STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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September 2, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Docket No. WC 04-36, IP-Enabled Services

Dear Ms. Dortch:

The Washington Utilities and Transportation Commission (WUTC) did not file Comments in docket WC 04-36, IP-Enabled Services. The purpose of this letter is to provide necessary context as you consider certain Reply Comments by others that refer to a decision by the WUTC. That decision concerns the regulatory status of a company that offered intrastate interexchange calling in Washington State in the form of phone-to-phone Internet protocol (IP) telephony service. The final order in our proceeding is styled *Washington Exchange Carrier Association v. LocalDial Corp.*, Order No. 08, Final Order Granting Motions for Summary Determination, Washington Utilities and Transportation Commission, Docket No. UT-031472, (June 11, 2004). A copy is enclosed for easy reference.

Callipso Corporation stated in its Reply Comments to Docket WC 04-36 dated July 14, 2004: "Despite the Commission's attempt to stave off the inappropriate regulation of IP-enabled services by state public utilities commissions in initiating this rulemaking proceeding, many states are attempting to regulate IP-enabled service offerings. *Recently, Washington State required one provider of IP-enabled services to obtain state certification. As a result of that order, the Company ceased to offer services and withdrew from the marketplace."*

Net2Phone stated in its Reply Comments to the same docket: "Despite the FCC's best efforts to signal the need for states to await Commission guidance ... [O]ne state has ordered a company providing an IP-based service 'to cease and desist' until it complies with various state law requirements (*Wash. Exchange Carrier Ass'n (WECA) vs. Local Dial Corp.*, Docket No. UT-031472, Order No 8, 2004, WL 1372952 (Wash. U.T.C. June 11, 2004)."

The Voice On the Net (VON) Coalition stated in its July 14, 2004 Reply Comments: "Unfortunately, states continue to consider whether and how to regulate IP-enabled services. *For example, on June 11, the Washington State Utilities and Transportation Committee ("WUTC") concluded that LocalDial, a company offering one type of VoIP service, is a telecommunications company doing business in the state of Washington and is subject to the WUTC's jurisdiction. The WUTC's ruling has prompted LocalDial to cease providing VoIP service."*

Our proceeding was commenced in response to a referral from the United States District Court for the Western District of Washington. In September of 2004, the Court entered a Stay Order and referral to the WUTC in a civil case *Washington Exchange Carrier Association, et al, Plaintiffs, v LocalDial Corp.* The Commission proceeding was narrowly limited in scope to the particular service offered by LocalDial and did not consider the array of services that may be contained within the umbrella of so-called VoIP technology.

The service offered by LocalDial was an IP-in-the-middle intra-state long distance voice service sometimes referred to as a phone-to-phone IP telephony service. Calls originated and terminated on the PSTN from ordinary touch-tone telephones and were routed to LocalDial's equipment via leased PRI facilities. Calls were then converted to IP at a gateway, then moved between router ports in the same physical location before being converted back to TDM for termination on the PSTN. In most cases the physical length of the IP portion of a call was less than one foot. In this particular case there was no confusion as to whether the calls were intra- or inter-state. LocalDial's service provided no enhanced functionality to users.

The WUTC considered state law and prior FCC reports and decisions. The WUTC's conclusions are entirely consistent with the FCC's *AT&T Order* (FCC WC Docket No. 02-361, *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*). It is unclear whether the outcome of the FCC's NPRM on IP-enabled Services will have any bearing on the

issues decided in UT-031472. The request we received from the U.S. District Court, however, clearly required a timely response.

The comments filed with the FCC by Net2Phone, Callipso, and the VON Coalition may be misleading in that they do not disclose that the LocalDial service was a "phone-to-phone" service similar to the AT&T service that the FCC previously ruled provided telecommunications (FCC Docket WC 02-361). We note that both the VON Coalition (Callipso is a member of the Coalition) and Net2Phone asked for and received interested person status in the WUTC's proceeding. Interested persons were permitted to file amicus briefs in the case but neither the VON Coalition nor Net2Phone presented any argument under the facts presented in the LocalDial proceeding.

We hope we have helped clarify the nature and scope of our order.

Sincerely,

Marilyn Showalter
Chairwoman

Richard Hemstad
Commissioner

Patrick J. Oshie
Commissioner

Attachment: *Wash. Exchange Carrier Ass'n (WECA) vs. Local Dial Corp.*, Docket No. UT-031472, Order No. 8, 2003

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SERVICE DATE
JUN 11 2004

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE CARRIER ASSOCIATION, ET AL.	)	DOCKET NO. UT-031472
Complainants,	)	ORDER NO. 08
v.	)	
LOCALDIAL CORPORATION,	)	FINAL ORDER GRANTING MOTIONS FOR SUMMARY DETERMINATION
Respondent.	)	
. . . . .	)	

Synopsis: The Commission, ruling on two motions for summary determination, concludes that: 1) LocalDial is conducting business subject to the Commission's regulatory authority: 2) Complainants' (plaintiffs') tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using Complainants' facilities; and 3) LocalDial should be regulated in the same manner and to the same extent as other interexchange companies that provide functionally identical telecommunications service (i.e., intrastate long distance calling) in Washington.

SUMMARY

1 **PROCEEDINGS:** On September 4, 2003, the United States District Court, Western District of Washington at Tacoma, Judge Ronald B. Leighton presiding, entered its Stay Order and Order of Referral to WUTC [Washington Utilities and Transportation Commission], in Case No. C03-5012, a civil complaint proceeding styled *Washington Exchange Carrier Association, et al., Plaintiffs, v. LocalDial Corporation, an Oregon Corporation, Defendant*. The District Court's Order referred three questions to the Commission:

1) Whether LocalDial is conducting business subject to the Commission's regulatory authority;

2) Whether plaintiffs' tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using plaintiffs' facilities; and

3) Whether and to what extent carriers using VoIP technology should be regulated, if the Commission has the statutory and regulatory authority to do so.

In its Order No. 01: Prehearing Conference Order, the Commission reframed these questions, considering its statutory authority and obligations, as follows:

1) Is LocalDial's service that is challenged by WECA telecommunications service offered to the public in Washington for compensation within the meaning of chapter 80 RCW?

2) Is LocalDial's service that is challenged by WECA a form of intrastate long distance telecommunications service that subjects LocalDial to the obligation to pay access charges payable to originating and terminating local exchange carriers under those carriers' tariffs?

The Federal District Court's third question, to the extent relevant to LocalDial's service in Washington, is subsumed within the second of these questions. The Commission considers here the parties' arguments concerning the legal limits of its discretion to determine as a matter of policy whether and to what extent LocalDial's services *should* be regulated.

2 **PARTIES:** Richard A. Finnigan, attorney, Olympia, Washington, represents the Washington Exchange Carrier Association (WECA) and its members who are plaintiffs in the Federal District Court action (*i.e.*, Complainants in this proceeding). Arthur Butler and Lisa Rackner, Ater Wynne Hewitt Dodson & Skeritt, Seattle, Washington and Portland, Oregon, respectively, represent LocalDial Corporation (LocalDial). Brooks E. Harlow, Miller Nash LLP, Seattle, Washington, represents the Broadband Communications Association of Washington. Mary B. Tribby and Letty S.D. Friesen, AT&T Law Department,

Denver, Colorado, represent AT&T Communication of the Pacific Northwest (AT&T). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Office of Washington Attorney General. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff").[1]

3 **DISPOSITIVE MOTIONS:** Complainants filed their Motion for Summary Determination on February 27, 2004. The Commission set April 9, 2004, as the date for responses. On April 5, 2004, Commission Staff filed its Motion for Summary Determination. LocalDial filed its Response to WECA's Motion on April 9, 2004, and to Staff's Motion on May 3, 2004.

4 The two motions, in addition to drawing responses from LocalDial, precipitated a series of filings by parties and one "interested person" who wishes to participate as *amicus curiae*. In all, we now have before us 19 separate documents that address the pending issues, many with attachments.

5 **COMMISSION DECISIONS:** The Commission determines that there are no genuine issues of material fact in dispute and that Complainants and Staff are entitled to judgment as a matter of law. LocalDial is a telecommunications company doing business in Washington and is subject to our jurisdiction. LocalDial is an interexchange carrier and subject to Complainants' tariffs to the same extent as other interexchange carriers that provide intrastate long distance service in Washington for Complainants' local exchange service customers. LocalDial must register with the Commission as required by RCW 80.36.350 and must cease and desist from providing jurisdictional services until it complies

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[1] In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455.*

fully with all legal requirements for telecommunications companies that do business in Washington.

MEMORANDUM

I. Background and Procedural History

6 On September 15, 2003, the Commission received a "Stay Order and Order of Referral to WUTC" entered on September 4, 2003, by the United States District Court, Western District of Washington at Tacoma, in Case No. CV03-5012 RBL, styled *Washington Exchange Carrier Association, et al.* v. *LocalDial Corporation*. The plaintiffs in the Federal District Court action allege that LocalDial's business activities in Washington State require it to pay them access charges for originating and terminating intrastate long distance telephone calls that use plaintiffs' equipment and/or facilities. Because the issue referred to the Commission contested issues in pending litigation, it was set for consideration as an adjudication styled under the names of the litigants in the District Court.

7 This proceeding attracted widespread interest in the industry because, as framed by the District Court, and portrayed in the trade and popular press, it potentially queued up for decision wide-ranging policy issues concerning so-called voice over Internet protocol (VoIP) service. VoIP is an emerging regulatory issue with myriad dimensions on both the state and federal levels.

8 On the other hand, this proceeding is fundamentally a dispute between private companies concerning a single service provided by LocalDial in Washington.

9 The Commission invited the participants at its prehearing conference to address what should be the scope of this proceeding. The participants all argued that the Commission should not use this proceeding as a broad-based, generic-type proceeding to resolve the many aspects and nuances of the emerging regulatory

debate over VoIP service. Instead, the participants urged the Commission to limit its inquiry and determination in this proceeding to the specific service offered by LocalDial in Washington of which WECA complains in the underlying Federal District Court case.

10 The Commission's general powers and duties are set forth in RCW 80.01.040. Under that statute, the Commission is required to:

> Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to . . . telecommunications companies.

11 According to RCW 80.04.010:

> "Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

and

> "Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

12 RCW 80.04.015 provides in relevant part:

> Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission . . .
>
> After investigation, the commission is authorized and directed to issue the necessary order or orders declaring the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

13 Considering the District Court's referral in the context of these governing statutes and the parties' arguments, we determined that this proceeding should be limited in scope to the particular service offering by LocalDial that WECA asserts is "telecommunications" making LocalDial a "telecommunications company" subject to the Commission's jurisdiction. We consider in this proceeding only the service placed at issue by WECA's complaint—intrastate interexchange calling, a/k/a intrastate long-distance calling—regardless of whether LocalDial offers other services that may be subject to our jurisdiction. We do not consider the broader legal and policy issues that may come before us in future proceedings concerning the array of services that may be within the umbrella of so-called VoIP technology. Thus, we will fulfill the District Court's need in the context of the case it has stayed by our determination of underlying issues concerning our jurisdiction and what the exercise of our jurisdiction, if any, requires vis-à-vis the particular service offering at issue.

14 In other words, we will answer the following questions:

1. Is LocalDial's service that is challenged by WECA telecommunications service offered to the public in Washington for compensation within the meaning of chapter 80 RCW?

2. Is LocalDial's service that is challenged by WECA a form of intrastate long distance telecommunications service that subjects LocalDial to the obligation to pay access charges payable to originating and terminating local exchange carriers under those carriers' tariffs?

15 The parties anticipated that the issues in this proceeding could be resolved on stipulated facts and cross-motions for summary determination. However, on January 2, 2004, LocalDial informed the Commission that, despite diligent efforts, LocalDial and WECA had not been able to compose a comprehensive set of stipulated facts. The Commission revised the process in this Docket to provide an opportunity for evidentiary hearing proceedings based on prefiled testimonies and exhibits.

16 The Commission, however, did not foreclose the parties from filing motions for summary determination. Complainants filed their Motion for Summary Determination on February 27, 2004, the same day they filed their direct evidence. LocalDial requested an extension of time to file its response. The Commission granted LocalDial's motion and set April 9, 2004, as the date for responses. On April 5, 2004, Commission Staff filed its Motion for Summary Determination. LocalDial filed its Response to WECA's Motion on April 9, 2004, and to Staff's Motion on May 3, 2004.

17 Intervenor BCAW filed an Answer to Complainants' Motion. Verizon, an "interested person" as discussed in our Order No. 04, filed responses to both Complainants' Motion and Staff's Motion.

18 Complainants' filed a Reply to BCAW's Answer.

19 LocalDial filed motions to strike Verizon's responses. Verizon responded.

20 Complainants', LocalDial, Staff, and BCAW all filed arguments concerning the implications of the Federal Communications Commission's Order FCC 04-97 concerning the nature and regulatory status of a VoIP service offered by AT&T.

21 In total, the Commission now has before it 19 separate documents that address the issues in one fashion or another.[2] We consider the various arguments raised and determine the issues in this Order.

II. Governing Law.

22 In addition to the statutes previously cited, we consider our rule governing summary determination. WAC 480-07-380(2) provides:

> A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (*e.g.*, affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

Fundamentally, then, we must make two determinations. We must review the pleadings and supporting evidence to ascertain whether there is a dispute as to any question of fact material to our determination of the issues that cannot be resolved without resorting to further process, such as an evidentiary hearing, to

[2] Appendix A to this Order is an index to the filings.

develop additional evidence. If we can make all findings of fact necessary to a decision on the basis of the pleadings and supporting evidence, we consider that evidence in the light most favorable to the nonmoving party and determine whether the moving party is entitled to judgment as a matter of law.

23 Considering the definitions of "telecommunications" and "telecommunications company" enunciated in RCW 80.04.010, the facts material to our determination of the issues in this proceeding are those that inform us about LocalDial's business, including the nature of LocalDial's intrastate long distance calling service in Washington and the technology by which it is provided. Those facts, discussed below, are not in dispute; they are unequivocally established by uncontroverted evidence submitted in support of the two pending motions for summary determination. Indeed, the evidence LocalDial offers to support its responses affirmatively supports the movants' rendition of all facts that are material to our determination of whether movants are entitled to judgment as a matter of law.

III. Discussion and Decisions

A. Undisputed Facts

24 The facts material to our determination of the legal questions before us in this case are those that tell us what intrastate service(s) LocalDial offers to customers in Washington and how it goes about providing such service(s). We find those facts well established by the affidavits, deposition transcripts, and other documents that are attached as exhibits to the parties' various filings. We summarize these facts below.

25 LocalDial, an Oregon corporation, offers to residential telephone customers in Washington, including Complainants' customers, a service it variously describes on its Internet web site as "unlimited long distance calling for a low flat rate,"

supplemental phone service for domestic long distance calling," and "technology to slash the costs of local toll-calling."[3] To initiate service, LocalDial customers pick up the phone in their homes, receive dial tone from their Local Exchange Carrier (LEC) (*e.g.*, one of the WECA member companies who are Complainants here), and dial a local access number to connect with LocalDial's facilities in Seattle or Portland. As Mr. Williamson testifies:

> LocalDial leases T1 PRI (Primary Rate ISDN) facilities from a competitive local exchange company (CLEC). The CLEC has a switch in Seattle from which it provides local exchange access services in a number of Qwest wire centers throughout the state. Through this arrangement, LocalDial is able to provide its customers in many parts of Washington with a telephone number in their local calling area that connects them to LocalDial's leased T1 trunk facility via CLEC's switch. The T1 trunks connect to LocalDial's Integrated Access Devices (IAD), Gateways, and routers . . .
>
> Calls to and from Spokane and Western Washington as far south as Centralia/Chehalis use the LocalDial Seattle facility at the Westin Building, and calls to and from Western Washington south of Centralia/Chehalis to the Oregon border use a LocalDial facility in Portland. The leased T1 PRI's are bundled in DS3's (28 DS1s or T1s). The IADs de-multiplex each DS3 into the separate T1 PRIs, which then connect to the Gateways. The gateway verifies the caller's number against a database of known subscribers to LocalDial's service and then prompts the customer to dial the long distance telephone number that they want to reach. If the called number is in an area served by the LocalDial network in Washington, the gateway converts the call to IP format and routes the call packets to the router and a particular IP address. The call packets are then routed to the IP address dedicated to the appropriate port associated with the terminating trunk via an

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[3] WECA Motion, Exhibit 4, at 1 (LocalDial Internet pages). *See also*, Staff Motion, Exhibit ___ (RW-1T) at 11 (Williamson Direct).

> internal LAN. The gateway converts the IP packet format back to TDM [time division multiplexing] and sends the call to the T1 PRI associated with the correct terminating area. For a call from Seattle to Spokane or from Olympia to Bellingham, this whole process of converting the call from TDM to IP and back to TDM again occurs in the room at the Westin Building. The T1 PRI terminates in the CLEC office which, after receipt of the called telephone number, routes the call over local interconnection trunks to the terminating ILEC central office, or intermediate local tandem, as a local call. Calls that terminate at the Portland facility are sent from the router in Seattle over the Internet to an IP address in Portland. Some interstate calls and calls that cannot be terminated on the intrastate LocalDial/Competitive Local Exchange Carrier (CLEC) network are sent to Long Distance resellers (approximately four) for termination (access charges are paid on these calls). Interstate calls that can be completed over the extended LocalDial network are routed over the Internet to the appropriate LocalDial gateways.[4]

Mr. Williamson's cogent, if somewhat technical, description is verified by the deposition testimonies of Mr. Crawford, LocalDial's President and Chief Operating Officer, and Mr. Carden, LocalDial's Chief Executive Officer.[5]

26 Reduced to more simple terms, a LocalDial customer makes a telephone call over the public switched telephone network (PSTN) to a computer facility ("gateway") that LocalDial owns and operates in Seattle or Portland. LocalDial's equipment briefly converts the voice call into digital packets and uses internet protocol to route it internally (*i.e.*, within LocalDial's gateway equipment), converts it back into voice and sends it to its destination over the public switched telephone network. This describes one form of what is known in the industry as "phone-to-phone IP telephony" or "phone-to-phone VoIP (voice over internet protocol)."

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[4] Exhibit ___ (RW-1T) at 12-14 (Williamson Direct).

[5] WECA Motion at 4-5 (citing to Deposition Exhibit 1 at 42:8-44:14 (Crawford Deposition); Deposition Exhibit 2 at 34:12-38:5, 39:1-7, 39:23-40:8, 40:14-21, and 43:10-17 (Carden Deposition)).

27 In approximately October 2003, LocalDial modified its network in one particular. Specifically, the company began using the public Internet to transport calls between its Seattle and Portland gateways, rather than continuing to rely on leased lines. As we discuss later in this Order, this fact does not change LocalDial's service in a way material to our determination of either the federal or state law issues that are before us in this proceeding.

28 In summary, LocalDial offers to customers in Washington service it variously describes as "unlimited long distance calling for a low flat rate," "supplemental phone service for domestic long distance calling," and "technology to slash the costs of local toll-calling." The service LocalDial offers exclusively to residential customers is one that involves the transmission of information, exclusively in the form of sound (*i.e.*, voice communication), via by wire, radio, optical cable, electromagnetic, or other similar means. LocalDial owns, operates, and manages facilities used to provide telecommunications for sale to the general public in Washington. These undisputed facts establish all that is necessary for us to determine whether LocalDial is a telecommunications company subject to the Commission's jurisdiction and regulatory authority.

B. LocalDial's Argument That There Are Material Facts In Dispute

29 We find above that there are no material facts in dispute, but we briefly address LocalDial's assertions to the contrary. LocalDial argues: "At a minimum there are issues of fact as to whether LocalDial offers information services or telecommunications services." The question LocalDial describes is one that arises under federal law. It is a legal question, not a fact question. The facts

necessary to its determination are in our record and are not disputed.[6] We return to this question, and resolve it, in section III.D. of this Order.

30 In addition to its misguided argument that there are genuine issues of material fact in dispute, LocalDial argues that the parties' failure to agree to a set of stipulated facts precludes Commission action on the pending motions for summary determination. This argument is grounded in the Commission's first prehearing order (*i.e.*, Order No. 01), which, having described the issues, states in part: "We expect to address these questions on cross-motions for summary determination grounded in stipulated facts concerning the precise nature of the service LocalDial offers." The Commission's expectation, however, was based entirely on the parties' representations at the first prehearing conference that they believed they could develop and submit a set of stipulated facts. Yet, LocalDial characterizes the Commission's statement as one establishing a "precondition for summary determination."[7]

31 We reject this argument. After the parties informed the Commission that they had not been able to achieve a set of stipulated facts, the Commission convened a second prehearing conference. Relying on the parties' representations that the facts might best be developed through evidentiary hearing proceedings, the Commission established a schedule for that process. However, Complainant's counsel stated that "by moving down this track . . . we didn't want to foreclose the possibility of bringing a motion for summary disposition if its within the Commission's rules."[8] The presiding officer responded that "at any point in time that a party feels that there is sufficient development that they can assert in good faith that there are no material facts in dispute, then it is appropriate to do

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[6] Even LocalDial argues that we have all of the underlying facts necessary to determine this legal question in its favor. LocalDial's Response to Complainants' Motion for Summary Disposition at 12-15.

[7] *Id.* at 5.

[8] TR. 83:19-23.

that."[9] It is perfectly clear from this colloquy that the Commission did not establish the requirement of stipulated facts as a precondition to summary determination of the issues in this proceeding.

32 The only fact-related "precondition" to summary determination under controlling law is a determination that there are no genuine issues of material fact in dispute. Such a determination can be grounded in a set of stipulated facts, but that is only one option. As discussed in more detail above, such a determination also can be grounded in the pleadings, considered together with any properly admissible evidentiary support. And, as also discussed above, we are well and thoroughly informed by undisputed facts concerning the intrastate service LocalDial offers to customers in Washington both in terms of what service the company offers and how it goes about providing that service. Under these circumstances, the parties' failure to prepare and submit a fact stipulation is simply beside the point.

C. Preliminary Matters

33 Before turning to the more substantive issues, we consider and resolve two preliminary matters raised by the parties.

1. LocalDial's Motions To Strike Verizon's Responses to Complainants' and Staff's Respective Motions for Summary Determination

34 LocalDial acknowledges that the Commission, in its prehearing orders, allowed for the filing of *amicus* briefs by interested persons. Yet, LocalDial argues that this was only allowed if the issues were to be resolved on stipulated facts. Just as the parties' failure to file a stipulation of the facts is not a barrier to the Commission's determination of the issues on motions for summary determination, that failure is not a barrier to interested persons filing *amicus*

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[9] TR. 84:1-5.

briefs. As Verizon discusses in its answers to LocalDial's motions to strike Verizon's responses, it is clear from the transcript of the first prehearing conference that the presiding officer contemplated that one or more interested persons might wish to file an *amicus* brief at the summary determination stage.[10] Neither LocalDial, nor any other participant, raised any objection to the suggestion that interested persons could file *amicus* briefs at the summary determination stage of this proceeding.

35 LocalDial argues that the Commission's procedural rule governing motions for summary determination, WAC 480-07-380, precludes Verizon from filing an *amicus* brief because the rule establishes the timing requirements for answers to be filed by "a party." The rule does not foreclose the possibility of *amicus* filings. Such filings are regularly received in our proceedings and may even be encouraged to promote the Commission's understanding of various perspectives on issues that may be held by a range of interested persons. Again, the presiding officer expressed the Commission's openness to the receipt of such filings in this proceeding at the summary determination stage.

36 LocalDial also argues that Verizon, by its responses, would "expand the nature of the issues before the Commission."[11] This is simply not true. As we discuss in more detail below, it is appropriate that we determine the question of federal preemption and that we consider any guidance arguably relevant FCC rulings may provide on the issues before us. This is the principal subject matter of Verizon's *amicus* briefs. The parties also offer argument on these questions. Verizon's arguments do not broaden the scope of our proceeding at all.

37 Finally, the Commission recognizes that this proceeding is one of widespread interest in the industry and that it represents a first step, of sorts, into what

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[10] TR. 40:19-24; 64:6-11; 65:16-18.

[11] LocalDial's Motion To Strike Verizon Northwest Inc.'s Response to Complainants' Motion for Summary Disposition at 4.

promises to be a subject matter of considerable importance. The Commission values the perspectives of various industry participants. We find nothing in LocalDial's arguments that persuades us that we should deny Verizon the opportunity to express its perspectives on the issues before us in this proceeding. Accordingly, we deny LocalDial's Motion To Strike Verizon's Response to Complainants' Motion for Summary Disposition, filed on April 15, 2004, and LocalDial's Motion To Strike Verizon Northwest Inc.'s Response to Staff's Motion for Summary Disposition, filed on May 14, 2004.

2. BCAW's Argument Concerning Scope

38 BCAW takes no position on WECA's Motion for Summary Determination, except to the extent BCAW contends WECA's Motion "seeks to broaden the issues in this docket."[12] BCAW quotes our first prehearing order, in which we stated: "We will consider in this proceeding ***only the service placed at issue by WECA's complaint***, regardless of whether LocalDial offers other services that may or may not be subject to our jurisdiction."[13] The complaint to which this language refers is the underlying complaint in Federal District Court that brought this case before us by referral from that Court.

39 BCAW argues that it appears LocalDial was not offering a service that used the public Internet for transport at the time it filed its complaint in the Federal Court. At the time of the underlying complaint, all calls placed using the LocalDial service were converted to "internet protocol," or "IP," but were transported in IP only for a short distance over dedicated facilities owned and operated by LocalDial. The facts before us show that sometime in October 2003, after the complaint was filed and the matter referred to the Commission, LocalDial began to transport certain Washington-originated calls between Seattle and Portland,

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[12] Answer of BCAW to WECA Motion for Summary Determination at 1.

[13] *Id.* at 2 (emphasis added by BCAW) (citing to Order No. 01, Prehearing Conference Order at ¶ 14).

Oregon using the public Internet. Some of the calls initiated in Washington and routed to Portland are terminated in southwestern Washington, and thus are intrastate.

40 BCAW argues that we should not make any determination in this proceeding concerning these intrastate long-distance calls in which the public Internet is used because this is not the "service" that LocalDial offered at the time of the complaint. BCAW states that "the Commission should take care to distinguish between **VoIP**, which is at issue in this case, and **VoInternet**, which is not."[14]

41 In describing the calls for which BCAW argues WECA's complaint seeks compensation, BCAW says these "were merely VoIP, not VoInternet."[15] This implies that VoIP is a subset of VoInternet or that the two are wholly separate technologies, but that appears to be contrary to accepted definitions in the industry. Newton's Telecom Dictionary, 19th edition (2003), defines VoIP as "The technology used to transmit voice conversations over a data network using the Internet Protocol. Such data network may be the Internet or a corporate Intranet." Thus, VoInternet, as BCAW uses the term, is encompassed within VoIP. BCAW acknowledges this point in its Comments, filed May 3, 2004, on the *AT&T Order*.[16]

42 WECA argues that the distinction BCAW urges is not relevant to this proceeding. WECA contends it is essential that the Commission evaluate the technology LocalDial uses to provide the services to which WECA's complaint pertains so as to avoid "incomplete and piecemeal review."[17] According to WECA, if the Commission accepts BCAW's position, each permutation of the use of IP technology within a phone-to-phone VoIP service would require a separate,

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[14] VoInternet appears to be a term of relatively recent vintage. The term did not find its way into Newton's Telecom Dictionary, 19th edition (2003).
[15] BCAW Answer at 3.
[16] Discussed, *infra*, in section III.D.
[17] WECA's Reply to BCAW's Answer at 2.

lengthy proceeding that could exhaust the resources of parties such as the WECA members.[18]

43 One apt description of LocalDial's service that was put at issue by WECA's complaint is "intrastate long distance, phone-to-phone telephony with internet protocol in the middle." Our ultimate determination of the issues before us, as discussed in detail in the next two sections of this Order, does not turn on whether the internet-in-the-middle portion of the call is on a private local area network (*i.e.*, corporate intranet) using internet protocol or on the public Internet, again using internet protocol.

44 While we remain committed to deciding this case narrowly, the distinction BCAW urges us to make for purposes of decision is a distinction without a difference. Parsimony in our decision here would invite additional litigation concerning closely similar, even identical, issues and cause parties to expend significant resources over a protracted period of time. LocalDial could make small change after small change to its internet-in-the-middle network architecture without changing the fundamental nature of its VoIP offering—phone-to-phone VoIP in this instance—that is the focus of the issues before us. We will not open the door to this possibility. We will determine the issues based on the facts at hand, as fully developed in this proceeding. We address the basic service LocalDial offers and of which WECA complains, both when that service involves IP-in-the-middle on a private intranet and when it involves use of the public Internet to transport calls between LocalDial's Seattle and Portland gateway facilities.

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[18] We note in this connection that WECA filed its complaint in the Federal District Court in December 2002. The matter was referred to us in September 2003 and we today return it to the District Court in June 2004, where further proceedings will be required. WECA expresses its concern that if we adopt BCAW's approach, WECA will be required to initiate yet additional proceedings to address at least a part of LocalDial's service in Washington, as provided after October 2003.

D. Preemption (Is LocalDial's service "telecommunications service" or "information service" as a matter of federal law?)

45 Complainants' argue that the question whether the Commission is preempted by federal law from deciding the issues referred by the District Court is not before us because it was not expressly referred to us by the Court. LocalDial, on the other hand, argues that we are prohibited from addressing the substantive issues referred by the District Court because the FCC has preempted the states from deciding such issues. We are further informed on the issues by argument from Staff and Verizon. WECA, LocalDial, Staff, and BCAW also offered supplemental arguments considering the FCC's recent decision in a factually similar case involving AT&T's VoIP service at the interstate level.

46 Preemption is a threshold question that must be resolved in this proceeding because it implicates our jurisdiction—our power to decide. If federal law preempts us, what we might otherwise decide under state law is a question we cannot legally reach. Accordingly, we address the merits of the preemption arguments here. We determine, as a matter of law, that we are not preempted.

47 LocalDial's argument that we are preempted depends on its assertion that the company is offering "information services" or "enhanced services" under federal law, not "telecommunications services" as defined by the Telecommunications Act of 1996 and FCC rules. LocalDial's argument flows from that assertion and urges the point that if the assertion is true we are preempted because the FCC has exclusive jurisdiction over information services.

48 LocalDial contends it is an Enhanced Services Provider ("ESP") because the company changes the form and content of the communications initiated by the company's customers. By contrast, "telecommunications carriers switch and transport the form and content of the sender's information ***without change,***"

according to LocalDial.[19] LocalDial argues that it uses telecommunications services it obtains from others to provide information services.

49 LocalDial relies in part on the definition of "enhanced service" in the FCC's rules at 47 CFR § 64.702(a):

> For the purposes of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The genesis of this definition dates to 1980 when, in the so-called *Computer II* decision, the FCC distinguished "enhanced service" from "basic service." In 1980, of course, few recognized even the possibility of VoIP, much less that it would become the subject of an important national, perhaps global, regulatory policy discussion. VoIP still was not a technology with much visibility at the time the Telecommunications Act of 1996 (Telco Act) became law. Congress, however, recognized a distinction between telecommunications service (*i.e.*, basic service) and information service (*i.e.*, enhanced service) along the lines of the FCC's rule. The Telco Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received."[20] "Information service" is defined in the Telco Act as:

> The offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available

[19] LocalDial Response to Complainants' Motion for Summary Disposition at 2.
[20] 47 U.S.C. § 153(43).

> information via telecommunications, and includes electronic publishing, *but does not include any use of any such capability for the management, control, or operation of a telecommunications network or the management of a telecommunications service.*[21]

50 LocalDial argues that it meets the definition of enhanced service under all three clauses in 47 CFR § 64.702(a). Although stated in highly technical terms by LocalDial's witness, Mr. William Page Montgomery, the essence of LocalDial's argument is that it employs within its network electronic technology and mathematical algorithms that make voice communication intelligible and indistinguishable from the users' perspectives from what is quaintly referred to in the industry as "plain old telephone service."[22] LocalDial argues that these internal network changes in protocol remove its service from the realm of telecommunications and bring it within the FCC's definition of information service.

51 As Staff argues, however, all modern telecommunications networks employ the sorts of technology and mathematical algorithms LocalDial uses inside its network—in some cases identical technology and mathematical algorithms, in some cases different. Mr. Williamson testifies:

> LocalDial attempts to build a case that its long distance IP-in-the-middle service is an "Information Service" rather than a "Telecommunications Service" based on *how* the International Telecommunications Union (ITU) G.723 technology performs signal compression and suppression functions, detects and corrects errors, or performs protocol functions. They state that because it "actually involves complex, mathematical, real-time computations that act on the pitch and other characteristics of the human voice"[23] the LocalDial IP-in-the-middle long distance service somehow differs

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[21] 47 U.S.C. § 153(20) (emphasis added).
[22] LocalDial. at 12-14.
[23] Montgomery Direct Testimony, p. 36

> from similar functions that are commonly provided in the Public Switched Telephone Network (PSTN) . . .

52 The information transmitted by the LocalDial service is simply the called and calling parties' digitized voice. Mr. Williamson testifies that virtually all PSTN services digitize, mathematically create filters (such as echo cancellation via ITU G.711), and use complex real-time computing processes in both transmission and switching equipment that effect the perception of the speaker's individual voice. The business of telecommunications is to provide intelligible voice communication to both parties. Yet LocalDial claims that because the G.723.1 technology makes the human voice signal intelligible to the listener, it somehow provides "additional, different, or restructured information." As Mr. Williamson testifies, if somehow the provision of intelligible voice through the use of computer processing was considered an "information service," then virtually all PSTN voice services would have to be reclassified as "information services."[24]

53 We look not only to 47 U.S.C. § 153(43), 47 U.S.C. § 153(20), and 47 CFR § 64.702(a), but to the *Steven's Report*, and the *AT&T Order* as we analyze whether LocalDial's service is telecommunications or information service as a matter of federal law.[25] In the *Steven's Report* the FCC stated, consistent with the determinations it had previously made on several occasions,[26] that "[t]he

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[24] Supplemental Declaration of Robert Williamson at 2-3.

[25] In 1998, the FCC prepared and presented to Congress the so-called *Steven's Report*, which addressed how evolving technology, including most significantly the Internet, might affect universal telephone service. *In the Matter of Federal-State Joint Board on Universal Service* cc Docket No. 9645, 13 FCC RD 11501, release Number 98-67 released April 10, 1998. The *Steven's Report*, among other things, discusses the classification of VoIP services as either "telecommunications" or "information." While, as LocalDial contends, the *Steven's Report* lacks the force of law, it nevertheless provides useful guidance to the FCC's view of the applicable law. The significance and currency of the *Steven's Report* is underscored by the FCC's recent discussion and decision in *Petition for a Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Order FCC 04-97 (April 21, 2004)(*"AT&T Order"*).

[26] Memorandum Opinion and Order, *Petitions for Waver of Section 64.702 of the Commission's Rules and Regulations to Provide Certain Types of Protocol Conversion Within Their Basic Network,* ENF-94-15, FCC 84-561 (rel. Nov. 28, 1984) (conversions that take place solely within a network that result

protocol processing that takes place incident to phone-to-phone IP Telephony does not affect the service's classification, under the Commission's current approach, because it results in no protocol conversion to the end user."[27] The FCC defined phone-to-phone IP Telephony as a service that: 1) holds itself out as providing voice telephony service; 2) does not require the customer to use CPE [customer premises equipment] different from that necessary to place an ordinary touch-tone call over the public switched telephone network; 3) allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan; and 4) transmits customer information without net change in form or content.[28]

54 More recently, in the *AT&T Order*, the FCC held that AT&T's interstate long distance service that is phone-to-phone with Internet in the middle is telecommunications service, not information service. The FCC stated:

> We emphasize that our decision is limited to the type of service described by AT&T in this proceeding, i.e., an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the switched public network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to the end user due to the provider's use of IP technology. *Our analysis in this order applies to services that meet these three criteria . . .*[29]

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in no net conversion between users are treated as basic (i.e., telecommunications) services); Memorandum Opinion and Order on Reconsideration, *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 3 FCC Rcd 1150, ¶¶ 4, 53-57 (1988); Memorandum Opinion and Order, *Southwestern Bell Telephone Company Petition for Waiver of Section 64.702 of the Commission Rules and Regulations to Provide and Market Asynchronous Protocol Conversion on an Unseparated Basis*, 5 FCC Rcd 161, ¶ 13 (1990).

[27] *Steven's Report* at ¶ 52.

[28] *Id. at* ¶ 88.

[29] *AT&T Order*, ¶ 1 [emphasis added].

55 In light of the *AT&T Order*, LocalDial's argument that "the FCC has never adopted [the] four-part shorthand description of 'phone-to-phone' IP Telephony [included in the *Steven's Report*] in any context, much less as a test to determine whether a VoIP service is an information service," is no longer true. Moreover, the *AT&T Order* belies LocalDial's argument that the *Steven's Report's* "description of 'phone-to-phone' IP Telephony is incorrect in material ways." As the *AT&T Order* makes clear, in the FCC's interpretation of its own rules and governing statutes, the *Steven's Report* captures quite accurately the agency's current rules and is central to the agency's decision concerning the classification of VoIP services as either "telecommunications" or "information."

56 The facts before us are closely similar in all material respects to those before the FCC in the AT&T matter.[30] LocalDial's customers use ordinary customer premises equipment—the same equipment they use to make other telephone calls—with no enhanced functionality. LocalDial's customers' calls originate and terminate on the public switched telephone network. Protocol conversions take place within LocalDial's network, as in many other companies' networks, but, insofar as LocalDial's service is concerned, there is no *net* protocol conversion from an end-user perspective. LocalDial customers' calls begin as voice on the PSTN and end as voice on the PSTN.

57 LocalDial does not contest that its service meets the first two criteria under the *Steven's Report* and in the *AT&T Order*. LocalDial's arguments concerning protocol conversion and enhanced functionality ignore the requirement for *net* protocol change from the customer perspective. We conclude that LocalDial's

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[30] LocalDial's argument in its Response Brief Regarding the FCC's *AT&T VoIP Order* that its service is "distinctly different" from AT&T's focuses entirely on distinctions that do not distinguish the two services in any way material to our decision. We do not consider the FCC's Order to be precedent that compels our decision here. The *AT&T Order*, however, confirms our understanding of the criteria by which a service should be determined to be telecommunications or information under federal law.

service meets the definition of telecommunications under federal law.[31] LocalDial does not provide information service or enhanced service.

58 The FCC has not preempted the states from regulating intrastate telecommunications services. We have the jurisdiction to decide, and are not preempted from deciding, whether LocalDial's service is subject to our regulatory authority under chapter 80 RCW.

59 Our conclusions under state law, discussed immediately below, while clearly not determined by the FCC's *AT&T Order* under federal law, are entirely consistent with that order. The *AT&T Order* clarifies the FCC's rules concerning the classification of phone-to-phone IP telephony as telecommunications service under federal law. Thus, LocalDial's argument that we should refrain from deciding this case pending FCC issuance of "one or more rulings either clarifying the application of existing federal rules," has been overtaken by events. LocalDial goes further with this line of argument to suggest that we await the outcome of the FCC's Notice of Proposed Rulemaking (NPRM) on IP-enabled services, which was initiated in March of this year. It is unclear whether the outcome of the NPRM will have any bearing on the issues pending here. Moreover, the timing of the NPRM is uncertain, but likely will consume much of this year and may extend into 2005. Considering that this matter is before us by referral from the Federal District Court, it would be inappropriate for us to not respond in a timely manner.

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[31] We do not mean to imply that the *AT&T Order* is fully dispositive of the issues before us. The AT&T matter can be distinguished on several points (e.g., it concerns interstate exchange service and it relies on Feature Group D 1+ dialing), but these distinctions are not relevant to the central question the *AT&T Order* answers (*i.e.*, what characteristics of phone-to-phone VoIP make it "telecommunications" under federal law?). The *AT&T Order* is entirely consistent with the FCC's prior treatment of this question. And, while AT&T's service is not identical in every respect to LocalDial's service, it is the same in every respect that matters under the FCC's analyses of its rules and governing statutes in the *AT&T Order*, in previous orders, and in the *Steven's Report*.

E. State Law Issues

1. Is LocalDial's service that is challenged by WECA telecommunications service offered to the public in Washington for compensation within the meaning of chapter 80 RCW?

60 LocalDial's argument that the Commission does not have authority to regulate LocalDial under state law turns entirely on its argument that it is an information service provider under federal law, not a telecommunications service provider. LocalDial argues that we should interpret RCW 80.04.010 "consistently with federal law." We have already determined that LocalDial's service is not an information service or enhanced service as those terms are used in the federal statutes and FCC rules. Accordingly, the fundamental predicate upon which LocalDial's argument rests is incorrect.

61 WECA and Staff argue that LocalDial is a "telecommunications company" under RCW 80.04.010. As Staff points out, the Washington statutory definition of telecommunications is broad and, like the federal definition, does not distinguish among transmission technologies. While the legislature has exempted certain services that otherwise would fall within the definition, such as cellular service and cable television, there currently is no exemption that would cover LocalDial's service.

62 Focusing on the terms of RCW 80.04.010, WECA states correctly that there is no question concerning LocalDial's status as a corporation doing business in Washington. Its business is the sale to the general public of telecommunications as discussed in this Order, and as evidenced by the company's own advertising. As Staff argues, LocalDial owns and operates the gateways, servers, and other equipment that are part of the network it uses to provide telecommunications service. In short, it is an inescapable conclusion under the undisputed facts before us that LocalDial offers telecommunications service for sale to the general

public in Washington and is a telecommunications company subject to our jurisdiction under chapter 80 RCW.

2. Is LocalDial's service that is challenged by WECA a form of intrastate long distance telecommunications service that subjects LocalDial to the obligation to pay access charges payable to originating and terminating local exchange carriers under those carriers' tariffs?

63 LocalDial argues that even if subject to Commission jurisdiction as a matter of law, the Commission should not regulate LocalDial's service for policy reasons. The simple response to this argument is that, as WECA argues, we do not have the statutory authority to forebear from regulating LocalDial. LocalDial, in terms of the service under consideration here, is no different from other interexchange carriers that do business in Washington. To the extent Complainants' tariffs require interexchange carriers to pay access charges for interexchange calls made by or to Complainants' customers, those tariffs must be enforced as to LocalDial.

64 The access charge regime in Washington is mandated by RCW 80.36.160. It is implemented by the companies' tariffs. Complainants' tariffs, once approved by the Commission, have the force and effect of law.[32] They must be applied uniformly to all interexchange carriers to avoid giving undue preference under RCW 80.28.090 or allowing for the application of discriminatory rate practices under RCW 80.28.100. LocalDial's phone-to-phone IP telephony service is 'telecommunications service,' and is functionally identical to the inter-local-calling area service that is provided by other interexchange carriers that pay access charges. LocalDial obtains the same access to the Complainants' networks as obtained by other interexchange carriers. LocalDial, therefore, imposes the same burdens on the local exchange carriers as do other interexchange carriers. LocalDial should bear its fair share of the associated costs, as reflected in the local exchange carriers' tariffs.

65 LocalDial's argument that it is not a customer of the WECA member local exchange companies and therefore not subject to their tariffs is unavailing. The point is, under our determinations here, LocalDial is required to the same extent as any other interexchange carrier to become such a customer if it wishes to continue doing business as described in this Order.

66 Thus, in answer to the District Court's second and third questions we conclude: 1) plaintiffs' tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using plaintiffs' facilities; and 2) LocalDial should be regulated in the same fashion and to the same extent as any other interexchange carrier.

3. Should LocalDial be required to register as a telecommunications company and should LocalDial be ordered to cease and desist from providing jurisdictional services pending full compliance with the requirements of Title 80 RCW?

67 Staff, with reference to our authority under RCW 80.04.015 to determine whether "any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval," argues that we should require in this Order that LocalDial register with the Commission, as required by RCW 80.36.350. In addition, given that interexchange telecommunications services are reasonably available from other sources, Staff argues that it would be appropriate to order LocalDial to cease and desist from providing intrastate telecommunications service in Washington until it registers with the Commission.

68 In light of our conclusion that LocalDial is conducting business subject to our regulatory authority, it clearly is necessary for LocalDial to meet the registration

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[32] *General Tel Co. of Northwest, Inc. v. Bothell*, 105 Wn.2d 579, 585, 716 P.2d 879 (1986).

requirement under RCW 80.36.350 and to otherwise conform to the other requirements imposed on telecommunications companies under Title 80 RCW and under the Commission's rules. Although Staff's argument implies a degree of discretionary authority, the language of RCW 80.04.015 is mandatory. Accordingly, given our findings and conclusions here, we also must order LocalDial "to cease and desist from providing jurisdictional services pending full compliance."

FINDINGS OF FACT

69 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

70 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.

71 (2) LocalDial is an Oregon corporation. LocalDial owns, operates, and manages facilities used to provide telecommunications for sale to the general public in Washington. LocalDial is engaged in the business of furnishing telecommunications services within Washington State as a public service company.

72 (3) LocalDial is conducting business subject to the Commission's regulatory authority. LocalDial is performing acts requiring registration or approval of the Commission, but LocalDial has neither registered with the

Commission nor otherwise sought regulatory approval to conduct business subject to the Commission's regulatory authority.

CONCLUSIONS OF LAW

73 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

74 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. *Title 80 RCW.*

75 (2) LocalDial's service that is challenged by WECA is telecommunications service offered to the public in Washington for compensation and LocalDial is a telecommunications company within the meaning of Title 80 RCW.

76 (3) LocalDial's service is a form of intrastate interexchange (*i.e.*, long distance) telecommunications service that subjects LocalDial to the obligation to pay access charges payable to originating and terminating local exchange carriers, including Complainants, to extent required of interexchange carriers by those carriers' tariffs. In other words, plaintiffs' (*i.e*, Complainants in this proceeding) tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using plaintiffs' facilities.

77 (4) The Commission has the statutory and regulatory authority, and obligation, to regulate LocalDial to the extent of its intrastate long distance telecommunications service in Washington. The Commission lacks the statutory authority to forebear from regulating LocalDial in the same

manner and to the same extent as it regulates other interexchange carriers offering services in Washington. *See e.g., RCW 80.28.090* and *RCW 80.28.100.*

78 (5) LocalDial is conducting business subject to the Commission's regulatory authority. LocalDial should be required to register with the Commission as required under RCW 80.36.350 and to otherwise conform with the requirements for telecommunications companies operating in Washington under Title 80 RCW and chapters 480.80, 480.120, and 480.121 WAC, and such other of the Commission's regulations as may apply.

79 (6) LocalDial should be required to cease and desist from providing intrastate telecommunications service in Washington unless and until it registers with the Commission and otherwise conforms to all requirements of law. *RCW 80.04.015.*

80 (7) The Commission should retain jurisdiction to effectuate the terms of this Order. *Title 80 RCW.*

ORDER

THE COMMISSION ORDERS THAT:

81 (1) Complainants' Motion for Summary Determination and Staff's Motion for Summary Determination are GRANTED, as discussed in the body of this Order.

82 (2) LocalDial's Motion to Strike Verizon's Response to Complainants' Motion for Summary Determination and LocalDial's Motion to Strike Verizon's Response to Staff's Motion for Summary Determination are DENIED.

83 (3) LocalDial is required, within 10 days following the date of this Order, to register with the Commission as required under RCW 80.36.350 and to otherwise conform with the requirements for telecommunications companies operating in Washington under Title 80 RCW and chapters 480.80, 480.120, and 480.121 WAC, and such other of the Commission's regulations as may apply.

84 (4) On the eleventh day following the date of this Order, at 12:01 a.m., LocalDial is required to cease and desist from providing intrastate telecommunications service in Washington unless and until it thereafter registers with the Commission and otherwise conforms to all requirements of law.

85 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this 11th day of June 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

APPENDIX A
Parties' Filings Related to Motions for Summary Determination

- **WECA Motion for Summary Determination**

  - Complainants' Motion for Summary Determination (2/26/04)
  - LocalDial's Response to Complainants' Motion for Summary Determination (4/9/04)
  - Answer of Broadband Communications Association of Washington to WECA Motion for Summary Determination (4/9/04)
  - Verizon's Response to WECA's Motion for Summary Determination (4/9/04)
  - LocalDial's Motion To Strike Verizon's Response to Complainant's Motion for Summary Disposition (4/15/04)
  - Verizon's Response to LocalDial Motion To Strike (4/26/04)
  - WECA's Response in Opposition to LocalDial's Motion to Strike Verizon's Response to Complainants' Motion for Summary Disposition (4/26/04)
  - Complainants' Reply to Answer of BCAW to WECA Motion for Summary Determination (4/26/04)

- **Staff Motion for Summary Determination**

  - Staff's [Corrected] Motion for Summary Determination and Memorandum in Support (4/5/04)
  - LocalDial's Response to Staff's Motion for Summary Disposition (5/3/04)
  - Verizon's Response to Staff's Motion for Summary Disposition (5/3/04)
  - LocalDial's Motion To Strike Verizon Northwest Inc.'s Response to Staff's Motion for Summary Disposition (5/14/04)
  - Verizon Response to LocalDial's Motion To Strike Verizon Northwest Inc.'s Response to Staff's Motion for Summary Disposition (5/27/04)

- **Comments Re FCC's AT&T Order**

  - Initial Argument of Commission Staff Concerning Order FCC 04-97 (5/3/04)
  - Complainants' Brief Regarding AT&T's Petition for Declaratory Ruling [Order FCC 04-97] (5/3/04)
  - BCAW Comments on Impact of FCC's AT&T Order on Case (5/3/04)
  - Response Arguments of Commission Staff Concerning Order FCC 04-97 (5/14/04)
  - Complainants' Reply to LocalDial's Response to Commission Staff's Motion for Summary Determination and Memorandum in Support and to Comments of BCAW and Commission Staff (5/14/04)
  - LocalDial's Response Brief Regarding the FCC's *AT&T VoIP Order* (5/14/04)