

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

SANDY JUDD AND TARA)	DOCKET UT-042022
HERIVEL,)	
)	ORDER 22
Complainants,)	
)	
v.)	ORDER DENYING AT&T'S
)	MOTION FOR LEAVE TO FILE A
AT&T COMMUNICATIONS OF THE)	RESPONSE REGARDING BENCH
PACIFIC NORTHWEST, INC., AND)	REQUEST NO. 6 AND T-NETIX'S
T-NETIX, INC.,)	RESPONSE THERETO
)	
)	
Respondents.)	
.....)	

MEMORANDUM

- 1 **SYNOPSIS.** *This interlocutory order denies the Motion for Leave to File a Response Regarding Bench Request No. 6 and T-Netix's Response Thereto of AT&T Communications of the Pacific Northwest, Inc.*

- 2 **NATURE OF PROCEEDING.** Docket UT-042022 involves a formal complaint filed with the Washington Utilities and Transportation Commission (Commission) by Sandy Judd and Tara Herivel (Complainants) against AT&T Communications of the Pacific Northwest, Inc. (AT&T), and T-Netix, Inc. (T-Netix), requesting that the Commission resolve certain issues of fact and law under the doctrine of primary jurisdiction and referred by the Superior Court of Washington for King County.

- 3 **APPEARANCES.** Chris R. Youtz, Sirianni Youtz Meier & Spoonemore, Seattle, Washington, represents Complainants. Letty Friesen, AT&T Law Department, Austin, Texas, and Charles H. R. Peters, Schiff Hardin, LLP, Chicago, Illinois, represent AT&T. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, and Stephanie A. Joyce, Arent Fox LLP, Washington, D.C., represent T-Netix.

- 4 **PROCEDURAL HISTORY.** On November 17, 2004, Complainants filed a formal complaint with the Commission against T-Netix and AT&T under the court's referral.¹ On July 11, 2008, the Commission assigned Administrative Law Judge Marguerite E. Friedlander (ALJ) to matter after the Superior Court of Washington for King County reinstated its referral to the Commission.
- 5 AT&T's and T-Netix's motions for summary determination were originally filed with the Commission in 2004 and 2005, respectively. The Commission did not have an opportunity to rule on the motions prior to the King County Superior Court's revocation of referral on September 6, 2005.
- 6 AT&T filed an Amended Motion for Summary Determination (AT&T's Amended Motion) on August 24, 2009.² On August 27, 2009, T-Netix filed its Amended Motion for Summary Determination (T-Netix's Amended Motion). On September 10, 2009, Complainants filed a Memorandum in Opposition to T-Netix's and AT&T's Amended Motions; T-Netix filed its Opposition to AT&T's Amended Motion; and AT&T filed its Response to T-Netix's Amended Motion. On September 24, 2009, AT&T and T-Netix filed replies in support of their respective amended motions.
- 7 The Commission issued Bench Request (BR) Nos. 5 and 6 on March 19, 2010.³ BR No. 6 indicated that Amendment No. 3 to the Department of Corrections (DOC) contract required T-Netix to remit a 27 percent monthly commission to the DOC for local calls. In the bench request, the Commission asked that T-Netix explain what services or activities, if any, T-Netix was providing upon which the monthly commission was based. The company filed its response explaining that it leased facilities to provide local calls on behalf of AT&T. According to T-Netix, AT&T

¹ The procedural history in this matter is described more fully in previous orders within this docket and is not repeated here.

² AT&T neglected to request leave to amend its original pleading. Following a telephonic conference on August 25, 2009, between the parties and the ALJ, AT&T and T-Netix both filed motions for leave to amend their original motions for summary determinations, stating that the original motions were more than 4 years. In Order 21, entered on August 28, 2009, the Commission granted AT&T's and T-Netix's request for leave to file amended motions for summary determination.

³ However, only T-Netix's Response to BR No. 6 is at issue in this order.

agreed to reimburse T-Netix for the commission paid on local calls placed after March 3, 1998, from the five DOC facilities T-Netix served.

8 On April 8, 2010, AT&T filed its Motion for Leave to File a Response Regarding BR No. 6 (Motion for Leave) and its Response with the Commission.⁴ In its Motion for Leave, AT&T claims that T-Netix's Response to BR No. 6 is "vague, ambiguous, and, particularly with respect to references it makes to AT&T, misleading."⁵ AT&T's Response alleges that T-Netix's Response to BR No. 6 does not identify the services it provided at the five correctional institutions under Amendment No. 3 and for which it was required to pay a 27 percent commission.⁶ AT&T maintains that it was not authorized to provide local service in the territory addressed in Amendment No. 3 and, as such, T-Netix did not provide the service on AT&T's behalf.⁷

9 On April 9, 2010, T-Netix filed its Opposition and Response to AT&T's Motion for Leave (T-Netix's Opposition and Response). T-Netix asserts that AT&T has failed to cite to any authority which would allow it to respond to a bench request directed only to T-Netix.⁸ T-Netix also alleges that AT&T's Response is misleading, factually incorrect, and that it should be stricken.⁹ According to T-Netix, AT&T inappropriately raises questions regarding interLATA and intraLATA toll calls, which were not at issue in BR No. 6, and its Response should therefore not be accepted.¹⁰ In

⁴ AT&T's pleading was actually captioned "AT&T's Unopposed Motion for Leave to File its Amended Motion for Summary Determination." The pleading did, however, contain the appropriate title elsewhere in the text. As T-Netix has indicated, AT&T's Motion for Leave was not unopposed.

⁵ AT&T's Motion for Leave, ¶ 2.

⁶ *Id.*, at 1.

⁷ *Id.*, at 2.

⁸ T-Netix's Opposition, ¶ 5.

⁹ *Id.*, ¶ 6.

¹⁰ *Id.*, ¶ 7.

the alternative, T-Netix claims that it should be allowed, at a minimum, to respond to AT&T's Response.¹¹

10 In its Response, T-Netix contends that the March 10, 1999, letter from John Giannaula of T-Netix to Sandi Hornung of AT&T addresses the DOC facilities where T-Netix would carry the local traffic on behalf of AT&T.¹² T-Netix also states that AT&T never contested the validity of the letter and even submitted it as an exhibit in support of its own motion for summary determination.¹³

11 **Decision.** Pursuant to WAC 480-07-405(6)(c), any party may object to a response to a bench request. AT&T's Motion for Leave does state an objection to T-Netix's Response to BR No. 6. However, the company's Motion for Leave is lacking in any real substance and fails to indicate how its supplementation of the record would assist the trier of fact. Aside from claiming that T-Netix's Response to BR No. 6 is vague and ambiguous, AT&T provides no explanation or even proof of these allegations in its Motion for Leave. AT&T has failed to demonstrate that its Motion to Leave is in the public interest and is denied.

ORDER

12 THE COMMISSION ORDERS That AT&T's Motion for Leave to File a Response Regarding Bench Request No. 6 and T-Netix's Response Thereto is denied.

Dated at Olympia, Washington, and effective April 12, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

¹¹ *Id.*, ¶ 8.

¹² T-Netix's Response, at 2.

¹³ *Id.*, at 3.

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to *WAC 480-07-810*.