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September 3, 2004

Carole Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504

**Re: WECA, et al. v. Marathon Communications**  
**Docket No. UT-041244**  
**Our Matter No. 1224.02**

Dear Ms. Washburn:

Enclosed are the original and thirteen copies (one for conforming and returning to us) of Marathon Communications Inc.'s Opposition to Motion for Restraining Order.

Please return a conformed copy to me in the enclosed self addressed stamped envelope.

Very truly yours,

  
Henry K. Hamilton

enclosures

cc: Richard Finnigan  
Jonathon Thompson

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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

RESPONDENT MARATHON  
COMMUNICATIONS INC.'S  
OPPOSITION TO MOTION FOR  
RESTRAINING ORDER

**ORIGINAL**

1           1.     Respondent, Marathon Communications Incorporated d/b/a Marathon  
2 Communications of Washington ("Marathon"), opposes Petitioners' Motion for  
3 Restraining Order and requests that this motion be denied because the motion is  
4 unsupported by the record and the issues are moot.

5           2.     Petitioners' motion essentially requests a preliminary injunction. As stated  
6 in Kucera v. Department of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000), "the  
7 applicable requirements for issuance of a preliminary injunction are well settled: one  
8 who seeks relief by temporary or permanent injunction must show (1) that he has a  
9 clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion  
10 of that right, and (3) that the acts complained of are either resulting in or will result in  
11 actual and substantial injury to him." In addition, Petitioners must show that they will  
12 likely prevail on the merits. Kucera, 140 Wn.2d at 216.

13           3.     Here, Petitioners' motion must be denied because there is no record  
14 supporting petitioners' claims. Petitioners submit absolutely no evidence in support of  
15 their motion. There are no records, documents, sworn statements, or any type of  
16 evidence substantiating any allegation. This motion fails for its own lack of support.  
17 Simply put, Petitioners offer no proof that Marathon is allegedly bypassing Petitioners'  
18 access charges, taking any action that avoids originating and termination access  
19 charges, or that the LocalDial decision in any way applies here. Marathon's Answer  
20 denies Petitioners' allegations and Petitioners must do more than claim otherwise.

21           4.     Petitioners' mischaracterize the evidence. Petitioners' counsel has  
22 reviewed the agreement between Local Dial and Marathon. Marathon is not the  
23 successor in interest to Local Dial and there exists nothing to suggest otherwise.

1 5. The issues raised in the motion are also moot. In such an instance, the  
2 motion should be denied. In York v. Wahkiakum School Dist., 110 Wn. App. 383, 385,  
3 40 P.3d 1198 (2002), the court agreed that a party stopping the allegedly damaging  
4 activity prior to trial renders the need for a preliminary injunction moot. Here,  
5 Marathon's use of LocalDial's equipment was limited to a very brief period of time  
6 following the commission's ruling against LocalDial. Marathon's use of LocalDial's  
7 equipment was necessary because of the extremely short time period Marathon had  
8 available before beginning service to LocalDial's customers. Marathon has ceased  
9 using LocalDial's equipment. The only service Marathon offers in WECA territory is 800  
10 numbers. In Qwest and Verizon territories, Marathon is temporarily using PRI lines to  
11 avoid terminating a limited number of Local Dial customers, which use Marathon  
12 anticipates ending within a month as these customers are switched over to an 800  
13 number platform. Petitioners' motion is moot and should be denied.  
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16 Dated this 3<sup>rd</sup> day of September 2004

17 GRIEFF & HAMILTON, PLLC

18 /s/ Henry K. Hamilton  
19 By: Jeffrey M. Grieff, WSBA #6418  
20 Henry K. Hamilton, WSBA No. 16301  
21 Attorneys for Respondent  
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