

BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

|                                   |   |                            |
|-----------------------------------|---|----------------------------|
| COMPUTER 5 *, INC. d/b/a LOCALTEL | ) |                            |
| COMMUNICATIONS                    | ) |                            |
|                                   | ) | DOCKET NO. UT-040018       |
| Complainant,                      | ) |                            |
|                                   | ) |                            |
| v.                                | ) | <b>ANSWER, AFFIRMATIVE</b> |
|                                   | ) | <b>DEFENSES &amp;</b>      |
| AT&T COMMUNICATIONS OF THE        | ) | <b>COUNTERCLAIMS</b>       |
| PACIFIC NORTHWEST, INC.           | ) |                            |
|                                   | ) |                            |
| Respondent.                       | ) |                            |

Pursuant to RCW 80.01.040, 34.05.482, 80.36.080, 80.36.100 and WAC 480-09-500 and other rules noted below, AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) hereby submits its Answer, Affirmative Defenses and Counterclaims to Computer 5\*, Inc. d/b/a/ LocalTel Communications complaint submitted in the above-captioned proceeding (“LocalTel”).

**INTRODUCTION**

This is a case about LocalTel, a competitive local exchange carrier (“CLEC”) and its attempt to impose inter and intra-state switched access charges upon AT&T and other interexchange carriers (“IXC”), where LocalTel’s intrastate switched access rates were not tariffed/price listed or approved by the Washington Utilities and Transportation Commission (“Commission”) and its interstate switched access rates were, likewise, not tariffed, pursuant to the Federal Communications Commission’s (“FCC”) Seventh Supplemental Order<sup>1</sup> benchmark rate nor did LocalTel enter into any negotiation over

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<sup>1</sup> *In the Matter of Access Charge Reform – Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, FCC 01-146 (Rel. Apr. 27, 2001)(hereinafter “**CLEC Access Reform Order**”); *see also*, 47 CFR § 61.26.

interstate rates as required by the FCC's Order. Not only does AT&T deny LocalTel's inflammatory allegations within its complaint, but AT&T also seeks, herein, repayment by LocalTel of all switched access sums paid by AT&T (and other IXCs),<sup>2</sup> wherein LocalTel collected such rates in violation of the state and federal laws related thereto. LocalTel, like any other CLEC including AT&T, should have to comply with the FCC's and this Commission's rules or not be allowed to avail itself of switched access rates where it neglects to comply with the law or reasonably respond to IXC's inquiries related to its service.

### **ANSWER TO LOCALTEL'S COMPLAINT**

1. Regarding paragraph 1 of the complaint, AT&T admits only that LocalTel holds itself out as a CLEC and that LocalTel became a member of Washington Exchange Carriers Association ("WECA") on or about January 9, 2003, but otherwise AT&T has no independent knowledge as to the validity of the remaining allegations in paragraph 1, and therefore, neither denies or admits same.

2. No response is required to the allegations contained in paragraph 2.

3. AT&T admits that it is certified local exchange provider and an interexchange provider operating lawfully in Washington State, but AT&T otherwise denies the balance of the characterizations made in paragraph 3.

4. Concerning paragraph 4 of the complaint, AT&T denies that Mr. Kopta is its "Regional Counsel." By LocalTel's own admission, through representations made in its complaint, it did not properly inform AT&T of its complaint. Nevertheless, on January 7, 2004, AT&T—after contacting LocalTel—received an e-mail containing the

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<sup>2</sup> LocalTel admits in its complaint that it has been billing other IXCs presumably at rates consistent with what it has billed AT&T. Thus, those IXCs deserve repayment.

complaint from Mr. Seabeck. Later, on January 9, 2004, AT&T received Notice from the Commission properly serving the complaint.

5. AT&T denies that the Commission has jurisdiction, as suggested by the Complainant, over interstate long distance toll service, including interstate switched access, but admits that the Commission has jurisdiction over intrastate telecommunications services offered by both AT&T and LocalTel.

6. AT&T admits that LocalTel has terminated calls from and originated calls sent to AT&T's network. AT&T has no independent knowledge of whether LocalTel provides service to Sprint, MCI, Global Crossing and others, and therefore neither denies or admits same.

7. AT&T denies the allegations regarding LocalTel's claims of compliance with the Telecommunications Act of 1996, the FCC's Seventh Supplemental Order a/k/a FCC 01-146 and the unidentified "laws in the State of Washington." AT&T has no independent knowledge regarding whether LocalTel "commenced billing IXC's," in May 2002 through a "nationally recognized" third party or otherwise, and therefore, neither denies or admits such allegations.

8. AT&T admits that LocalTel terminates calls from AT&T's network and AT&T accepts calls originated on LocalTel's network. AT&T has no independent knowledge regarding the allegation of "the inception of LocalTel's network in 2001," and therefore, neither denies or admits same.

9. AT&T denies the allegations regarding LocalTel's alleged compliance the "access service billing guidelines." Further, AT&T has no independent knowledge of LocalTel's claims regarding "all of the [listed] IXC's" willingness to pay LocalTel or

whether AT&T is the only IXC that has challenged LocalTel's illegal attempt to obtain certain access rates, and therefore, AT&T neither admits nor denies same.

10. AT&T denies the allegation that LocalTel submitted bills to AT&T on a monthly basis, but admits that it refused to pay LocalTel's intrastate access charges without further information from LocalTel. AT&T further denies the allegation that AT&T did not communicate to LocalTel "any reason for this refusal." And AT&T denies that it owes LocalTel an "unpaid" balance of \$ 5,771.97 for legally approved 2002 intrastate access charges.

11. In regard to paragraph 11 of the complaint, AT&T denies that LocalTel became a member of the Washington Exchange Carriers Association ("WECA") in December of 2002; rather, AT&T admits that LocalTel became a member of WECA when the Commission approved its membership and LocalTel fully complied with the Commission's requirements of such membership on or about January 17, 2003. AT&T admits further that, in October 2003, it began to pay the Commission-approved WECA switched access rates upon LocalTel's compliance with the Commission's tariff filing requirements. AT&T admits further that LocalTel had agreed to the delay in intrastate switched access payments pending the parties' discussion of the issue. *See Exhibit A*, e-mail from John Seabeck Vice President of LocalTel agreeing to such delay.

12. AT&T denies the allegations contained in paragraph 12 of the complaint.

13. AT&T denies the allegations contained in paragraph 13 of the complaint.

#### **AFFIRMATIVE DEFENSES**

14. The Complainant fails to state a claim upon which relief may be granted.

15. The Commission lacks subject matter jurisdiction over any and all allegations related to interstate, switched access payments, rates and remedies sought by LocalTel.<sup>3</sup>

16. LocalTel should be estopped from bring its complaint because of its unclean hands.

## **COUNTERCLAIMS AGAINST LOCALTEL**

### **I. Jurisdiction & Parties**

17. On information and belief, LocalTel is a CLEC and IXC certified to offer local exchange service throughout Washington State.

18. On information and belief, although LocalTel has a switch located in Washington, it provisions service largely through resale and unbundled network elements purchased from Verizon Northwest, Inc. and Qwest Corporation.

19. As previously noted, AT&T is both a CLEC and an IXC certified by the Commission to provide telecommunications service in Washington.

20. The Commission has jurisdiction over the intrastate access service dispute alleged herein and may investigate the interstate claims, but has no independent authority to hear and remedy claims born out of its investigation, but the Commission may petition the FCC for resolution.

### **II. Factual Background**

21. On May 17, 2002, AT&T received the first switched access bill from LocalTel. LocalTel, in its first bill, assessed inter and intra-state switched access charges against AT&T dating back to January 7, 2002. *See Exhibit B*, an excerpt of the first bill AT&T received from LocalTel.

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<sup>3</sup> *But cf.* Paragraph 45, below.

22. On May 17, 2002 and prior to such date, LocalTel did not have a Commission or FCC approved switched access tariff on file with either agency.

23. On May 17, 2002 and prior to such date, LocalTel did not contact AT&T about LocalTel's switched access services or rates, nor did LocalTel attempt to negotiate an inter or intra-state switched access contract with AT&T.

24. By both telephone and e-mail, AT&T has expressed its concern to LocalTel about its switched access charges and AT&T has attempted to obtain information from LocalTel about its services such that AT&T could confirm that LocalTel was appropriately billing AT&T. LocalTel has consistently failed to provide AT&T with the information it needed to verify the accuracy of LocalTel's rates or charges.

25. In an effort to work with LocalTel, AT&T sent LocalTel AT&T's *ABM Vendor Information Form*, which AT&T uses with local exchange carriers providing AT&T switched access services. The form requests information necessary to set-up billing and payment accounts at AT&T and it further seeks information AT&T employs to confirm that local exchange carriers are accurately billing AT&T for their switched access services, among other things.

26. LocalTel returned AT&T's form, which is attached hereto as Confidential **Exhibit C**. Examination of the form reveals that it asks carriers to identify their specific company code or operating company number ("OCN"). An OCN is a company code used by the industry to, among other things, uniquely identify each carrier. Pursuant to ANSI Standard T1.251-2001 (Second), the National Exchange Carrier Association ("NECA") Services assigns carriers unique company codes. The company codes identify

all CLECs and ILECs—among others—and are used in telecommunications systems throughout the industry to aid in information sharing.

27. On the AT&T form, LocalTel identified its NECA code as “OCN = 3229.” As **Exhibit D** reveals, no such NECA assignment exists for LocalTel in the NECA Tariff FCC No. 4, 190<sup>th</sup> Revised Section 8—a listing of all current NECA Code carriers.

28. As of November 8, 1999, Computers 5\* Inc. and/or Computerland Network & Telephone had an *effective* tariff and price list on file with the Commission that neither discussed switched access service or offered any prices related thereto. See **Exhibit E** – the original tariff and price list for LocalTel. Subsequent tariff and price list filings on 11/17/99 and 12/10/99 are likewise silent in relation to switched access services offered by Computers 5\* Inc. and/or Computerland Network & Telephone.

29. Not until January 17, 2003, did LocalTel have a Commission-approved network access and toll service price sheet on file at the Commission. See **Exhibit F** – Original Page No. 16

30. The LocalTel network access and toll service price sheet actually references its “Concurrence in ‘WECA TARIFF’ WNU-2.” LocalTel sought WECA membership in the Washington Exchange Carrier Association (“WECA”) because its unbundled, de-averaged loop costs had allegedly exceeded its retail rates. LocalTel’s WECA membership was completed on or about January 17, 2003.<sup>4</sup>

31. Prior to January 17, 2003 LocalTel sent AT&T other invoices for switched access service; LocalTel has not consistently (*e.g.*, on a monthly basis as suggested by

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<sup>4</sup> *In the Matter of the Request of the Washington Exchange Carrier Association, Petitioner, for less than Statutory Notice in Connection with Tariff Revisions*, Order Granting Less Than Statutory Notice, Docket No. UT-021714.

both its complaint and tariffs) invoiced AT&T for inter or intra-state switched access service. When AT&T inquired about missing monthly invoices, LocalTel later provided such invoices. When AT&T inquired about proper rates, LocalTel failed to provide information necessary to determine the proper rate application.

32. Nevertheless, and in its continuing effort to work with LocalTel, AT&T examined each bill and paid it according to AT&T's belief regarding the proper rates for switched access billed by a CLEC such as LocalTel.

33. The Washington Commission governs CLEC intrastate, switched access rates, which must be filed in tariffs or price lists with the Commission. RCW 80.36.100; WAC 480-80-121; and WAC 480-80-201.

34. The FCC governs CLEC interstate switched access rates pursuant to the *Seventh Report and Order and Further Notice of Proposed Rulemaking*<sup>5</sup> and 47 CFR § 61.26. In setting interim CLEC access rate benchmarks, the FCC determined such benchmarks were necessary because:

We now acknowledge that the market for access services does not appear to be *structured* in a manner that allows competition to discipline rates. ... We are concerned that, in this environment, permitting CLECs to tariff any rate that they choose may allow some CLECs inappropriately to shift onto the long distance market in general a substantial portion of the CLECs' start-up and network build-out costs. Such cost shifting is inconsistent with the competitive market that we seek to encourage for access service.<sup>6</sup>

35. In essence the FCC concluded that CLECs may file interstate access tariffs, if and only if, those tariffs employ rates that are the higher of: (a) the rate charged "by the competing ILEC or the lower of: (i) [t]he benchmark rate described in paragraph (c) ... or (ii) the lowest rate that the CLEC has tariffed for its interstate exchange access

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<sup>5</sup> See *supra*, n. 1.

<sup>6</sup> *Id.* at ¶¶ 32 – 33.



services, within the six months preceding June 20,2001.<sup>7</sup> Paragraph (c) states generally that from June 20, 2001 to June 20, 2002 the benchmark rate for a CLEC's interstate switched access services was \$0.025 per minute. And between June 20, 2002 to June 20, 2003 the benchmark rate was \$0.018 per minute. Finally from June 20, 2003 to June 20, 2004, the benchmark rate will be \$0.012 per minute; after that the rate will become no higher than the ILEC rate. "Rural CLECs," as the term is defined by the FCC, are held to a similar scheme employing NECA access tariff rates.

36. Under the FCC's scheme, CLECs that choose to set higher rates for their switched access service must negotiate separate contracts with IXCs to do so and during those negotiations, the benchmark rates govern the relationship.<sup>8</sup>

37. And CLECs that begin offering switched access after June 20,2001, must employ the ILEC rate.<sup>9</sup>

38. From January 7, 2002 to February 6, 2002, LocalTel billed AT&T for interstate switched access service at a rate of \$0.015 for interstate access.

39. From January 7, 2002 to February 6, 2002, LocalTel billed AT&T for intrastate switched access at a rate of \$0.015 for intrastate access.

40. AT&T did not (and does not) fully understand LocalTel's billing because LocalTel's bills and the information contained therein are inconsistent with industry practice and LocalTel has provided contradictory information to AT&T. AT&T requested, among other things, Call Detail Records ("CDR") to help it understand LocalTel's billing and rates. LocalTel never supplied the necessary CDR or any other information helpful to AT&T. In response to an AT&T oral inquiry, LocalTel did state

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<sup>7</sup> 47 CFR § 61.26(b)(1) & (2).

<sup>8</sup> *CLEC Access Reform Order* at ¶ 3.

<sup>9</sup> 47 CFR § 61.26(d).

that it was not a rural carrier, it later contradicted that statement and it orally stated that LocalTel had begun offering service in Washington at the “end of” 2001.

41. From January 7, 2002 to February 6, 2002 LocalTel did not have either an effective federal or state tariff or price list offering any switched access service. And because LocalTel failed to provide AT&T with the necessary information to determine the correct rate and it appeared from the bills that LocalTel had only begun its switched access service in January 2002, AT&T—consistent with 47 CFR § 61.26(d)—paid LocalTel the ILEC rate for interstate switched access service and delayed paying intrastate switched access pending the receipt of further information to determine the appropriate rate.

42. At some point after AT&T received the first invoices from LocalTel, LocalTel altered its interstate rate to \$ 0.018, the FCC’s ramp-down, benchmark rate. LocalTel was ineligible to offer this rate under 47 CFR § 61.26(d).

43. On September 18, 2003, AT&T agreed to pay LocalTel the WECA rate based upon Commission approval of the WECA membership and tariff. Thus, beginning on January 2003, AT&T paid LocalTel the billed WECA rate for intrastate, switched access services.

### III. Causes of Action

#### A. First Cause – Unlawful Interstate Switched Access Rates

44. AT&T incorporates by reference the facts and law contained in paragraphs 17 through 43, here.

45. Pursuant to RCW 80.36.250, the Commission has the authority to investigate:

all interstate rates and charges, classifications, or rules or practices relating thereto ... [w]here any acts in relation thereto take place within this state which, in the opinion of the commission, are excessive or discriminatory, or are levied or laid in violation of the federal communications act of June 19, 1934, and acts amendatory thereof or supplementary thereto, or are in conflict with the rulings, orders, or regulations of the Federal Communications Commission, the commission shall apply by petition to the Federal Communications Commission for relief, and may present to such federal commission all facts, coming to its knowledge respecting violations of such act or the rulings, orders, or regulations of the federal commission.

46. LocalTel billed AT&T for interstate, switched access service in violation of the FCC's rules and its *Seventh Supplemental Order*.

47. According to LocalTel's complaint, paragraph 6, LocalTel billed "additional IXC customers such as Sprint, MCI, Global Crossing and others" for interstate, switched access service in violation of the FCC's rules and its *Seventh Supplemental Order*.

B. Second Cause – LocalTel's Intrastate, Switched Access Rates Violate State Statute and Commission Rules

48. AT&T incorporates by reference the facts and law contained in paragraphs 17 through 43, here.

49. RCW 80.36.080 requires that "all rates, tolls, contracts and charges" shall be "fair, just, reasonable and sufficient, and the service so to be rendered any person, firm or corporation by any telecommunications company shall be rendered and performed in a prompt, expeditious and efficient manner ... ." RCW 80.36.140 provides the Commission with authority over complaints regarding unjust, unreasonable and other rates that violate the law.

50. LocalTel's attempt to assess intrastate, switched access rates without use of a tariff, a price list or a contract and its failure to adequately provide AT&T with

information necessary to determine the proper rates renders LocalTel's conduct prior to January 9, 2003 improper, insufficient and in violation of State statutes and rules.

IV. Request for Relief

WHEREFORE, AT&T prays for a Commission order granting relief as follows:

51. Finding that LocalTel has unlawfully assessed and collected interstate switched access payments from AT&T and other IXCs.

52. Finding that LocalTel has unlawfully assessed and collected intrastate switched access payments from AT&T and other IXCs.

53. Initiating a Petition to the FCC asking that LocalTel be ordered to disgorge all interstate, switched access payments made wherein LocalTel was in violation of the FCC's rules and orders. Such payments should be returned to all IXCs that were illegally charged for such service.

54. Requiring LocalTel to refund all illegally collected intrastate, switched access payments to AT&T.

55. Such other and further relief as the Commission deems just and proper.

Respectfully submitted this 27th day of January, 2004.

**AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC.**

By: \_\_\_\_\_

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