

TAB 24

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD, and TARA HERIVEL,

Complainants,

v.

**AT&T COMMUNICATION OF THE PACIFIC
NORTHWEST, INC., and T-NETIX, INC.,**

Respondents.

Docket No. UT-042022

REDACTED PUBLIC VERSION

AT&T'S AMENDED MOTION FOR SUMMARY DETERMINATION

Introduction

1. In 2000, Sandy Judd and Tara Herivel, along with another individual who is not a party to this proceeding, filed a putative class action in the Superior Court of Washington for King County. The complaint alleges that several telecommunications companies failed to provide the required rate information to individuals receiving calls from Washington state prisons since June 20, 1996. A copy of the complaint is attached as Exhibit 1. In its response to the complaint, AT&T asked the court to refer to the Commission, under the doctrine of primary jurisdiction, the question of whether AT&T is an Operator Service Provider (“OSP”). On November 8, 2000, the court granted AT&T’s request and referred to the Commission the issue of whether AT&T is “considered by the agency to be an OSP under the contracts at issue and if so, if the regulations have been violated.” A copy of the court’s November 8, 2000 Order is attached as Exhibit 2.

2. AT&T is not now, and never has been, an OSP or Alternate Operator Service Provider company (“AOS company”) to any Washington state prison or correctional facility. The Commission’s rules impose rate disclosure obligations on OSPs (and previously on AOS

companies) for calls from pay phones or other aggregator locations. Those same rules have consistently limited the definition of OSPs and AOS companies to those entities that connect calls to local or long-distance service providers from call aggregators. AT&T did not connect calls from prisons to local or long-distance service providers. Nor did AT&T provide the operator services for such calls. The agreements between the Washington Department of Corrections, AT&T, and other telecommunications companies demonstrate unequivocally that other entities have always delivered calls from prisons to AT&T's Point of Presence ("POP"), and that other entities have always provided the operator services for such calls, including rate disclosure announcements.

3. Indeed, discovery in this proceeding has demonstrated that T-Netix, through its P-III Premise platform, both connected calls from the prisons at issue to local and long-distance service providers and provided the operator services for those calls. As a result, the Commission should make a summary determination that AT&T is not an OSP or AOS company and, correspondingly, has not violated the Commission's rate disclosure obligations.

RELIEF REQUESTED

4. AT&T requests that the Commission make a summary determination finding that:

- (a) AT&T did not serve as an OSP or AOS company for calls from the Washington state prisons at issue during the relevant period; and
- (b) AT&T did not violate any of the Commission's regulations applicable to an OSP or AOS company for calls from the Washington state prisons at issue during the relevant period.

STATEMENT OF FACTS

Regulatory Background

5. The plaintiffs' complaint in this case depends upon the assertion that AT&T has obligations that have never existed. Indeed, the plaintiffs' assertions are inconsistent with Commission regulations. Since at least 1989, the Commission has directly regulated the disclosure of rates to public telephone consumers. At no time, however, have those regulations applied to a person or entity other than one providing a connection from call aggregators to long-distance or local service providers. Because AT&T has never provided that connection for calls from the prisons at issue, it cannot bear any liability for any alleged failure to comply with those regulations.

6. In 1989, the Commission enacted a regulation that required notices to be posted on public telephones to alert consumers that rates for services from that telephone may be higher than normal and to provide dialing directions so the consumer could obtain specific rate information. WAC 480-120-141 (1989), attached as Exhibit 3. That regulation applied to AOS companies, which the Commission defined as:

any corporation, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from places including but not limited to, hotels, motels, hospitals, campuses, and customer-owned pay telephones. Alternate operator services companies are those with which a hotel, motel, hospital, campus, or customer-owned pay telephone etc. contracts to provide operator services to its clientele.

WAC 480-120-021 (1989), attached as Exhibit 3.

7. In 1991, the Commission amended this regulation in at least three significant ways. First, it made explicit that the AOS company was obligated to disclose to a consumer, at

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no charge, rate information upon the consumer's request. WAC 480-120-141 (1991), attached as Exhibit 4. Second, it eliminated the concept that the AOS company should be defined based on contractual privity to the call aggregator. Third, it modified the definition of an AOS company to exclude local exchange carriers. WAC 480-120-021 (1991), attached as Exhibit 4. While excluding local exchange carriers from the definition, the Commission made clear that an AOS company was still limited to those entities "providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators." Id.

8. In 1999, the Commission further amended the rate disclosure obligations. For the first time the Commission required regulated entities to instruct the consumer verbally, before the call was connected, how the consumer could obtain a rate quote with no more than two key strokes. WAC 480-120-141(2)(b) (1999), attached as Exhibit 5. The Commission also changed the definition of who was required to provide the required information. The Commission eliminated the term AOS company from its regulation and instead, required OSPs to provide the verbal disclosure. Id. Although the term changed, the Commission still limited OSPs to "any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators." WAC 480-120-021 (1999) attached as Exhibit 5.

9. In 2003, the Commission adopted the current version of the regulation. The 2003 amendment recodifies the disclosure obligations and requires OSPs to verbally advise consumers of the actual rate to be charged, before the call is completed, if the rate exceeds a Commission established benchmark. WAC 480-120-262, attached as Exhibit 6. If the rate does not exceed

the benchmark, the OSP is required to advise the consumer how to obtain a rate quote by pushing two or less keys. Id. The definition of OSP, however, remains unchanged.

The Provision of Public Telephone Service to Washington Correctional Facilities

10. In 1992, the Washington Department of Corrections (the “DOC”) entered into an agreement (the “DOC Contract”) for the provision of telephone service from state prisons and work release facilities. A copy of the March 16, 1992 agreement between the DOC and AT&T is attached as Exhibit 7. The DOC Contract divided responsibility for the phone services among AT&T and three local exchange companies (“LECs”): (1) GTE Northwest Inc., n.k.a. Verizon Northwest Inc. (“Verizon Northwest”); (2) US West Communications, n.k.a. Qwest Corporation (“Qwest”); and (3) Telephone Utilities of Washington, Inc., d.b.a. PTI Communications (“PTI”). The DOC Contract specified that AT&T would provide only interLATA and international service. DOC Contract, Exhibit 7, at 2. It did not contemplate that AT&T would provide any local service or connect the calls from telephones at the facilities to AT&T’s POP. Rather, it explicitly contemplated that the LECs, or someone retained by the LECs, would provide those services. Similarly, the DOC Contract contemplated that the LECs, or someone retained by the LECs, would provide the operator services for calls from the facilities. The DOC Contract divided the prisons and work release facilities into three groups. As to all of the facilities in each group, it specified that one of the LECs “shall install and maintain public telephone sets, all associated equipment, lines, call timing and call blocking software” Id. at 2-4. The DOC Contract was also explicit that the LECs “shall also provide local and intraLATA telephone service and operator service to the [LEC’s] Public Telephones” at the specified locations. Id.

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Thus, the DOC Contract made clear that AT&T would not be connecting calls from the prisons to local or long-distance service providers or providing the operator services for such calls.

11. Pursuant to the scheme established by the DOC Contract, each of the three LECs entered into a separate contract with AT&T by which it committed to connect calls to AT&T's POP and provide the operator services for such calls. For example, the contract between Verizon Northwest and AT&T dated March 16, 1992 (the "Verizon Contract") specified that Verizon Northwest would provide public telephones at each of the facilities assigned to it in the DOC Contract, as well as cabling and associated equipment. Verizon Contract, attached as Exhibit 8, at 2. The Verizon Contract further stated that Verizon Northwest "shall provide . . . [d]elivery of interLATA traffic originating from the Public Pay Telephones to AT&T's Point of Presence over switched access facilities" and "[c]ompletion of all "0+ local and intraLATA calls from all Public Pay Telephones." *Id.* The Verizon Contract also specified that Verizon Northwest would provide certain "live or mechanical operator announcements" and other services. *Id.* at 3. The recitals to the Verizon Contract explained that the DOC had agreed to select AT&T as a vendor on the basis of AT&T's proposal to use Verizon Northwest and the other LECs to provide local and intraLATA service within their specified territories. *Id.* at 1. Moreover, the Verizon Contract stated that the DOC Contract — including its explicit requirement that the LECs would provide the operator services for calls from DOC facilities — was incorporated by reference and made a part of the Verizon Contract. *Id.* Qwest and PTI entered into separate agreements with AT&T that contained virtually identical language and obligations for those facilities assigned to them. A copy of the March 16, 1992 agreement between AT&T and Qwest (the Qwest

Contract”) is attached as Exhibit 9, and a copy of the March 16, 1992 agreement between AT&T and PTI (the “PTI Contract”) is attached as Exhibit 10.

12. Several years after AT&T entered into the DOC Contract, the DOC amended the contract to replace one of the three original LECs, PTI, with T-Netix. Amendment No. 3 to the DOC Contract, attached as Exhibit 11, states that the contract was being amended for several reasons including “to delete Telephone Utilities of Washington, Inc. dba PTI Communications (PTI) as a subcontractor, and to include T-Netix Inc. as the station provider.” Amendment No. 3, Exhibit 11, at 1. The amendment further specifies that T-Netix was to pay the DOC a monthly commission rate of 27% on local calls from the facilities that PTI previously served. Id. On March 10, 1998, T-Netix wrote to AT&T to confirm the parties’ respective responsibilities at the sites “where T-Netix is carrying the local traffic on AT&T’s behalf.” A copy of the March 10, 1998 letter is attached as Exhibit 12. T-Netix recognized that its responsibilities included “provision[ing] local traffic on AT&T’s behalf” and “perform[ing] or caus[ing] to be performed the administrative services required on behalf of AT&T.” Id.

13. In addition to handling local service from facilities previously served by PTI, T-Netix also has provided the automated operator services, including rate announcements. Affidavit of Frances M. Gutierrez, attached as Exhibit 13, at ¶¶6, 9. In order to prevent inmates from using telephones to harass witnesses, judges, or the general public, inmate calls may be monitored, blocked or recorded. Id. at ¶6. Inmates are generally restricted to calling numbers on a pre-approved list. Id. In order to prevent inmates from manipulating operators to circumvent the system, inmates at Washington state prisons are prevented from speaking with live operators. Id. Instead, the security system screens the number to make sure it is on the inmate’s pre-

approved list. Id. If it is, the call is routed to the called party and the called party is informed via an automated announcement that they have received a call from a particular inmate, provided access to a rate quote and given the opportunity to accept or reject the call. Id. All of these services are provided through software that T-Netix owns, maintains, and provides. Id. at ¶¶6, 9. AT&T does not own or provide any of this operator interface software or equipment. Id.

14. Shortly after the Commission amended its rules in 1999 to require OSPs to verbally advise consumers how to receive a rate quote, Verizon Northwest and Qwest petitioned the Commission for waivers. Both entities explained that they would not have the technology available to provide the verbal disclosures until September 30, 2000 and sought a temporary waiver until then. See Order Granting Temporary Waiver to GTE Northwest, attached as Exhibit 14, at 2; and Order Granting Full and Partial Temporary Waiver to Qwest, attached as Exhibit 15, at 2. They both also sought and received a permanent waiver from any obligation to disclose rates to the person initiating the call from a prison telephone. Order Granting GTE Northwest Waiver In Part of WAC Rule 480-120-141 (2)(b), attached as Exhibit 16, at 1; and Order Granting Qwest Permanent Partial Waiver of WAC 480-120-141 (2)(b), attached as Exhibit 17, at 1. They explained that safety, security, and anti-fraud concerns prevented them from using live operators to provide the rate quotes, and instead, required them to use automated technology. Id. The automated technology, however, did not permit the inmate to initiate the rate quote. It only permitted the party receiving the call to initiate the quote. Id. The Commission granted Qwest's and Verizon Northwest's petitions for both a temporary waiver, granting them additional time to implement the verbal rate disclosure, and the permanent waiver, excusing them from providing inmates with the ability to initiate rate quotes.

- [REDACTED] (August 6, 2009 Deposition of Robert L. Rae (T-Netix’s expert), excerpts attached as Exhibit 23, at 220);
- [REDACTED] (id.);
- [REDACTED] (id. at 224);
- [REDACTED] (id. at 235);
- [REDACTED] (id. at 246);
- [REDACTED] (id. at 247).

16. The plaintiffs’ expert agrees that T-Netix, through its P-III Premise platform, both connected calls from the prisons at issue to local and long-distance service providers and provided the operator services for such calls. At prisons utilizing the P-III Premise platform, “[REDACTED]” August 15, 2005 Declaration of Kenneth L. Wilson (plaintiffs’ expert), attached as Exhibit 22, at ¶10 (underlined language has been designated highly confidential and has been redacted from the public version of this motion). According to the plaintiffs’ expert, “[t]he T-Netix platform . . . is making the connection to intrastate and interstate long-distance services from correctional institutions,” and it provides, or is supposed to provide, the operator services for calls from these institutions, including rate quote

announcements. Id. at ¶¶13-20. The T-Netix P-III Premise platform “performs operators services functions on each call dialed by an inmate, whether the call is local, intraLATA or interLATA. Specifically, the platform provides automatic assistance to a consumer to arrange for billing and completion of an intrastate telephone call, as specified in the WUTC definition of operator services.” Id. at ¶16.

STATEMENT OF ISSUES

17. Whether AT&T has been an OSP or AOS company since June 20, 1996, and if so, when and at what facilities?

EVIDENCE RELIED UPON

18. AT&T relies upon the following evidence that is attached as exhibits hereto:

Exhibit 1 First Amended Complaint in Judd et al. v. AT&T et al., No.. 00-2-17565-5-SEA, pending in the Superior Court of King County;

Exhibit 2 November 8, 2000 Order, granting, in part, AT&T’s Motion to Dismiss;

Exhibit 3 1989 Washington State Register, Issue 89-04;

Exhibit 4 1991 Washington State Register, Issue 91-13;

Exhibit 5 1999 Washington State Register, Issue 99-02;

Exhibit 6 WAC 480-120-262 (2003);

Exhibit 7 March 16, 1992 Agreement between Washington Department of Corrections and AT&T;

Exhibit 8 March 16, 1992 Agreement between AT&T and GTE Northwest;

Exhibit 9 March 16, 1992 Agreement between AT&T and U.S. West;

Exhibit 10 March 16, 1992 Agreement between AT&T and Telephone Utilities of Washington d.b.a. PTI;

Exhibit 11 Amendment 3 to Agreement between Washington DOC and AT&T;

Exhibit 12 March 10, 1998 letter from T-Netix to AT&T;

- Exhibit 13 Affidavit of Frances M. Gutierrez;
- Exhibit 14 Order Granting Temporary Waiver to GTE Northwest;
- Exhibit 15 Order Granting Full and Partial Temporary Waiver to Qwest;
- Exhibit 16 Order Granting GTE Northwest Waiver in Part of WAC 480-120-141 (2)(b);
- Exhibit 17 Order Granting Qwest Permanent Partial Waiver of WAC 480-120-141(2)(b);
- Exhibit 18 October 10, 2000, Partial Decision on Summary Judgment and Order for Further Briefing entered in Judd et al. v. AT&T.
- Exhibit 19 June 10, 2005 Affidavit of Alan Schott (T-Netix's expert);
- Exhibit 20 August 5, 2009 Declaration of Robert L. Rae (T-Netix's expert);
- Exhibit 21 July 27, 2005 Supplemental Affidavit of Alan Schott (T-Netix's expert);
- Exhibit 22 August 15, 2005 Declaration of Kenneth L. Wilson (plaintiffs' expert);
- Exhibit 23 August 6, 2009 Deposition of Robert L. Rae (T-Netix's expert).

ARGUMENT

I. AT&T Was Exempt from any Disclosure Obligations Prior to 1999.

19. The plaintiff's underlying complaint asserts claims on behalf of a putative class of individuals who received calls since June 20, 1996. First Amended Complaint, Exhibit 1, at ¶7. The Commission rules in effect from 1991 until 1999, however, excluded LECs from the Commission's disclosure obligations. The regulations in effect at that time defined an AOS company as follows:

Alternate operator services company – any corporation, company partnership, or person other than a local exchange company providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.

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WAC 480-120-021 (1991) (emphasis added). The comments to the new rule made clear that the Commission sought to focus on non-LECs because they could “be seen as entering and existing [sic] markets at will” and “often charge higher rates than LECs.” Exhibit 4 at 106-07.

20. From 1996, to the present, AT&T has been a certified LEC. See Gutierrez Affidavit, Exhibit 13, at ¶12. AT&T cannot, therefore, be found to be an AOS company for this time period or to be liable for failing to make disclosures that only AOS companies were obligated to make. The Commission can and should make a summary determination on these points.

II. AT&T Was Not the OSP for the Prisons at Issue.

21. Wholly apart from its status as a LEC, AT&T cannot be held responsible for any failure to make disclosures because it has never connected calls from the prisons at issue to a local or long distance provider. Nor has it provided the operator services for such calls. Throughout the relevant time, the party required to make the required disclosures, whether it is defined as an AOS company or an OSP, has always been limited to the party “providing a connection to intrastate or interstate long-distance or local service from locations of call aggregators” See ¶¶5-9, *supra*. As discovery has shown, that party was T-Netix.

22. First, AT&T did not connect calls from the prisons at issue to local or long-distance service providers, and, in fact, could not have connected these calls because, as discussed below, any traffic to be carried by AT&T was delivered to AT&T’s POP by someone else. As discovery has shown, it was T-Netix, through its P-III Premise platform, that connected calls from the prisons at issue to local or long-distance service providers. In the words of the plaintiffs’ expert, “[t]he T-Netix platform . . . is making the connection to intrastate and interstate

long-distance services from correctional institutions.” August 15, 2005 Wilson Declaration, Exhibit 22, at ¶13. Similarly, T-Netix’s own expert admits that the P-III Premise platform [REDACTED] [REDACTED]” June 10, 2005 Schott Affidavit, Exhibit 19, at ¶9 (underlined language has been designated highly confidential and has been redacted from the public version of this motion); see also July 27, 2005 Schott Supplemental Affidavit, Exhibit 21, at ¶¶13, 15, Figure 1, 18(a)-(e). T-Netix, not AT&T, provided the requisite connection under the Commission’s definition of an OSP.

23. Second, AT&T did not provide the operator services for calls from the prisons at issue. Rather, as discovery has shown, T-Netix, through its P-III Premise platform, provided the operator services for the calls it connected from prisons to local or long-distance service providers. As the plaintiffs’ expert put it, the P-III Premise platform provided the operator services for calls from the prisons at issue — it provided automatic assistance to a consumer to arrange for billing and completion of an intrastate telephone call, as specified in the WUTC definition of operator services. August 15, 2005 Wilson Declaration, Exhibit 22, at ¶¶13-20. Similarly, T-Netix’s expert agrees that T-Netix’s P-III Premise “platform’s automated voice will announce that [the call recipient has] received a call from an inmate (platform plays the inmate’s actual pre-recorded name) and then prompts the called party on the procedure to accept the call.” July 27, 2005 Schott Supplemental Affidavit, Exhibit 21, at ¶ 18(g). More specifically, T-Netix’s P-III Premise platform performed the following operator services functions:

The inmate picks up a designated inmate phone, from which only collect calls can be made. [REDACTED] [REDACTED] the platform and dials a 0+ telephone number and a unique inmate identifier and passcode. [REDACTED]

[REDACTED] The inmate operator services platform has software and hardware that control the call and provide services to the inmate and the person the inmate is calling. After the dialed digits have been completed, the platform screens the dialed number against a list of prohibited numbers [REDACTED]

[REDACTED] If the number dialed is not prohibited, the platform prompts the inmate to record his/her name. For a valid call, the platform will seize an outbound trunk, and after receiving dial tone will output the destination number as a 1+ call. The LEC end office switch will then route the call to either an IXC switch or to a LEC switch, depending on the jurisdictional nature of the call and which carrier is the designated telecommunications provider for the type of call being made. When the called party answers the telephone, the platform will play a prerecorded message stating that they have a call from the inmate and by playing the inmate's recording. The platform then gives the person an option of accepting the call or rejecting the call [REDACTED]

[REDACTED] It is at this time that the platform should play a prerecorded rate announcement and give the called party an opportunity to hear a message regarding the rates associated with the call. While this interaction is proceeding, the platform does not make a connection for the audio path between the inmate and the called party. If the person accepts the call, the platform will complete the audio path and the call proceeds, as would a normal call. If the called party rejects the call, the platform disconnects the call. The platform keeps a record of the call, including the date, time, originating phone number, terminating phone number, length of call and distance of call. Call detail records for each call are periodically downloaded from the platform to a centralized T-Netix data center where it is formatted and sent to the LEC or IXC that owns the traffic.

August 15, 2005 Wilson Declaration, Exhibit 22, at ¶14 (underlined language has been designated highly confidential and has been redacted from the public version of this motion). Accordingly, T-Netix, not AT&T, provided the operator services for calls from the prisons at issue through its P-III Premise platform.

24. Third, the DOC contractual scheme demonstrates that AT&T did not, and was never intended to, either connect calls from prisons to local or long-distance service providers, or provide the operator services for such calls. Rather, under the contractual scheme, the LECs, or someone they retained, were responsible for doing these things.

25. At the prisons where Verizon Northwest and Qwest handled local and intraLATA service, they were contractually obligated to connect the calls from their equipment at the prison and provide the operator services, and they did so through T-Netix. Both the Verizon Northwest and Qwest Contracts specified that they would install their own equipment and cabling at the prisons, complete the intraLATA calls and provide other operator services such as the provision of operator announcements. Verizon Northwest Contract, Exhibit 8, at 2-3; Qwest Contract, Exhibit 9, at 2. Significantly, they were also obligated to deliver interLATA traffic originating from their phones at the prison to AT&T's POP. *Id.* AT&T could not possibly provide the connection from the prison phones when Qwest and Verizon were responsible for transporting the signal from those phones to AT&T's POP. The LECs were the parties responsible under the contractual scheme, and they retained T-Netix to act as the OSP, both connecting calls from the prisons at issue to local or long-distance service providers and providing the operator services for such calls.

26. Recognizing their contractual obligations, and that they had retained T-Netix to act as the OSP by providing the requisite connection and the operator services, Qwest and Verizon sought and obtained waivers for complying with WAC 480-120-141(2)(b). Whether due to an over-abundance of caution or concern for their own potential liability, by seeking these

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waivers, the LECs indicated that they, or someone retained by them (T-Netix), were the OSPs for the prisons at issue. See Exhibits 14 through 17.

27. Although AT&T has entered into contracts with Verizon, Qwest, PTI and T-Netix, those contracts do not transform AT&T into an OSP, or render AT&T liable for the conduct of an OSP. The Commission's regulations have consistently imposed disclosure obligations only upon OSPs and AOS companies. See Exhibits 3 to 6. They have never imposed disclosure obligations on a party that contracts with an OSP or AOS company. Id. The court that referred this matter to the Commission has already ruled that a cause of action exists only "for violations of the regulations promulgated by the Washington Utilities and Transportation Commission ('WUTC') and [the legislature] did not create a cause of action for actions beyond or outside of the regulations." Partial Decision On Summary Judgment and Order for Further Briefing, attached as Exhibit 18, at 1. As a result, language in RCW 80.36.520 that suggested the Commission may adopt regulations sufficient to assure that companies "operating as or contracting with an alternate operator services company" make "appropriate disclosure" cannot serve as a basis to extend liability not specified in the regulations themselves. The Commission enacted regulations to define what disclosures it considered "appropriate," and chose to impose specific disclosure obligations only upon OSPs and, before them, AOS companies. That was certainly reasonable because the OSP, as the party connecting the call from the phone to the local or long-distance service provider, has the most direct contact with the consumer. Moreover, there is less need to impose additional disclosure obligations on regulated telecommunications companies, such as AT&T, because they already disclose their rates through publicly filed and approved tariffs, which the public is "conclusively presumed to know." Hardy

v. Claircom Communications Group, 86 Wash. App. 488, 492, 937 P.2d 1128, 1131 (1997).

The plaintiffs cannot now second-guess the Commission and seek to extend those disclosure obligations beyond the rule to a party other than an OSP.

28. AT&T is not, and never has been, responsible for connecting calls from phones in Washington prisons to either the long-distance or local provider. Others have always done that. Indeed, as discovery has shown, and as both the plaintiffs' and T-Netix's experts have demonstrated, it was T-Netix — not AT&T — that connected calls from the prisons at issue to local and long-distance service providers. Moreover, it was T-Netix, through its P-III Premise platform, that provided the operator services for those calls. Accordingly, it was T-Netix that was the OSP. As such, AT&T is not an OSP under the Commission's rules and cannot be held responsible for meeting obligations imposed upon OSPs.

Dated: August 24, 2009

Respectfully submitted,

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

By: /s/ Charles H.R. Peters

Charles H.R. Peters

David C. Scott

Tiffany R. Redding

SCHIFF HARDIN, LLP

6600 Sears Tower

Chicago, IL 60606

(312) 258-5500

(312) 258-5600 (fax)

cpeters@schiffhardin.com

dscott@schiffhardin.com

Letty S.D. Friesen

AT&T Corp.

2535 E. 40th Avenue

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Ste. B1201
Denver, CO 80205
(303) 299-5708
(303) 298-6301 (fax)
lsfriesen@att.com

CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I hereby certify that I have this day, August 24, 2009, served this document upon all parties of record by e-mail and Federal Express overnight delivery at the e-mail addresses and mailing addresses listed below:

Glenn B. Manishin
Joseph S. Ferretti
Duane Morris LLP
505 9th Street NW, Suite 1000
Washington, DC 20004-2166
gbmanishin@duanemorris.com
jsferretti@duanemorris.com

Arthur A. Butler
Ater Wynne LLP
601 Union Street, Suite 1501
Seattle, WA 98101-2341
aab@aterwynne.com

Chris R. Youtz
Richard E. Spoonemore
Sirianni Youtz Meier & Spoonemore
719 Second Avenue, Suite 1100
Seattle, WA 98104
cyoutz@sylaw.com
rspoonemore@sylaw.com

Pursuant to WAC 480-07-145, I further certify that I have this day, August 24, 2009, filed MS Word and PDF versions of this document by e-mail, and the original and four copies of this document by Federal Express, with the WUTC at the e-mail address and mailing address listed below:

Mr. David W. Danner
Secretary and Executive Director
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250
records@utc.wa.gov

Pursuant to the Prehearing Conference Order 08, I further certify that I have this day, August 24, 2009, provided a courtesy copy of this document, in MS Word, to ALJ Friedlander by e-mail at the following e-mail address: mfriedla@utc.wa.gov.

Dated: August 24, 2009

/s/ Tiffany R. Redding

Tiffany R. Redding