

**TAB 33**

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

SANDY JUDD, ET AL.	)	
Complainant,	)	
	)	Docket No. UT-042022
v.	)	
	)	
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.	)	<b>AFFIDAVIT IN SUPPORT OF AT&amp;T'S MOTION FOR SUMMARY DETERMINATION</b>
And	)	
	)	
T-NETIX, INC.	)	
Respondents.	)	

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**AFFIDAVIT OF FRANCES M. GUTIERREZ**

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1. I, Frances M. Gutierrez, being duly sworn and under oath hereby state as follows:

2. I am over 21 years of age and I offer this affidavit based upon my personal knowledge and information.

3. I am employed by AT&T Corp. as Market Manager for the corrections industry. In this capacity I am responsible for sales and marketing of services to the corrections industry, among other things. Through my responsibilities for AT&T I am familiar with the agreement to provide inmate telephone service between AT&T, the State of Washington Department of Corrections ("DOC") and our subcontractors, including T-Netix Inc. ("T-Netix").

4. I have worked for AT&T for nineteen years, the last twelve of which have been in supporting AT&T's sales to the corrections industry.

5. The purpose of my affidavit is to provide the Commission with some background into how AT&T's subcontractors, in particular T-Netix, provisions service to AT&T such that AT&T may provide service to the DOC.

6. Prior to discussing the actual provision of such service, however, it is important to understand the special nature of inmate calling. Providing telephone service from correctional facilities for use by inmates brings with it some unique issues. For example, to prevent inmates from abusing witnesses, judges or the general public through the use of telephones, their calls maybe recorded, monitored or blocked, as required and directed by the correctional institution. They are generally restricted to calling numbers on a pre-approved list. In addition, the institutions insist that inmates must employ coinless inmate phones located on the premises of the correctional facilities. These coinless inmate phones, which are linked to a customized inmate call control platform and the attendant software, require inmates to make calls that are paid by the called party, after the system verifies that a called number is on the inmate's approved list. These calls are not, however, routed through the telephone network as traditional "O+" operator calls, but are routed as ordinary "1+" direct dialed calls, and in the case of interLATA calls do not touch AT&T's OSPS (Operator Services Position System). The coinless inmate phones and their associated platform capture the call detail of the inmate calls and provide for the billing of these calls to the called parties. In the case of interLATA, intraLATA or local service, the institutions require that the inmates not speak with live operators; rather, the calls must be routed to the called parties where the individual called is informed, via the automated call processing software located at the facility within the call control platform, that they have received a call from a particular

inmate. Generally, the software asks the called party to press a certain button if he or she chooses to accept the call and it offers the called party an opportunity to hear the rates before electing to accept the call.

7. AT&T entered into a contract with the DOC in March of 1992, during which time AT&T was primarily an interstate long distance provider ("IXC"). As such under the contract, AT&T agreed to provide interstate and interLATA long distance service ("InterLATA service") and subcontract with three local exchange companies ("LECs") for the provision of local exchange service and intraLATA toll service. In 1992, the subcontractor-LECs were U S WEST Communications, Inc. ("USWEST"), GTE Northwest Inc. ("GTE") and Telephone Utilities of Washington, Inc. (d/b/a "PTI" or "CenturyTel"). In each case the subcontractor-LECs agreed to provide the public telephones, the recording and monitoring equipment and the appropriate software (the inmate platform) and the local service connections or "lines" necessary to transport the interLATA calls from the DOC facilities to AT&T's network.

8. AT&T did not and does not own the LEC facilities that connect and transport inmate traffic to AT&T's network. Rather, the LECs carry the traffic, on their own facilities, from the various DOC premises. So, for example, where Ms. Judd, a plaintiff in this case, received calls at her home in Snohomish from her husband incarcerated at the Washington State Reformatory at Monroe, the calls would only have traversed GTE's network to travel between the Monroe to Snohomish exchanges. Because her calls are intraLATA calls, they were all completed entirely on the LEC network and never touched AT&T's own network. Where an inmate at the Washington State Reformatory at Monroe makes an interLATA call, the LEC will pass that call to

AT&T, and AT&T will take those calls and transport them to their ultimate interstate or interLATA long distance destination.

9. As with the underlying LEC facilities, AT&T does not own or provide the operator interface between the called party and the collect call announcement or the access to rate quotes. These services were provided by T-Netix and the underlying intraLATA toll rates would have been dictated by the underlying LEC provider's tariffs.

10. Through mergers or otherwise over time each of the original subcontractor-LECs were replaced. USWEST became Qwest Communications, Inc. ("Qwest"), GTE became Verizon Northwest, Inc. ("Verizon") and T-Netix replaced PTI or CenturyTel as the subcontractor.

11. Amendment No.3 to the March 1992 DOC/AT&T contract released PTI or CenturyTel as a subcontractor and replaced it with T-Netix. In that Amendment, T-Netix was identified to become a "station provider" and pay the DOC a commission on local calls using the PTI facilities in PTI territory.<sup>1</sup> In early 1998, T-Netix further refined its understanding of its role in the PTI territory in a letter to AT&T.<sup>2</sup> T-Netix agreed to provide the local exchange services, which it obtained from PTI.

12. In January of 1997, the Washington Utilities and Transportation Commission ("WUTC") granted AT&T authority as a competitive local exchange carrier ("CLEC") in the State of Washington. However, at no time did AT&T take over the provision of local exchange services under the DOC contract at any DOC location.

13. From these provisioning arrangements it is clear that AT&T does not provide the connection between the DOC facilities and its interLATA services or its

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<sup>1</sup> Attachment 1, Amendment No. 3.

<sup>2</sup> Attachment 2, Letter dated March 10, 1998 to AT&T from T-Netix.

intraLATA toll service. Furthermore, AT&T does not provide the "operator" interface (the inmate calling platform) between the called parties and the system.

Dated this 14<sup>th</sup> day of December, 2004.

Dec 14, 2004  
Date

Francis M. Gutierrez  
Signed

Signed and Sworn before me this 14<sup>th</sup> day of December, 2004.

M. Michelle Daniel  
Notary Public in and for Texas  
Address 811 Main Hubbard, TX

My commission expires on 2-1-06



AMENDMENT NO. 3 TO AGREEMENT  
BETWEEN  
STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS  
AND  
AT&T CORPORATION

The AT&T Commission Agreement entered into as of March 16, 1992 ("Agreement"), between AT&T Communications, Inc. acting on behalf of the Interstate Division of AT&T Corp. (formerly American Telephone and Telegraph Company) and the AT&T Communications interexchange companies ("Contractor" or "AT&T") and State of Washington Department of Corrections ("Department") is amended, effective upon signing by both parties, as follows:

WHEREAS, Department and Contractor entered into an Agreement on March 16, 1992 for the Installation and Operation of an Inmate Telephone System at State Correctional Institutions and Work Facilities, bearing Contract No. CDOP2681 (the "Agreement");

WHEREAS, Department and Contractor entered into an Amendment No. 1 to the Agreement on November 30, 1994 for the purpose of modifying certain terms and conditions relating to Contractor's subcontractor GTE Northwest Incorporated (GTE);

WHEREAS, Department and Contractor entered into an Amendment No. 2 to the Agreement on August 15, 1995 for the purpose of providing for the addition of certain call control features for calls carried by Contractor and for an increase in commissions on calls carried by Contractor;

WHEREAS, the parties now wish to further amend the Agreement to change the expiration date of the Agreement, to increase the commissions, to delete Telephone Utilities of Washington, Inc. dba PTI Communications (PTI) as a subcontractor, and to include T-Netix Inc. as the station provider;

NOW, THEREFORE, Department and Contractor do mutually agree as follows:

1. Department and Contractor agree that the term of the Agreement is extended and will expire June 30, 1999.
2. Commencing on the 16th day of the month following the signing of this Amendment by Department, the monthly commission rate paid by Contractor under the Agreement shall increase to Forty-five percent (45%) on billed revenues from operator-assisted interLATA and international calls carried by Contractor from all locations. Also, Contractor shall pay Department a monthly commission rate of Forty-five percent (45%) on billed revenues from operator-assisted intraLATA calls from the following facilities only in PTI territory: Clallam Bay Corrections Center, Washington Correction Center for Women, Olympic Corrections Center, Pine Lodge Work Pre-Release, Coyote Ridge Corrections Center, and Larch Correctional Center.
3. Upon execution of this Amendment, US WEST Communications, Inc. (USWC) shall pay to Department an increased monthly commission rate of Forty percent (40%) of billed revenues from operator-assisted local and intraLATA calls carried by USWC during the term of the Agreement.
4. Upon execution of this Amendment, GTE shall pay to Department an increased monthly commission rate of Thirty-five percent (35%) on all local and intraLATA GTE generated revenues for the term of the Agreement.
5. Upon execution of this Amendment, T-Netix, Inc. shall pay to Department a monthly commission rate of Twenty-seven percent (27%) on local calls only, for the term of the Agreement, from the facilities in PTI territory referred to in paragraph 2 above.
6. The Independent Contractor Agreement between AT&T and PTI entered into as of March 16, 1992, under which PTI agreed to act as subcontractor to Contractor for the provision of local service, inmate telephone equipment and monitoring and recording equipment to correctional facilities operated by the Department in PTI territory in the State of Washington, and in support of Contractor's obligations to the Department pursuant to the Agreement between the Department and AT&T for Installation and Operation of an Inmate Telephone System at State Correctional Institutions and Work Release Facilities, is hereby terminated in its entirety.
7. Any rate change will be effective beginning on the 16th day of the first calendar month of the renewal period.

8. In the event of an inconsistency between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail.

REVISED ATTACHMENT A:  YES  NO  
REVISED ATTACHMENT B:  YES  NO

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

Gary Banning  
Authorized Signature

Gary Banning  
Typed or Printed Name

Contracts Administrator  
Title

2/3/97  
Date

360-753-5770  
Contract Telephone Number

AT&T COMMUNICATIONS, INC.

Donna Bowen (for)  
Authorized Signature

John Powell  
Typed or Printed Name

Sales V/P  
Title

2/14/97  
Date

Contract # \_\_\_\_\_

Agent ID \_\_\_\_\_

Location # \_\_\_\_\_

Approved as to Form:

OFFICE OF THE ATTORNEY GENERAL  
STATE OF WASHINGTON

Thomas F. Young  
Authorized Signature

Thomas F. Young  
Typed or Printed Name

Assistant Attorney General  
Title

February 3, 1997  
Date







# Standard Delegation Of Authority

US74  
(7-87)

Note: Part A is used by the principal to appoint an in-charge during his/her absence:

Part B is used by the supervisor of the absentee to appoint an in-charge person to act on behalf of the absent principal.

Responsibility Code 1AX200000 Expires 2/14/97

## Part A

During my absence from 2/10/97 to 2/14/97 19 97 inclusive, Donna Bowen will be in charge of Consumer Sales Division and may exercise all authority delegated to me in the Schedule of Authorizations and appropriate Departmental Instructions.

Authority Delegated To:

Signature Donna Bowen

Name Donna Bowen

Title/Salary Grade SG-6 B Band

Social Security No. 14 48-9786

Responsibility Code 1AX 00010

Approved:

Signature [Signature]

Name John C. Powell

Title/Salary Grade F-8and

Social Security No. 205-34-2385

Date February 10, 1997

## Part B

During the absence of \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_ 19 \_\_\_\_\_ inclusive,

\_\_\_\_\_ will be in charge of \_\_\_\_\_

and may exercise the authority delegated to \_\_\_\_\_

in the Schedule of Authorizations and appropriate Departmental Instructions.

Authority Delegated To:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title/Salary Grade \_\_\_\_\_

Social Security No. \_\_\_\_\_

Responsibility Code \_\_\_\_\_

Approved:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title/Salary Grade \_\_\_\_\_

Social Security No. \_\_\_\_\_

Date \_\_\_\_\_



**T-NETIX, Inc.**

67 Inverness Drive East  
Englewood, CO 80112 USA  
Corporate Offices: (303) 790-9111  
FAX: (303) 790-9540  
NASDAQ Symbol: TNTX

March 10, 1998

Sandi Hornung  
AT&T  
6<sup>th</sup> Floor  
2020 K Street, NW  
Washington D.C. 20006

**Re: Local Only Facilities - WA DOC**

This letter is to outline AT&T's understanding of the responsibilities of both AT&T and T-NETIX in respect to those Washington DOC facilities listed below where T-NETIX is carrying the local traffic on AT&T's behalf. The facilities included are:

WA DOC - Washington Women's  
WA DOC - Coyote Ridge  
WA DOC - Pine Lodge Pre-Release  
WA DOC - Olympic Correctional  
WA DOC - Clallam Bay Correctional

**T-NETIX Responsibilities**

T-NETIX will provision the local traffic on AT&T's behalf beginning **March 3, 1998**. T-NETIX will perform or cause to be performed the administrative services required on behalf of AT&T.

**AT&T Responsibilities**

AT&T will purchase all inmate telephone sets. AT&T, or a subcontractor to AT&T will provide any required maintenance of the phones.

AT&T will reimburse T-NETIX for the commissions paid, for the cost of the inmate telephone lines, and for the charges billed T-NETIX by its billing agent ZPDI, including bad debt, unbillable calls, billing agent service fees and LEC fees ("Reimbursements"). Bad debt, unbillable calls and LEC fees are billed to AT&T at actual costs passed on to ZPDI from the LECs. The billing agent service fees are billed to AT&T at the rate T-NETIX receives which is discounted based on T-NETIX' total volume with ZPDI.

AT&T will also remit to T-NETIX a \$.10 transaction fee per call processed ("Transaction Fees"). T-NETIX will apply the cash revenue remitted for the benefit of AT&T from the billing agent ("AT&T Cash Revenue") against the noted

Reimbursements and Transaction Fees. In those instances where Reimbursements and Transaction Fees exceed AT&T Cash Revenue, T-NETIX will invoice AT&T. T-NETIX will provide to AT&T a full reconciliation of the amount due on a monthly basis by facility. The net amount due to/from AT&T will be outlined in a supporting schedule. These facilities will be and included in AT&T's current local only facility invoices and supporting schedules.

AT&T shall have the right to audit any records upon 30 days written notice.

Please sign the attached copy as agreement. If you have any questions please do not hesitate to call myself or Shannon.

Sincerely,

T-NETIX, Inc.



John Giannaula  
VP Finance

Accepted by: \_\_\_\_\_  
Sandi Hornung, AT&T

cc: Karen Casciotta - AT&T  
Russ Vitale - AT&T  
Katja Christensen - T-NETIX, Inc.  
Shannon Fenimore - T-NETIX, Inc.