

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC.

Respondent.

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) DOCKET UT-060962  
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) NARRATIVE SUPPORTING  
) SETTLEMENT AGREEMENT  
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## I. INTRODUCTION

1 This Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to WAC 480-07-740(2)(a) on behalf of both AT&T Communications of the Pacific Northwest, (AT&T) and the Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, "the Parties"). Both parties have signed the Settlement Agreement (Agreement), which is attached to this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

## II. PROPOSALS FOR REVIEW PROCEDURE

2 The Parties submit that this matter is considerably less complex than a general rate proceeding and request that review proceed on a timetable for less complex matters, as provided in WAC 480-07-740(1)(b). Because of the less complex nature of the matter and the uncontested status of the settlement, the Parties suggest that a formal settlement hearing, along with the opportunity for public comment, are unnecessary in this case.

3           The Parties do not intend to file documentation supporting the Agreement, with the  
exception of the Agreement itself, this Narrative, and appendices to this Narrative. If the  
Commission requires supporting documents beyond the Agreement, Narrative, and the other  
documents on file in this docket, the Parties will provide documentation as needed.

4           In keeping with WAC 480-07-740(2)(b), the Parties are prepared to present one or  
more witnesses each to testify in support of the proposal and answer questions concerning  
the details of the Settlement Agreement, should such testimony be required. In addition,  
counsel for both Parties are available to respond to any questions that the Commission may  
have regarding the proposed settlement.

### III.   SCOPE OF THE UNDERLYING DISPUTE

5           The underlying dispute concerns a complaint issued by the Commission at the  
request of Commission Staff against AT&T. In 2005, Staff commenced a formal  
investigation into certain billing of AT&T. In December 2006, Staff completed an audit  
report that contained its findings that AT&T or its agents unintentionally overbilled collect-  
call customers who accepted collect pay phone calls. The report was delivered to AT&T,  
and Staff and AT&T engaged in discussions as a result of the audit.

6           The Commission issued a Complaint, Notice of Prehearing Conference, and Notice  
of Opportunity to Address Confidential Information on May 31, 2007, based upon a finding  
of probable cause that AT&T improperly charged customers receiving collect calls from  
prisons in Washington State more than the amount stated in effective schedules on file with  
the Commission, in violation of RCW 80.36.130. AT&T asserted confidentiality of certain  
information contained in Staff's Audit Report and the Complaint. Following a prehearing  
conference on June 22, 2007, the parties set a procedural schedule, and reached agreement

on what information should be unredacted and what information should remain confidential. This agreement was memorialized in a letter filed by the parties on June 29, 2007. As directed by the Commission, Staff refiled a new redacted version of its Investigation Report on July 5, 2007. The Parties commenced settlement discussions and subsequently agreed to a resolution of all issues raised by the investigation and complaint filed in this docket.

#### IV. SUMMARY OF PROPOSED SETTLEMENT

7 The settlement resolves all issues in dispute. AT&T admits that 29,971 collect calls that originated from Airway Heights Correctional Facility and the Washington State Penitentiary between March 14, 2005, and June 1, 2005, were incorrectly billed, in violation of RCW 80.36.130.<sup>1</sup> AT&T admits that this resulted in total charges of \$67,295 above those shown in AT&T's tariff.<sup>2</sup> AT&T agrees to pay a penalty of \$302,705 to the Commission.<sup>3</sup> AT&T agrees to set up a claims process and provide refunds to affected customers. Under the Agreement, AT&T will provide refunds of up to \$67,295 in total to those customers who contact AT&T and submit a claim for a refund alleging that they were an account holder of a relevant telephone number during this period, and upon AT&T's verification that the telephone number qualifies for a refund.<sup>4</sup> AT&T will provide notice of the claims process to potential claimants through postings at the correctional facilities, newspaper advertisements and notices.<sup>5</sup> Staff will promptly refer customers who contact it regarding the claims process to AT&T, and, if disputes arise that AT&T is unable to resolve, AT&T will refer

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<sup>1</sup> See Settlement Agreement, at ¶ 4.

<sup>2</sup> *Id.*, at ¶ 4.

<sup>3</sup> *Id.*, at ¶ 5.

<sup>4</sup> *Id.*, at ¶ 6.

<sup>5</sup> *Id.*, at ¶ 8-10.

those customers to the Commission.<sup>6</sup> AT&T will donate any portion of \$67,295 that has not been refunded at the conclusion of the claims process to the Offender Welfare Betterment Fund.<sup>7</sup> AT&T agrees to submit a quarterly report to the Commission describing the progress of the refunds process.<sup>8</sup> AT&T agrees to file a final report with the Commission summarizing the refund process, and any donation, at the completion of the refund process.<sup>9</sup> The Parties agree that AT&T will comply with all applicable Commission rules and statutes.<sup>10</sup> AT&T will continue to actively monitor the billing practices of companies with whom it has a contractual relationship to provide billing services to Washington State customers, and conduct audits where appropriate.<sup>11</sup> The Agreement does not preclude the Commission from pursuing penalties for violations of Commission rules and statutes unrelated to the subject matter of the Agreement.<sup>12</sup>

#### **V. STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST**

8 As stated in the Settlement Agreement, the settlement represents a compromise of the positions of the two Parties. It is in the Parties' best interest to avoid the expense, inconvenience, uncertainty, and delay necessitated by ongoing litigation. It is in the public interest that this dispute concludes without the further expenditure of public resources on protracted litigation. Likewise, it is in the public interest that the Agreement includes AT&T's admittance that the conduct violated RCW 80.36.130 and the commitment of

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<sup>6</sup> *Id.*, at ¶ 14.

<sup>7</sup> *Id.*, at ¶ 17.

<sup>8</sup> *Id.*, at ¶ 15.

<sup>9</sup> *Id.*, at ¶ 16.

<sup>10</sup> *Id.*, at ¶ 18.

<sup>11</sup> *Id.*, at ¶ 19.

<sup>12</sup> *Id.*, at ¶ 18.

AT&T to comply with all applicable Commission rules and statutes, and to continue taking specific steps to ensure that it complies with applicable rules and statutes.

9           The Parties believe that the Agreement further serves the public interest in that AT&T has agreed to set up and implement a process to refund customers affected by the incorrect billing the amounts they were overbilled. The Parties find that, although there is uncertainty as to the results that may be achieved, the process that AT&T has agreed to undertake in the Agreement is the most feasible. Both Parties are satisfied that the facts and available records, along with the materials provided, show that for AT&T to identify and locate all customers, as opposed to the process agreed to, presents numerous practical challenges involving great time and expense. AT&T's perspective regarding this issue is attached to this Narrative in the form of an Affidavit.<sup>13</sup> The Parties support the refunds effort in fairness to those customers adversely affected. Likewise, it is in the public interest that the Agreement calls for the Commission to oversee this process through periodic reporting by AT&T. Providing notice of the availability of the refunds through postings, as well as newspaper advertisements and notices is in the public interest. This provision represents a point of compromise, reached with considerable negotiation in order to obtain full settlement of all issues in this docket for approval by the Commission.

10           Additionally, the Agreement provides that any amount of the \$67,295 not directly refunded will be indirectly returned to the customer base affected in the form of a donation to the Offender Welfare Betterment Fund administered by the Washington State Department of Corrections (DOC). At the request of the Parties, DOC sent a letter to Staff, attached as an appendix to the Agreement, which describes the fund and demonstrates that DOC is

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<sup>13</sup> See Attachment A.

receptive to the donation.<sup>14</sup> The Parties understand that this fund is specifically designed to benefit the families of inmates, and assist inmates in their transition back into society. In this way, the overcharges not directly refunded will be returned in the form of a donation to benefit a similar population, which the Parties believe serves the public interest.

11 In summary, the Agreement is in the public interest and the interests of the Commission, and Commission Staff and AT&T respectfully requests that the Commission approve the Agreement.

#### **VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT**

12 In WAC 480-07-700, the Commission expresses its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The Parties have resolved all of the issues in dispute between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

#### **VII. CONCLUSION**

13 Because the Parties have negotiated a compromise on all of the issues in this dispute, and because the settlement is in the public interest, both Parties request that the Commission approve the attached Settlement Agreement.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

ROBERT M. MCKENNA  
Attorney General

AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC.

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<sup>14</sup> See Settlement Agreement, Appendix A.

*Michael A. Fassio*

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MICHAEL A. FASSIO  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff

Dated: December 14, 2007

*Letty Friesen FOR*

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LETTY FRIESEN  
Attorney for AT&T Communications of the  
Pacific Northwest, Inc.

Dated: December 14, 2007

ATTACHMENT A

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )  
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AT&T COMMUNICATIONS OF THE )  
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Respondent. )

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AFFIDAVIT OF MARK LANCASTER

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STATE OF MISSOURI )  
 ) ss.  
COUNTY OF CLAY )

MARK LANCASTER, of lawful age, being first duly sworn deposes and states that to the best of his knowledge:

1. My name is Mark Lancaster. I am an Area Manager – Numbering in AT&T Mass Market Care Planning. I offer this affidavit on behalf of AT&T Communications of the Pacific Northwest, Inc. in the above-captioned proceeding.
2. For the last twelve years, I have worked extensively on industry and regulatory aspects of telephone numbering. I represent AT&T at the Industry Numbering Committee (“INC”), a committee of the Alliance for Telecommunications Industry Solutions (“ATIS”). My duties have also included representing AT&T at the North American Numbering Counsel (“NANC”), an advisory committee to the Federal Communications Commission (“FCC”), as well as regular member of the North American Portability Company (“NAPM”) Limited Liability Corporation which oversees the vendor contracting for the industry Number Portability database. Consequently, I am familiar with the numbering resources and how various carriers employ them as well as the type of information various numbering data bases contain.
3. It is my understanding that AT&T has been asked to identify the names and addresses associated with over 3,600 telephone numbers contained on a spread sheet that purportedly represents a list of miss-billed calls. It is further my understanding that the spread sheet contains multiple calls to the



same numbers and that the calls were all made during the time frame from March 14, 2005 to June 1, 2005.

4. The purpose of my affidavit is to provide the Staff of the Washington Transportation and Utilities Commission ("WUTC") with a description of the process that AT&T would have to follow to construct a list of names and addresses associated with the numbers on the spread sheets at the relevant point in time. As the process discussion will reveal such a list would be inherently imperfect because: (a) people and carriers change numbers over time, (b) necessary customer data in local exchange carrier databases as well as "industry" numbering databases change over time, (c) other carriers and industry groups would be required to cooperate in the gathering of data, (d) numbers alone will not reveal whether the allegedly over-billed customer actually paid their bill and (e) based on a sampling of the data, we see that at least 25% of the numbers are no longer working numbers. My affidavit also describes the estimated man-hours and employee type that would be required to conduct each step of the process that AT&T could perform with internal resources. From these estimates, AT&T will provide, in response to Staff discovery, a rough estimate of the cost of creating the imperfect list.

5. To begin the analysis, AT&T would start with the billing spread sheets it provided to Staff. Analysis of the billing information available regarding the Prison Collect remediation project would allow for the development of a partial method for matching these records with those who were billed incorrectly. This method is *partial* since it relies upon participation by the local exchange carrier of record for that number, based on the information available to AT&T.

6. The records analyzed include two elements that are useful in identifying the party likely billed for the Prison Collect service: **Called Number** (a 10 digit number in the form NPA-NXX-XXXX) and **Date** (a date MM/DD/YY and timestamp HH:MM form). Using a combination of these two elements, the billed party for each call may be discoverable.

7. The billed party may be discovered by identifying the carrier that offered local service in conjunction with the **Called Number** as of the **Date** in the record. Once the local service carrier is identified, cooperation is required from that carrier to identify the **Name** and **Address** of the billed party to properly compensate the billed party for the error.

8. The steps necessary to properly identify the relevant local service carrier are herein described. Since Number Portability has been deployed through much of the state of Washington, two industry database references must be made.

9. The **Called Number** must be compared to the Telcordia® LERG™ Routing Guide ("LERG"), Table 6 for the relevant **Date** of each call. The block of

telephone numbers in inventory may have changed carriers in certain geographies through the FCC ordered Thousands-Block Number Pooling method during the three months involved in the data analyzed. Using the NPA-NXX (full NXX if not a Number Pooling NXX) or the NPA-NXX-X (for Thousands-Block Number Pooling NXXs) of the called number, the Operating Company Number ("OCN") and the Portable (Y or N) indicator must be recorded for each call. The OCN must be translated to the OCN Name information using Table 1 of the same month's LERG. For the telephone numbers identified in the analysis, this LERG matching step is estimated to take a data analyst 150 hours to perform.

10. After this default information is correlated to each **Called Number**, a check must be made against the possible Number Portability status of each **Called Number**. This check is necessary for any call that has a telephone number with a Portable indicator of Y in the prior step. This check must be performed against the relevant Number Portability database records as of the **Date** of the call. The Number Portability Administration Center ("NPAC") is maintained by vendor NeuStar, Inc. in contract with the North American Portability Company ("NAPM") Limited Liability Corporation ("LLC"). Each User of NPAC services has access through their downloaded copy ("LNP SMS") of that database or through their database vendor for Number Portability services. This check must first be performed against the AT&T LNP SMS database. This database will show any Number Portability records that are currently active in the NPAC. If a record is found, and the porting record is earlier than the **Date** for the **Called Number**, then the carrier to which that number was ported would be the carrier from which to request **Name** and **Address**. If a record is found, and the porting record is later than the **Date** for the **Called Number**, then a further search of the actual NPAC database is necessary to determine what if any prior carrier may have had the **Called Number** ported to that prior carrier at the **Date** of the call. For the AT&T LNP SMS analysis of numbers potentially ported, this step is estimated to take a data analyst four hours to perform.

11. Consistent with other carriers, AT&T keeps only 35 days of NPAC history for numbers that have ported previously but either are no longer ported, or which had ported previous to the extant porting record and are greater than 35 days from the date of query. Consequently, to acquire history of these numbers, AT&T must make an inquiring of the NPAC database for each **Called Number** and record the porting carrier for the timeframe in question, as NPAC maintains an archive of all historical records.

12. Checking Number Portability records in the NPAC is a process that must be coordinated with NeuStar, Inc. This is done as an enterprise project at the expense of the NPAC User that requires it. NeuStar does not maintain records older than 18 months online and to create such a report would require recreating the NPAC database for the relevant time frame. A non-binding estimate from NeuStar places the estimated cost for this record check in excess of \$20,000 and would require at least 3 months of development time to produce

such a report. For any **Called Number** that is shown in the prior step to have the possibility of being ported, but for which no porting record was found or no porting record was shown before the last **Date** in the analysis records, a report from NPAC must be generated to show all porting activity associated with the **Called Number**. NeuStar, Inc. has also informed AT&T that if a Service Provider Identification ("SPID") Migration has occurred on the NXX associated with the Number Portability record, the prior ported-from carrier will be inaccurately identified

13. The most available option would be to query each telephone number individually. Once AT&T identified the porting carrier, along with the non-porting numbers, the list of carriers would be complete. Assuming the carrier address information in LERG 1 were up-to-date (this table is notoriously out of date, but the total number of carriers may not be large), AT&T would need to contact each carrier for the needed name and address associated with the number. Particularly where the numbers were unlisted/unpublished, it is likely that these carriers would not surrender such information without some Commission ruling regarding customer proprietary information ("CPNI") or something to address customer privacy concerns. Carriers may also charge AT&T some amount for their efforts. This cost is unknown at this time.

14. This analysis shows the complexity of determining, first, the carrier that served the number at the time of the call and it highlights the necessity for aid from outside sources such as NeuStar and other carriers. Further, because "call detail" must be employed to work backwards to find names and addresses, AT&T believes it would need to obtain a waiver of the CPNI rules to proceed. All this, to generate a list that would not be conclusively accurate such that a group of people may get refunds; people that may never have received one of the calls at issue or if they did receive such a call, may not have ever paid the bill.

15. I estimate the total hours<sup>1</sup> to generate the information to be broken down as follows:

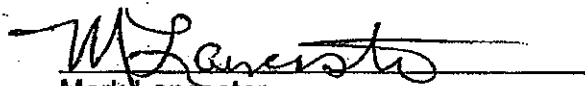
- 15 hours to draft and obtain the appropriate CPNI waivers (based upon information supplied by the legal team);
- 150 hours to trace the telephone numbers back to the respective carriers for the relevant time frame;
- 4 hours for an analyst to trace specific number portability status internally;
- Unknown hours to work with NeuStar along with the time NeuStar needs to develop a project plan and obtain the outcome;
- Unknown hours to work with local carriers to obtain needed names and addresses from ported, non-porting, unlisted, no-longer in service numbers lists

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<sup>1</sup> These numbers are based upon total hours worked and does not reflect the real number of days necessary to actually accomplish the respective goals.

For the internal AT&T work, following the strategy described above, a rate of \$64.42 per hour should be applied (excluding the legal work). In addition, the NeuStar cost and time along with any other carrier cost and time must be added to the internal costs. In short, the list generated for the time invested and the money spent would not render a sufficiently valuable product.

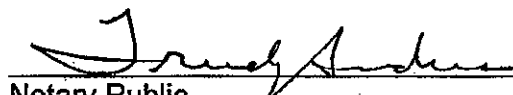
Respectfully submitted this 20<sup>th</sup> day of July 2007.

  
Mark Lancaster

Subscribed and sworn to before me this 20<sup>th</sup> day of July 2007 by Mark Lancaster.

Witness my hand and official seal.

TRUDY ANDERSON  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI  
CLAY COUNTY  
MY COMMISSION EXP: 3-3-2009  
COMMISSION #05504473

  
Notary Public

My Commission Expires: 3-3-2009