mr. Grieff and here today the whole issue of the  
20 universal service charge, etcetera, and the question  
21 is, is that or is that not something that he intends to  
22 present to the --

23 JUDGE MOSS: WECA is not seeking in this  
24 proceeding any sort of financial remedy. What WECA has  
25 filed is a petition asking the Commission to exercise

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1 its jurisdiction to determine whether WebTel is doing  
2 business as a telecommunications company under our  
3 statutes, and if so, asking the Commission to order it  
4 to either register and conform to all requirements of  
5 law for telecommunications companies or cease and  
6 desist. So that's the issue, and that's what you will  
7 need to respond to.

8 MR. HAMILTON: I want to make sure we are not  
9 getting far afield and moving outside the scope of the  
10 motion.

11 JUDGE MOSS: All we are concerned with in  
12 this forum is the application of Washington law to  
13 whatever facts appear in our record as a result of,  
14 initially, at least, the exchange of a motion for  
15 summary determination and your response and any filing  
16 that Staff may wish to make, and then we will probably  
17 provide, I think I will provide an opportunity for an  
18 additional round.

19 And I will say quite bluntly that I think a  
20 case like this is very straightforward or should be,  
21 and I would expect it to be handled in a very  
22 straightforward manner, and I don't see the need at  
23 this juncture for extensive discovery, an oral hearing,  
24 and that sort of thing. It seems to me the facts ought  
25 to be able to be established very readily.

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1           Basically, we are concerned with what is the  
2 nature of the business that WebTel is conducting, and I  
3 think you can, in a sense, without any suggestion on my  
4 part that the services are, as alleged, similar or  
5 identical to those in the recent Local Dial proceeding,  
6 I think you can at least look to that case.

7           JUDGE MOSS: Off the record.

8           (Discussion off the record.)

9           JUDGE MOSS: So I think you can at least look  
10 to that case for some guidance as to the sort of record  
11 development we need, and we were able to resolve that  
12 case without live or oral evidentiary proceeding. So  
13 that would be my inclination would be to encourage that  
14 sort of result.

15           MR. FINNIGAN: I'll undertake to provide  
16 Counsel with an explanation of the access charge  
17 structure. I agree with Your Honor's observation it is  
18 not directly involved in this case, but I will try to  
19 clarify the confusion.

20           JUDGE MOSS: And so we are talking in terms  
21 of a September 3rd date for the response to the motion  
22 for summary determination. Mr. Thompson, is it too  
23 early in the case for you to understand, or does Staff  
24 have a view or preliminary position in the case, or do  
25 you need to do some exploration or discovery?

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1           MR. THOMPSON: I think Staff's view at this  
2 point would be that there is something very close, if  
3 not a prima facie case, that just based on the  
4 advertisement that the Company is offering intrastate  
5 telecommunication service. There may be a defense to  
6 that, and I'm not aware of what that might be.

7           So I guess those are things that would need  
8 to come out in the response round. Staff would like to  
9 probably have an opportunity to file some briefing in  
10 the matter, and I don't know if that would be  
11 appropriate at the response stage.

12           JUDGE MOSS: That's my concern as I started  
13 thinking about setting the September 3rd response date.  
14 It strikes me that Staff is going to essentially weigh  
15 in in support of the allegations in the petition. That  
16 is to say, if Staff is going to assert that the Company  
17 is doing business as a telecommunications company, as a  
18 matter of state law, then we will need to have a  
19 response to that.

20           So I'm wondering if the most appropriate way  
21 to proceed is to provide an opportunity in, say, 10  
22 days for Staff to file, and then we could give WebTel  
23 an opportunity to respond to both in a single filing,  
24 and then we can rebut. Mr. Finnigan is shaking his  
25 head in the affirmative.

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1                   MR. FINNIGAN: I would agree with that, Your  
2 Honor.

3                   JUDGE MOSS: I would think that WebTel would  
4 want to respond once.

5                   MR. HAMILTON: A separate issue, and that is,  
6 quite frankly, given the fact that this issue has come  
7 up in Minnesota and New York, and the FCC is holding a  
8 hearing on whether to settle preemption of this whole  
9 issue, we would just ask for a further continuance and  
10 wait for the ruling from the FCC.

11                   JUDGE MOSS: We've been down that path a  
12 number of times over the past couple of years in cases  
13 in which I have been the presiding officer with respect  
14 to requests from one party or another, and sometimes,  
15 all parties that we hold things in abeyance pending  
16 action by the FCC.

17                   I have personally been disinclined to do that  
18 simply because of the fact that we need to conduct our  
19 business, and we really can't just hold things in  
20 abeyance, because we don't know when and if the FCC  
21 will act. Sometimes they are prompt and sometimes they  
22 are not, and while they may ultimately undo us, we  
23 still need to continue with our business.

24                   Now, having said that, obviously, you are  
25 free to file any motion that you wish within the

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1 constraints of our procedural rules and statutes, and  
2 so if you want to present that suggestion through a  
3 formal motion, we can take it up.

4 I should say that it's unclear to me at this  
5 juncture whether the commissioners will elect to sit in  
6 this proceeding or whether they will simply have me  
7 conduct this proceeding, and then, of course, there  
8 would be a review opportunity since they are the  
9 ultimate decision makers in all of our proceedings.  
10 They do have an interest in this case. I know that,  
11 but a lot has to do with scheduling and so forth.

12 In any event, your procedural rights are  
13 protected as well as your substantive rights at every  
14 stage, so if, for example, you were to file such a  
15 motion and I were to deny it, you could make an appeal  
16 on interlocutory order.

17 MR. HAMILTON: Proceeding through the  
18 normal --

19 JUDGE MOSS: Through the normal course, so  
20 that is an option, but I think we would need to move  
21 forward with our business. So that would be my intent.

22 MR. GRIEFF: Your Honor, does it change the  
23 situation with moving forward with our business if  
24 WebTel, in fact, has terminated it's WECA territory  
25 customers?

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1           JUDGE MOSS: No. I think I've already  
2 explained that because Staff takes an independent  
3 interest in the case, we would have to be concerned on  
4 a broader level. In our statute, we have the  
5 obligation to make the determination as to whether the  
6 Company is doing telecommunications service, I think is  
7 the term of art in the statute.

8           MR. GRIEFF: But if it's not doing any  
9 telecommunications services in the State of  
10 Washington...

11           JUDGE MOSS: If it's providing no service to  
12 anyone in the State of Washington, then there is no  
13 case for us to consider.

14           MR. GRIEFF: Or intrastate interexchange  
15 services.

16           JUDGE MOSS: If the Company is not doing  
17 business that would be jurisdictional under any theory  
18 in the State of Washington, then I would suggest that  
19 that would probably moot the case. So if you made a  
20 filing to that effect ordered by appropriate evidence,  
21 showed it to be the case, then I suspect that might be  
22 accompanied by a motion to dismiss or what have you,  
23 and probably Mr. Finnigan and Mr. Thompson would cease  
24 to care. Although, that's speculation on my part.

25           So yes, that's certainly an option. This is

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1 frankly the option that Local Dial took when the  
2 Commission entered its order in that recent case and  
3 found that it was indeed doing such business. The  
4 company elected to simply on its own withdraw from the  
5 business. Although, we are going to hear about that  
6 more momentarily in another proceeding.

7           So let's see, Mr. Thompson, let's get back to  
8 the business at hand, which is to establish some dates.  
9 Today is Friday the 13th. What do you want, until the  
10 27th?

11           MR. THOMPSON: That should be sufficient.

12           JUDGE MOSS: So we are going to set August 27  
13 as the date for Staff to file argument, and we still  
14 want to give you 20 days at a minimum to respond, so  
15 that would put us August 27th -- so if we gave you  
16 until September 17th, that would be 20 days from  
17 Staff's filing, which actually works well in terms of  
18 my schedule and the commissioners' schedules, so we  
19 will have the WebTel response on the 17th of September.

20           MR. HAMILTON: So we don't have any response  
21 due on the 3rd.

22           JUDGE MOSS: Correct.

23           MR. FINNIGAN: And those are service dates,  
24 delivery dates, Your Honor, not putting-in-the-mail  
25 dates?



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1                   JUDGE MOSS: We can talk about that. Off the  
2 record.

3                   (Discussion off the record.)

4                   JUDGE MOSS: We will round this out with a  
5 date for replies 9/24, and then the Commission will  
6 take it under advisement.

7                   Now, on motions for summary determination, we  
8 can take that directly to the commissioners. If we are  
9 unable to resolve the proceeding on the motions for  
10 summary determination, then we will have to get back  
11 together for another prehearing conference and decide  
12 what we need to do in terms of record development.

13                   I want to again encourage the parties -- I  
14 think a case like this tends to be factually  
15 straightforward. If you need to file a set of  
16 stipulated facts, that's good. Otherwise, it will need  
17 to be developed through affidavits. Do either you,  
18 Mr. Finnigan, or you, Mr. Thompson, desire discovery,  
19 or did we have depositions in the Local Dial case, for  
20 example?

21                   MR. FINNIGAN: Your Honor, I was thinking  
22 about that, and I'm not sure, but I would like the  
23 discovery rule to be invoked so the opportunity is  
24 there.

25                   JUDGE MOSS: Mr. Thompson?

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1           MR. THOMPSON:  If this is disposed of through  
2 motion for summary determination, the need doesn't  
3 really exist to use the discovery rule, I don't think,  
4 but in the event that the motion would be denied, I  
5 think it would be a good idea to invoke the discovery  
6 rule.

7           JUDGE MOSS:  I think it's probably a prudent  
8 course, so I will invoke the discovery rule, which  
9 allows the parties to engage in some discovery.  It  
10 sounds as though it will be limited, in any event, but  
11 in terms of your comment, Mr. Thompson, we can make  
12 arrangements if you feel the need or any party feels  
13 the need to get some information, to the extent we need  
14 to schedule a deposition or something like that.  I  
15 just need to be told.  You, WebTel, are in possession  
16 of the key facts, so the discovery would tend to be  
17 interposed to your client, but you may have some  
18 discovery you wish to conduct as well, so you are free  
19 to do so.

20           I think we will cross the other process  
21 bridges if and when we come to them.  As I said, on  
22 motions for summary determination, the matter can be  
23 taken directly to the commissioners.  The way that  
24 functions, Mr. Hamilton and Mr. Grieff, is I act as a  
25 facilitator, if you will.  I bring the record to the

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1 commissioners. They take it under advisement. They  
2 make the decisions. I write the order for them. They  
3 approve it, and it's the final order. It is subject to  
4 petitions for reconsideration here. It is also subject  
5 to a judicial review.

6           On the other hand, if we have a live hearing,  
7 oral hearing at some point in this proceeding, then if  
8 the commissioners sit in, the same process, final  
9 order. If the commissioners are unable to sit for some  
10 reason and delegate that responsibility to me, then we  
11 are in the situation of your right to an initial order  
12 by me, which is subject to a petition for review, which  
13 then results in a final order which is then subject to  
14 reconsideration and so forth. If we get to that point,  
15 I will ask you whether you want to waive your right.  
16 If all parties agree to waive the initial decision,  
17 then we can go directly to the Commission. So that's  
18 the basic procedural outline of how this all functions.

19           You are free to contact me with procedural  
20 questions. Of course, we cannot discuss the substance  
21 of the case in any way off the record. So just like  
22 every other judicial proceeding in that way. Is there  
23 other business we need to take up today in terms of our  
24 procedural hearing?

25           MR. FINNIGAN: Not on my part, Your Honor.

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1 MR. THOMPSON: Not from Staff.

2 JUDGE MOSS: I don't have my usual agenda  
3 this morning. Mr. Hamilton, Mr. Grieff, anything else  
4 you want to go on the record?

5 MR. HAMILTON: Nothing.

6 JUDGE MOSS: I thank you all for being here,  
7 and we will be off the record in this proceeding.

8 (Prehearing conference concluded at 9:54 a.m.)

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