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KING COUNTY
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IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

Plaintiff,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY; GTE
NORTHWEST INC.; CENTURYTEL
TELEPHONE UTILITIES, INC;
NORTHWEST TELECOMMUNICATIONS,
INC., d/b/a PTI COMMUNICATIONS, INC.;
U.S. WEST COMMUNICATIONS, INC.; T-
NETEX, INC.,

Defendant.

Case No.: 00-2-17565-5 SEA

AT&T'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

1. Introduction.

Plaintiffs' entire case now hinges on adequately pleading and proving a violation of the WUTC regulations related to disclosure of rates to recipients of collect phone calls from prison inmates. The Court has ruled that only violations of these WUTC regulations can subject defendants to liability under RCW 80.36.530. Because AT&T Corp. ("AT&T") has never been subject to these WUTC regulations, it can never be liable under RCW 80.36.530. Plaintiffs claim that AT&T has violated the WUTC regulations by failing to provide the required disclosures. Plaintiffs fail to mention, however, that throughout the entire period covered by this lawsuit, those regulations have required only operator service providers ("OSPs") to make the disclosures. As AT&T has repeatedly maintained, in both its briefing and at oral argument, AT&T is not an OSP, and therefore had no obligation under the

1 regulations. Plaintiffs have consistently ignored this basic undeniable fact — never even attempting to
2 rebut AT&T's claim that it is not an OSP. In fact, plaintiffs' allegation that AT&T violated the
3 regulations is contradicted by the very contract upon which their complaint and this case is based. For
4 that reason, the claims against AT&T must be dismissed in their entirety.

5 Plaintiffs' argument that AT&T should remain in the case because it "contracted with" entities
6 that provided operator services ignores this Court's ruling and the plain language of the WUTC
7 regulations. The fact that AT&T contracted with entities that may have had obligations under the
8 regulations is irrelevant in determining whether AT&T itself could have violated these regulations.¹

9 2. AT&T Is Not An OSP And Therefore Had No Obligations Under The WUTC
10 Regulations.

11 The WUTC regulations at issue require OSPs — and *only* OSPs — to make certain disclosures
12 to recipients of collect calls from prison inmates. WAC 480-120-141. "Operator service provider
13 (OSP)" is defined at WAC 480-120-021 in pertinent part as follows:

14 [A]ny corporation, company, partnership, or person *providing a connection to intrastate*
15 *or interstate long-distance* or to local services from locations of call aggregators. The
16 term "operator services" in this rule means any intrastate telecommunications service
17 provided to a call aggregator location that includes as a component any automatic or
18 live assistance to a consumer to arrange for billing or completion, or both, of an
19 intrastate telephone call . . .

20 (Emphasis provided.)²

21 AT&T is not an OSP. It does not provide a *connection* to long distance or local services.
22 Instead, it *is* the long distance provider. The agreement between AT&T and the Washington
23 Department of Corrections ("Agreement") confirms this in no uncertain terms. AT&T "agrees to
24 provide '0+' interLATA and international service."³ See Agreement, attached as Appendix 1 of AT&T
25 Motion to Dismiss, at 2. AT&T does not, however, agree to provide operator services. Under the

26 ¹ Of course, as plaintiffs themselves note, many of the other defendants were exempt from the regulations because they are
27 local exchange carriers and/or because they received a waiver from the WUTC. Plaintiffs Supplemental Memorandum at
28 2-4.

² The 1999 revisions to the WUTC regulations replaced the term "alternate operator services company" with the term
"operator services provider." The definition has remained unchanged throughout the period covered by plaintiffs' lawsuit.
See Appendix 3 of AT&T Motion to Dismiss (WSR, Issue 91-13-078, p. 108).

³ In layman's terms, this means AT&T is to provide both interstate and intrastate (as well as international) long distance
service.

1 explicit terms of the Agreement, those services are to be provided not by AT&T, but by the
2 subcontractors to the agreement, GTE (now Verizon),⁴ PTI (later known as CenturyTel, whose
3 obligations were later taken over by T-Netix),⁵ and USWC (also known as USWest, now Qwest).⁶
4 Thus, the express terms of the Agreement confirm that AT&T has no obligation under the regulations
5 and should therefore be dismissed from the case. Plaintiffs have never challenged this fact.
6

7 The fact that plaintiffs have alleged, without any basis in fact, that AT&T violated the
8 regulations is not sufficient to prevent dismissal of the case in light of the plain language of the
9 Agreement, which is referred to in the First Amended Complaint (at ¶ 14) and is part of the pleadings
10 in this case. *See, e.g. Venture Associates Corp. v. Zenith Data Systems Corp.*, 987 F.2d 429, 431 (7th
11 Cir. 1993) ("Documents that a defendant attaches to a motion to dismiss are considered part of the
12 pleadings if they are referred to in the plaintiff's complaint and are central to her claim.").⁷
13

14 The terms of the Agreement, which confirm that AT&T is not an OSP and therefore has no
15 obligations under the regulations, prevail over any contradictory allegations in the First Amended
16 Complaint. The law on this point is clear:

17 [W]hen the allegations of the complaint are refuted by an attached document, the court
18 need not accept the allegations as being true.

19 *Hudson v. Sherwood Securities Corp.*, 1989 WL 534960, *1 (N.D. Cal. 1989); *accord Ott v. Home*
20 *Savings & Loan Assn.*, 265 F.2d 643 (9th Cir. 1958) (where allegations of pleading are inconsistent
21 with terms of written contract attached as an exhibit, terms of contract must prevail over contradictory
22 allegations). Here, the Agreement refutes any allegation that AT&T is an OSP and therefore had any
23 duty under the regulations. The claims against AT&T must be dismissed.
24

25 ⁴ "GTE shall also provide local and intraLATA telephone service *and operator service* to the GTE Public Telephones at the
above four locations." Agreement at 3, § 4.A (emphasis provided).

26 ⁵ "PTI shall also provide local telephone service *and operator service* to PTI Public Telephones at the above five
locations." Agreement at 3, § 4.B (emphasis provided).

27 ⁶ "USWC shall also provide local and intraLATA telephone service *and operator service* to USWC Public Telephones at
the above six locations." Agreement at 3, § 4.C (emphasis provided).

28 ⁷ All non-Washington cases cited in this Memorandum are attached to the Court's copy of the Memorandum.

1 3. The Fact That AT&T "Contracted With" OSPs Does Not Give Rise To Any Claim
2 Against AT&T For Violation Of The Regulations.

3 Plaintiffs vainly try to resuscitate their claim against AT&T by arguing, as they did in their
4 original opposition to AT&T's Motion to Dismiss, that because AT&T "contracted with" OSPs it is
5 somehow liable for any purported failure of those entities to provide the required disclosures.⁸
6 Plaintiffs' Supplemental Memorandum at 4. The Court's Partial Decision on Summary Judgment and
7 Order for Further Briefing ("Order") disposes of this argument:

8 [T]he legislature intended to create a cause of action under the Washington Consumer
9 Protection Act ("CPA") only for violations of the regulations promulgated by the
10 Washington Utilities and Transportation Commission ("WUTC") and did not create a
11 cause of action for actions beyond or outside of the regulations.

12 Order at 1. Thus, unless AT&T violated the WUTC regulations, plaintiffs have no cause of action. As
13 described above and in AT&T's previous briefing, AT&T did not violate the regulations, which
14 impose no duty on those who "contract with" OSPs to ensure that those entities provide the required
15 disclosures.

16 4. In The Event AT&T Is Not Dismissed Entirely, Claims Related To Interstate Calls
17 Should Be Dismissed, And The Remaining Claims Should Be Stayed Pending The
18 WUTC's Determination Whether Any Violation Has Occurred.

19 AT&T should be dismissed from the case, for all of the reasons described above and in its
20 previous pleadings. However, in the event the Court does not dismiss AT&T, at a minimum it should
21 dismiss all claims related to interstate long distance. Those claims are barred under the filed tariff
22 doctrine and because the WUTC regulations do not extend to interstate calls. *See* AT&T Motion to
23 Dismiss at 6-8; AT&T Reply at 4-5.

24
25 ⁸ Plaintiffs' argument is presumably based on the language in RCW 80.36.520, which directs the WUTC to enact rules
26 requiring "any telecommunications company, operating as or *contracting with* an alternate operator services company, [to]
27 assure appropriate disclosure to consumers." (Emphasis provided.) As AT&T explained in its Reply In Support of
28 AT&T's Motion to Dismiss ("AT&T Reply"), the regulations impose specific disclosure obligations only on OSPs. The
WUTC chose *not* to impose any specific disclosure obligations on entities, like AT&T, that merely contract with OSPs but
are not themselves OSPs. AT&T Reply at 3-4.

1 Plaintiffs suggest that in the event any claims remain, the Court should rule on the motion for
2 class certification prior to referring the remaining claims to the WUTC. Plaintiffs' Supplemental
3 Memorandum at 5. AT&T strongly disagrees with this approach. It would be premature and
4 extremely wasteful to consider this issue and potentially to notify class members (if indeed any
5 proposed class met the requirements of CR 23) of the pendency of the case before allowing the WUTC
6 to determine whether any violation of the regulations even occurred. If the Court is inclined to give
7 any consideration to plaintiffs' request, AT&T requests an informal conference under LR 23(c)
8 between the Court and the parties to discuss the scheduling of the referral to the WUTC, discovery,
9 dispositive motions and a briefing schedule.
10

11
12 DATED this 27th day of October, 2000.

13
14 STOKES LAWRENCE, P.S.

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16 By: Kelly T. Noonan
17 Kelly Twiss Noonan (WSBA #19096)
18 Laura J. Buckland (WSBA # 16141)
19 Attorneys for Defendant AT&T Corp.
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