Exhibit No. ____ (RAS-1T)

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE CARRIER ASSOCIATION, et al., Complainants, v. MARATHON COMMUNICATIONS, INC., Respondent.	Docket No. UT-041244

DIRECT TESTIMONY OF

ROBERT A. SMITH

ON BEHALF OF

WASHINGTON EXCHANGE CARRIER ASSOCIATION

October 8, 2004

IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?

A. My name is Robert A. Smith. I am Director of Regulatory and Governmental Affairs for the Tenino and Kalama Telephone Companies.

Q. COULD YOU BRIEFLY SUMMARIZE YOUR BACKGROUND IN THE TELECOMMUNICATIONS INDUSTRY?

A. I have been employed in my current position by the Tenino and Kalama companies for the past four years. I began my career with Pacific Telecom Inc., (PTI), or its predecessor companies in 1966. I held the positions of Field Engineer, Accounting Manager, Assistant Treasurer and Settlements Manager, Cost Studies Manager, Manager of Access Charges and Toll Settlements, and Director – External Affairs. PTI was subsequently acquired by CenturyTel at which time I became Director of Revenue Strategies in the CenturyTel Service Group and held that position until I left the Company in December of 1999.

I was the lead instructor for the United States Telephone Association's Cost Separations School for three years and I was a member of the National Exchange Carriers Association (NECA) Access Procedures Committee which drafted the original Part 69 cost allocation rules and developed the NECA Part 67/69 cost allocation model. I participated as a member of the NECA USF Industry Task Force and the USTA Regulatory Methods Sub-Committee. I served as the President of the Washington Independent Telephone Association (WITA) for four years. I was the Chairman of the Oregon Exchange Carrier Association (OECA) from 1986 through 1999. I am currently the President of the Washington Exchange Carrier Association (WECA) and have held this position since 1990.

Q. HAVE YOU PREVIOUSLY APPEARED AS A WITNESS IN PUBLIC UTILITY COMMISSION PROCEEDINGS?

A. Yes. I have testified on numerous occasions before the Washington Utilities and Transportation Commission. I have also testified before the Alaska, Colorado, Montana, Oregon and Wyoming commissions.

PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to provide some history as to the development of the current access charge system in the state of Washington, to discuss the policy behind access charges and to provide my view of the Marathon operations.

HISTORY OF ACCESS CHARGES

Q. WHAT IS THE PURPOSE OF ACCESS CHARGES?

A. As I noted in my introduction, I was a member of the Committee which drafted the original Part 69 cost allocation rules. What happened with the advent of competition in the long distance or toll market was an end to the old separations and settlements process. This brought about a need to develop a new intercarrier compensation mechanism. What developed is a system of access charges.

The original rules were developed in 1983 on the interstate level and allocated costs between the interstate jurisdiction and the intrastate jurisdiction. Shortly after that, Washington adopted similar rules that allocated costs between access and local service. Thus, under the cost allocation rules a certain portion of costs are allocated to the federal jurisdiction and a certain portion are allocated to the state jurisdiction. Following similar cost allocation rules as adopted by the state commission, a portion of the intrastate costs are allocated to intrastate access. Since interexchange companies, as a general rule, use the local network constructed by the local exchange carrier to originate calls from their customers and to terminate calls to destinations their customers want to reach, the access charges are meant to recover a portion of the costs of that LEC network that benefits the interexchange companies for their origination and termination of calls.

Obviously, this system is more complex than I have just described. However, the foregoing does describe the basic underlying purpose of access charges.

Q. IS THIS THE SYSTEM FOLLOWED IN THE STATE OF WASHINGTON TODAY?

A. Yes and no. There are still cost allocation rules in place and the companies do follow those rules. However, with the creation of the Washington Carrier Access Plan or WCAP, strict recovery of the access costs through access rates that change based upon specific company cost studies is no longer in place. Instead, under the WCAP a Revenue Objective is set for each company. A copy of the WCAP is attached to my testimony as Exhibit No.____ (RAS-2). Mr. Phillips will testify in more detail concerning the operation of the pools in the WCAP.

Q. HOW HAS THE POOL BEEN PERFORMING?

A. Unfortunately, the pool has not met its Revenue Objective in any of the recent years.

Q. WHAT IS THE ADVANTAGE OF THE WCAP?

A. The advantage of the WCAP is a reduction in regulatory expense. The details of cost allocation studies can be quite contentious and can result in large sums of money being spent in regulatory proceedings. Through the use of a Revenue Objective under the WCAP, there is a savings in these regulatory transaction costs.

Q. WHAT ARE THE RISKS OF THE WCAP?

A. Under the WCAP, there is a premium on capturing all of the minutes that are used to originate and terminate long distance calls and assessing access charges on those minutes. Obviously, if minutes are not captured, if there is some by-pass mechanism occurring, the Revenue Objectives will not be met.

Another risk is that for most small companies, the telecommunications business is not a declining cost business. This means that there should be growth in access minutes to help recover the increasing costs that are associated with the intrastate access cost allocation bucket. If there is not, then a static access rate means that even if the Revenue Objective is met, the entire cost recovery may not occur.

Q. CAN THE INCREASE IN ACCESS COSTS BE RECOVERED AT THE INTERSTATE LEVEL?

A. No. Intrastate access costs cannot be recovered at the interstate level. The cost allocation rules prohibit allocating the portion related to intrastate operations to the interstate jurisdiction. That is the precise purpose of the cost allocation rules, to allocate an appropriate level of costs between jurisdictions.

Q. IS THE WECA POOL THE ONLY INTRASTATE ACCESS MECHANISM?

A. No. The WECA pool is only part of the story. Each WECA member company has traffic sensitive access rates that are contained in its tariff concurrence in the WECA traffic sensitive tariff.

LOCALDIAL AND MARATHON'S OPERATIONS

Q. HAVE YOU REVIEWED THE AGREEMENT BETWEEN LOCALDIAL CORPORATION AND MARATHON?

A. Yes, I have.

Q. WHAT IS YOUR OPINION OF LOCALDIAL'S OPERATIONS?

A. Based on the description of their operations contained in the depositions of its officers and material from LocalDial's web site before it quit operations, LocalDial's operations were similar in nature to any long distance company. It is slightly more complicated than the standard interexchange operation in that it is a two-call system. However, functionally LocalDial offered a long distance service.

Q. PLEASE EXPLAIN.

A LocalDial used the local networks of LECs to originate calls. The LocalDial customer picked up the phone in their home and dialed an access number for LocalDial. Once the caller was authenticated as a LocalDial customer, the customer was given a prompt to dial the number they want to call, the "destination number," and upon the customer dialing that number, LocalDial completed the call and the customer talked to the person that they desired to reach. The call reached the "destination" either over two-way PRIs leased from CLECs or it was handed off to an underlying IXC on a resale basis. The call was terminated over the LEC's network just like any other long distance call is terminated.

Q. DOES THE FACT THAT LOCALDIAL USED LEASED FACILITIES FOR THE TRANSPORT OF ITS CALLS MAKE A DIFFERENCE?

A. No. Interexchange companies use a variety of mechanisms to transport their calls. It may be that they transported over networks that they themselves build. It may be that they lease facilities such as dark fiber. It may be that they purchase special access for dedicated facilities. In this case, the method chosen by LocalDial was simply to purchase leased facilities, the PRIs or DS1s, between locations where it wants to offer service. LocalDial's use of an underlying IXC to terminate calls to locations where it does not have leased facilities looks just like any other reseller of long distance service. Attached as Exhibits Nos. _____ (RAS-3), (RAS-4) and (RAS-5) are diagrams showing LocalDial's traffic flows.

Q. HOW DID THE CALLS FROM THE WECA MEMBER COMPANIES' SERVICE AREAS GET TO LOCALDIAL?

A. Over EAS networks. LocalDial had "local" numbers in a variety of Qwest and Verizon exchanges. This is the local access number that the customer dials to get to the LocalDial network and to LocalDial's facilities in Seattle where their call is authenticated. Given that the NPA/NXX for the numbers used by LocalDial are associated with Qwest or Verizon exchanges, the only way calls from WECA members could get to a LocalDial number, without an IXC other than LocalDial carrying the call, was over an EAS network that has extended area service calling into the area associated with that LocalDial telephone number.

What happened was that LocalDial's service used the WECA member companies' networks to originate and terminate long distance calls, but bypassing the access network by having those calls routed over the EAS network.

Commission Staff member Robert Williamson testified in detail regarding LocalDial's service. A copy of his testimony is attached to my testimony as Exhibit No. _________ (RAS-6).

Q. WHAT DO LOCALDIAL'S OPERATIONS HAVE TO DO WITH MARATHON?

A. When LocalDial chose to go out of business, rather than come into compliance with Washington laws, it reached an agreement with Marathon under which Marathon obtained certain rights and responsibilities. The contract between LocalDial and Marathon is a confidential item. I have attached it as Exhibit No. _______ (RAS-7C). Out of necessity, my testimony will be very general because of the confidential nature of the agreement.

However, in public documents, such as pleadings filed in this matter, Marathon has admitted that it succeeded to the LocalDial customer base and used, at least into September, portions of LocalDial's network including using PRIs to bypass access charges.

Q. HOW DOES THAT AFFECT WECA'S MEMBERS?

A. It affects WECA's members in two ways. First, even if customers in WECA members' service territories could no longer access the LocalDial network, if the former network of LocalDial is being used by Marathon in Qwest and Verizon territories, WECA members are still affected.

Q. PLEASE EXPLAIN.

A. Part of the access charge regime in the state of Washington is that all local exchange carriers are to assess a universal service fund access rate element against interexchange carriers, collect those revenues and remit them to WECA. The universal service fund access rate is $0.00152 per minute of traffic. If Qwest and Verizon access charges are being bypassed, this universal service fund element is also being bypassed and the WECA members lose the associated revenue that would otherwise be distributed to them.

Q. WHAT IS THE SECOND WAY IN WHICH WECA'S MEMBERS ARE AFFECTED BY MARATHON'S CONTINUED USE OF THE LOCALDIAL NETWORK?

A. The second way is through the bypass of terminating access charges. To the extent that Marathon continued to use two-way PRIs that terminated to a Qwest area that has EAS to a WECA member, that traffic configuration could be used to route terminating traffic over EAS networks and avoid bypass. In other words, what LocalDial was doing on the terminating end would be routing the call from Seattle to, for example, Olympia, over a two-way PRI. Qwest would view the traffic as having been originated on a local basis in Olympia and route the call for termination to Tenino or YCOM over EAS trunks. This avoided access charges that Tenino and YCOM would otherwise assess to the call. To the extent that Marathon continued to use those facilities, the WECA members' terminating access charges were bypassed in the same way.

Q. WHY SHOULD MARATHON BE SUBJECT TO PAYING ACCESS CHARGES?

A. It is functioning as a long distance or interexchange company. Marathon is using WECA members' networks to originate and terminate long distance calls. Marathon should be paying access charges. It also should pay the universal service fund rate element in Qwest and Verizon territory for traffic that should be subject to those companies' access tariffs.

Q. WHY IS THIS IMPORTANT TO WECA MEMBERS?

A. As I have explained above, capturing all of the minutes that are used for long distance service for traffic that originates from WECA member service areas or terminates to WECA member service areas is a very critical part of the current compensation mechanism for those companies. The WECA member companies have spent huge sums of dollars to provide high quality networks. Other carriers that use those networks to benefit their own services should compensate the WECA members for that use. Under today's compensation mechanisms, the appropriate and lawful mechanism is access charges. The WECA members rely on those revenue streams to be able to continue to provide high quality service in their largely rural areas that they serve.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes, for the present time.