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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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In Re: Petition of the Washington)
Exchange Carrier Association for) UT-041239
Order for WebTec Wireless, Inc. to) Volume II
Register or Cease and Desist.) Pages 21-35
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A pre-hearing conference in the

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above-entitled matter was held at 1:30 p.m. on

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Wednesday, September 8, 2004, at 1300 South Evergreen

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Park Drive, Southwest, Olympia, Washington, before

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Administrative Law Judge DENNIS MOSS.

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The parties present were as follows:

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WASHINGTON EXCHANGE CARRIER

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ASSOCIATION, by Brita Long, Attorney at Law, 2405
Evergreen Park Drive, S.W., Suite B-1, Olympia,
Washington 98502.

19

WEBTEL WIRELESS, INC., by Henry K.

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Hamilton, Attorney at Law, Grieff & Hamilton, PLLC,
520 Pike Street, Suite 1440, Seattle, Washington
98101 (Appearing Via Teleconference Bridge.)

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Barbara L. Nelson, CCR

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Court Reporter

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1 JUDGE MOSS: Let's be on the record. We are
2 convened this afternoon in the matter styled
3 Washington Exchange Carrier Association against
4 WebTel Wireless, Inc., Docket Number UT-041239.
5 Actually, I took that caption off of a piece of
6 correspondence here. I think our caption actually is
7 Petition for Order Requiring WebTel Wireless, Inc. to
8 Register as a Telecommunications Company, et cetera,
9 as previously recorded.

10 Let's take appearances, and we'll start
11 here. This WECA is, for all practical purposes, the
12 initiating party here on this matter today. So Ms.
13 Long.

14 MS. LONG: Thank you, Your Honor. Brita
15 Long, on behalf of WECA. Would you like my full
16 address?

17 JUDGE MOSS: This is your first appearance,
18 so let's go ahead with the full appearance.

19 MS. LONG: The address is 2405 Evergreen --

20 MR. HAMILTON: I can't hear anything.

21 JUDGE MOSS: Is your -- no, up. All right.
22 We were just getting Ms. Long's appearance.

23 MR. HAMILTON: Okay. I can hear you, but I
24 can't hear anyone else.

25 JUDGE MOSS: All right. Go ahead, Ms. Long.

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1 Try again.

2 MS. LONG: Brita Long, 2405 Evergreen Park
3 Drive, S.W., Suite B-1, Olympia, Washington, 98502.
4 Phone number is 360-956-7211; fax is 360-753-6862;
5 and the e-mail is bl@ywave.com.

6 JUDGE MOSS: And that was bl --

7 MS. LONG: -- @ywave.com.

8 JUDGE MOSS: All right. Mr. Hamilton.

9 MR. HAMILTON: Good afternoon. This is
10 Henry Hamilton. I represent WebTel, Inc. My address
11 is Grieff and Hamilton, Grieff is G-r-i-e-f-f,
12 Hamilton, H-a-m-i-l-t-o-n, P.L.L.C. Our address is
13 520 Pike Street, Suite 1440, Seattle, Washington,
14 98101. My telephone number is area code
15 206-467-6969; our fax number is 206-467-6738; and my
16 e-mail address is hamilton@jmg-law.com.

17 JUDGE MOSS: Thank you. I had a note
18 earlier today from Mr. Thompson, for the Commission
19 Staff, indicating that he would not be here today,
20 that he didn't feel it important to be involved in
21 this particular dispute, and that, in any event, he
22 had contacted Mr. Finnigan with a list of available
23 dates for a deposition, and he would plan to
24 participate in that, assuming that was set.

25 And that is our purpose for being here

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1 today, is to get this discovery matter resolved.
2 Previously, I had issued a notice on August 26th
3 concerning the matter of deposition that had been
4 raised by WECA, indicating that, in the Commission's
5 view, that a deposition of one or more persons
6 designated by WebTel as having knowledge of the
7 facilities and operations by which WebTel provides
8 service to customers in Washington is appropriate.

9 And apparently the parties had some
10 exchanges, I'm not sure, telephone calls, mail, what
11 have you, and my understanding is that, Mr. Hamilton,
12 your client has so far not been willing to indicate a
13 date and time that would be suitable.

14 MR. HAMILTON: Well, I think that's
15 oversimplifying things, Your Honor. Let's start with
16 this. The parties, at the last hearing, or following
17 the hearing, engaged in settlement discussions, which
18 culminated largely in WebTel Friday sending in its
19 registration materials. I can't speak for the WUTC,
20 but those materials should have been received by the
21 WUTC yesterday and should be processing.

22 It's our position that, based on the
23 settlement discussions between WECA and WebTel and
24 the resulting registration, when looking at the
25 petition, no further attorneys' fees should be

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1 incurred in this matter as this matter's settled.

2 It's -- the petition requests that WebTel
3 register -- let me just read it to you. Petition for
4 --

5 JUDGE MOSS: That's all right, Mr.
6 Hamilton. You can stop. Ms. Long, has WECA agreed
7 to settle this case on the terms proposed by WebTel?

8 MS. LONG: No, we have not.

9 JUDGE MOSS: All right. That's my
10 understanding, too, Mr. Hamilton. And we don't have
11 unilateral settlements. There's no such thing --

12 MR. HAMILTON: Oh, I'm not suggesting there
13 was, but I'm just saying that, along the lines of the
14 terms of settlement, you know --

15 JUDGE MOSS: Well, Mr. Hamilton, what you
16 said is, as far as you're concerned, the case is
17 settled. Well, as far as I'm concerned, it is not
18 settled. As far as I'm concerned, it is an active
19 litigation matter on my docket, and I have a
20 responsibility to process it, and you have a
21 responsibility to follow the directions of the
22 Commission, which are that a deposition should be set
23 with someone knowledgeable about the operations of
24 your client, and that's why we're here.

25 I don't have your registration materials,

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1 and even if I did, we would still go forward until
2 such time as we receive appropriate pleadings seeking
3 dismissal of this and determine that it is
4 appropriate that it should be dismissed. We're not
5 there.

6 And in the meantime, what I expect, as I
7 indicated to you previously by informal
8 correspondence, is I expect the parties to cooperate
9 in setting the schedule for these routine matters and
10 moving forward. So that's why we're here.

11 MR. HAMILTON: Okay. I mean, in no
12 uncertain terms, I mean, I'm not trying, and neither
13 is WebTel, nor is anyone else that I'm aware of,
14 trying to cut against any orders or your rulings.
15 The fact of the matter is is that we thought we were
16 complying with the clear terms of the petition, which
17 was to register. If that's -- if there's something
18 more that is on the docket beyond requiring us to
19 register, I'm all ears, but the simple fact of the
20 matter is is that -- I guess I'm trying to figure out
21 what further discovery is necessary given WebTel's
22 compliance with the petition's request.

23 JUDGE MOSS: Well, that's not the way it
24 works, Mr. Hamilton. When a matter is cued up before
25 the Commission and becomes a formal adjudication

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1 before the Commission, it is revolved in one way and
2 one way only, and that is by the final order by the
3 Commission.

4 MR. HAMILTON: I'm not disputing that. I'm
5 just wondering, you know, if there's any further need
6 for anything else.

7 JUDGE MOSS: Well, WECA seems to think there
8 is. They apparently do not agree with the terms by
9 which you propose to resolve this litigation.
10 Otherwise, they would have said, Yes, we agree to the
11 settlement terms. And they said, in no uncertain
12 terms, that they don't. So you know, you can go
13 forward with the settlement negotiations if you wish,
14 and you can present a settlement as a proposed
15 resolution of the issues pending in this matter and
16 the Commission can issue an order that says fine.

17 But that -- all that has to happen. That's
18 the way it works. We have formal rules, we have
19 formal processes, we have statutes with which we must
20 comply.

21 MR. HAMILTON: And I'm not disputing that.

22 JUDGE MOSS: So we've got to do all that.
23 And in the meantime, I have a responsibility to see
24 to it that our dockets move forward, and so, you
25 know, we set dates for these things, and if you can

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1 manage to resolve it with the other side, then fine.

2 MR. HAMILTON: Okay. Toward that end, we
3 will file a motion to dismiss, but, you know, I
4 understand your position completely.

5 JUDGE MOSS: All right.

6 MR. HAMILTON: I'm not here to quibble over
7 that.

8 JUDGE MOSS: All right. Then let's move on.
9 Ms. Long, WECA had indicated a desire to conduct this
10 deposition on the 13th. Is that still your wish?

11 MS. LONG: Yes, Mr. Finnigan thinks that it
12 will take a full day. The 13th not only works for
13 us, but it works for Staff. It's a full day. That
14 is the absolute best day that we can come up with.
15 And I understand that that's next week. I'm just
16 hedging against an argument that I know is coming up.
17 WebTel has known about this --

18 JUDGE MOSS: Well, don't hedge against
19 arguments that haven't been made.

20 MR. HAMILTON: Our concern is WebTel does
21 not have anyone present in the state of Washington.
22 And our question is simply one of we'd like to do it
23 telephonically. The person or persons who would be
24 able to answer these questions are all located in
25 either California or Colorado.

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1 JUDGE MOSS: Well, you know, that's
2 something -- this is the sort of thing that causes me
3 to say, again, this is why I encourage the parties to
4 work cooperatively together.

5 MR. HAMILTON: And that's fine. And that's
6 fine.

7 JUDGE MOSS: But that has not occurred to
8 date. And as a result, I'm concerned about this. Is
9 a telephonic deposition going to be satisfactory to
10 you, Ms. Long?

11 MS. LONG: No, Your Honor. We were granted
12 permission, as you know, on the 26th of August to
13 conduct this deposition. WebTel has certainly known
14 about our desire to conduct this deposition, they
15 certainly could have been making arrangements to come
16 up here, and the bottom line is, when you do business
17 in the state of Washington, especially conducting
18 yourself in this way, whether you do business
19 legitimately or not, that's just the risk that you
20 take.

21 And it's WebTel's responsibility to have a
22 representative here for a deposition. They certainly
23 have had plenty of notice. And from my information,
24 it doesn't appear that they have made any effort
25 whatsoever to make arrangements to have someone here.

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1 And it appears that this is just a stall. But we
2 need someone here, it needs to be on the 13th, and
3 whether someone has to fly in for the 13th or not, I
4 think they took that risk when they just completely
5 failed to come up with any dates. There was no
6 discussion of dates whatsoever.

7 MR. HAMILTON: I mean, that's a little bit
8 unfair, given that up until late yesterday afternoon,
9 when I spoke with counsel, that no dates were ever
10 offered, that I'm aware of, for setting a deposition.
11 And Your Honor, I don't want to have this discussion
12 in front of you. I think counsel and I can work this
13 matter out on our own, to be perfectly honest.

14 JUDGE MOSS: Well, I think that's probably
15 true. I do recall, however, that there was some
16 correspondence filed here, and I assume served.

17 MR. HAMILTON: No, it was not served. In
18 response to your e-mail of last week, we never
19 received a copy of whatever it was that you received.
20 That's why I responded to you that I was operating in
21 a vacuum at that juncture.

22 JUDGE MOSS: Well, I'm looking at a letter
23 dated August 23rd, 2004, that was filed with the
24 Commission on that date from Mr. Finnigan, directed
25 to my attention, concerning WECA's intent to depose,

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1 and it indicates that it was provided to the service
2 list. That would be you. Are you saying you didn't
3 get that letter?

4 MR. HAMILTON: I'm referring to the letter
5 of last Friday, I guess, that you were talking about
6 in your e-mail. Maybe that's one and the same, but I
7 gathered from your e-mail --

8 JUDGE MOSS: Well, and then there's a letter
9 of August 31st, that was filed with the Commission on
10 that date, also directed to my attention.

11 MR. HAMILTON: That I've not seen.

12 JUDGE MOSS: You haven't seen that?

13 MR. HAMILTON: We have not seen that letter.

14 JUDGE MOSS: Well, it's indicated that it
15 was copied to you.

16 MR. HAMILTON: Well, I'm just saying I've
17 not seen that letter.

18 JUDGE MOSS: Ms. Long, to your knowledge,
19 was that letter sent to him?

20 MS. LONG: It was. And Your Honor, just for
21 your information, I also personally spoke to Jeff
22 Grieff about scheduling a deposition. I e-mailed him
23 to schedule a deposition. We made it very clear that
24 if we weren't able to schedule the deposition, that
25 we would have to come back to the Commission. We

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1 have done -- I think we've gone beyond --

2 MR. HAMILTON: Well --

3 MS. LONG: -- to try and schedule a
4 deposition, and the only information that I had was
5 there's no need for a deposition because we've
6 settled. Well, we haven't settled. We never
7 indicated that we were going to settle.

8 MR. HAMILTON: Well, I think it's also
9 unfair, given the fact that, up until yesterday, no
10 dates were ever offered or suggested.

11 JUDGE MOSS: Well, you know, all I have is
12 what's before me, Mr. Hamilton. And I have this
13 letter from the 31st that suggests two dates as
14 possibilities and does relate what Ms. Long is
15 telling me about her conversations with Mr. Grieff.
16 Have you been in communication with Mr. Grieff about
17 this?

18 MR. HAMILTON: I have, and I also have a
19 correspondence file, and it's not there. We have
20 never gotten that letter. This is not a tactic; this
21 is simply a fact that we've never seen that letter.
22 You referenced a letter last week. We've never seen
23 it. I can't respond to something I've never seen
24 before.

25 JUDGE MOSS: Well, then, that would be the

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1 letter of September 3rd, I think, that you're talking
2 about, last week.

3 MR. HAMILTON: It could be.

4 JUDGE MOSS: These earlier ones were the
5 ones --

6 MR. HAMILTON: But, once again, I can only
7 respond to what I know, and that is I have seen the
8 letter of the 23rd, but more recent correspondence
9 I've not received, and I can't explain it, other than
10 I've not seen any dates offered or suggested.

11 And once again, this is something where
12 we're clearly going to move forward with the
13 deposition unless an order is entered dismissing the
14 matter, but I mean, it's just a matter of
15 logistically getting somebody from WebTel to appear.
16 And I mean, beyond that, it's also just a matter of,
17 you know, addressing the issue, telephone or no
18 telephone.

19 JUDGE MOSS: Allright. Well, I'm just
20 going to go ahead and set the 13th as the date for
21 the deposition, and Mr. Finnigan has previously
22 indicated that his offices are satisfactorily
23 equipped for the conduct of the deposition. That
24 would be convenient. So we'll set that as the time
25 and -- or, well, let's set, what, 9:00 a.m.?

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1 MS. LONG: Nine a.m.'s fine.

2 JUDGE MOSS: Nine a.m. is the time to
3 commence on 13th of September at Mr. Finnigan's
4 office, with one or more persons knowledgeable as to
5 the operations by which WebTel provides service to
6 customers in Washington. And if the parties want to
7 work cooperatively together to establish some
8 alternative, that's fine. I will need to be informed
9 of that.

10 I will plan to make myself available, if
11 possible, to assist the parties to resolve any
12 disputes that may arise during the course of the
13 deposition. That is my standard practice to do that.
14 And the only caveat being that if I am in hearing in
15 another matter, I will obviously be unavailable to do
16 that, but we can probably find our equivalent of
17 chief judge or something to sit in for me if that
18 becomes necessary. I doubt it will. It seldom has
19 come to that pass in my years of experience here, but
20 we do like to try to make these things go as smoothly
21 as possible for all concerned.

22 So that will be our plan. Is there any
23 other business that we need to take up today?

24 MS. LONG: I don't believe so, Your Honor.

25 JUDGE MOSS: Mr. Hamilton.

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1 MR. HAMILTON: No.

2 JUDGE MOSS: All right. Thank you both very
3 much. I appreciate your attendance today, and we'll
4 be off the record.

5 MR. HAMILTON: Thank you.

6 MS. LONG: Thank you.

7 (Proceedings adjourned at 1:48 p.m.)

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