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Honorable Kathleen J. Learned
Hearing Date: October 6, 2000

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

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

Plaintiffs,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY *et al.*,

Defendants.

No. 00-2-17565-5 SEA

DEFENDANT T-NETIX, INC.'S MOTION
FOR DISMISSAL OF FIRST AMENDED
COMPLAINT - CLASS ACTION

I. RELIEF REQUESTED

Defendant T-Netix, Inc. hereby moves the Court for an order dismissing the First Amended
Complaint - Class Action ("First Amended Complaint"), with prejudice, under CR 12(b)(6).

II. STATEMENT OF FACTS

This case involves the sole allegation that criminals incarcerated at correctional facilities in
Washington were not audibly notified of the rates applicable to "collect-only" inmate telephone
calls. First Amended Complaint ¶¶ 5-6.¹ The Complaint seek damages and injunctive relief under
the Washington Consumer Protection Act, RCW 19.86 ("CPA"). First Amended Complaint ¶¶ 18-
19. Although Plaintiffs' claim applies both to intrastate calls and interstate calls, *id.* ¶¶ 1-3, they

¹ According to Plaintiffs, the Defendants began providing "operator services for inmate
payphones" in 1992, with the exception of T-Netix, which allegedly was "added" in March 1999 "as
an operator service provider at some facilities." First Amended Complaint ¶ 14. The Amended

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1 concede that rate disclosure was available for interstate calls, pursuant to a rule promulgated by the
2 Federal Communications Commission ("FCC"), beginning in November 1999.² *Id.* ¶ 6.

3 III. STATEMENT OF ISSUES

4 Whether Plaintiffs' claims are barred under RCW 19.86.070, which exempts transactions
5 regulated by the Washington Utilities and Transportation Commission ("WUTC") from the
6 provisions of the CPA.

7
8 Whether the First Amended Complaint should be dismissed, and the matter referred to the
9 WUTC, under the doctrine of primary jurisdiction.

10 Whether the First Amended Complaint should be dismissed on the basis of federal
11 preemption.

12 IV. EVIDENCE RELIED UPON

13 Defendant T-Netix relies on the First Amended Complaint and the pleadings and exhibits
14 filed in this case.

15 V. AUTHORITY

16 A. Introduction.

17 1. Background.

18 The provision of telephone services to inmates at correctional institutions is subject to an
19 "exceptional set of circumstances." *Policies and Rules Concerning Operator Service Providers*, 6
20 FCC Rcd. 2744, 2752 (1991). Prisons face significant fraud, security and operational concerns that
21 prevent offering inmates the ability to place calls with any telephone company. Thus, at the
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25 Complaint challenges no conduct other than the fact that rates were "not made available to recipients
26 over the phone prior to the receipt of an inmate-initiated call." *Id.* ¶ 16.

² See 47 C.F.R. § 64.710(a)(3) (requiring every "provider of inmate operator services" to
disclose its rates "immediately to the consumer, upon request and at no charge to the consumer.")

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1 requirement of Washington correctional institutions, inmate service providers limit calls from
2 inmates to a collect basis, from a single telecommunications common carrier, and offer special
3 monitoring and call blocking services to prevent fraud, harassment of witnesses and other problems
4 inconsistent with the orderly management of prisons. These limitations have long been upheld by
5 the courts against a string of inmate class action lawsuits sounding in constitutional and antitrust
6 law.³ *E.g., Daleure v. Commonwealth of Kentucky*, Civ. Action No. 3:97-CV-709H (W.D. Ky. Feb.
7 10, 2000); *Arsberry v. State of Illinois*, Case No. 99 C 2457 (N.D. Ill. March 22, 2000). This litiga-
8 tion represents the latest attempt by the plaintiffs' class action bar to seek damages from inmate
9 service providers, this time based on a new state law theory that is just as invalid as the prior cases.⁴

11 2. The First Amended Complaint Fails to State a Claim Under the CPA.

12 The First Amended Complaint fails to state a claim for relief for three simple reasons. First
13 and foremost, Plaintiffs' CPA claim is flatly barred under RCW 19.86.170, which specifically
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16 ³ *Washington v. Reno*, 35 F.3d 1093, 1100 (6th Cir. 1994); *Benzel v. Grammer*, 869 F.2d
17 1105, 1108 (8th Cir. 1989); *Harris v. Flemming*, 839 F.2d 1232, 1235 (7th Cir. 1988); *Strandberg v.*
18 *City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986); *Carter v. O'Sullivan*, 924 F. Supp. 903, 909 (C.D.
19 Ill. 1996); *Clark v. Plummer*, 1995 WL 317015 *1 (N.D. Cal. 1995); *Adams v. McGee*, 1994 WL
20 544381 * 2 (D. Ore. 1994); *Levingston v. Plummer*, 1995 WL 23945 *1 (N.D. Cal. 1995); *McNeil v.*
21 *Springborn*, 1994 WL 48611 *2 (N.D. Ill. 1994); *Allen v. Josephine Country*, 1993 WL 11948 (D.
22 Ore. 1993); *Fillmore v. Ordonez*, 829 F. Supp. 1544, 1563-64 (D. Kan. 1993), *aff'd*, 17 F.3d 1436
23 (10th Cir. 1994).

24 ⁴ Although for purposes of this motion the Court is required to assume the truth of Plaintiffs'
25 allegation that T-Netix is a provider of inmate telephone services, First Amended Complaint
26 ¶ 14, this is not the case anywhere in the State of Washington. Under a contract with Defendant
AT&T, T-Netix only supplies AT&T with software and equipment for use in connection with
AT&T's inmate telephone services. T-Netix does not provide any telephone services to inmates in
Washington, does not collect payment for services provided to inmates in Washington, and has no
contractual relation with any state correctional facility in Washington. T-Netix is solely a sub-
contractor to AT&T. Should the Court not dismiss the Complaint for failure to state a claim for
relief, T-Netix will accordingly move for summary judgment on this ground at the appropriate time
under the Washington Rules of Civil Procedure. The FCC has defined a "provider of inmate operator
services" as "any common carrier that provides outbound interstate, domestic, interexchange
operator services from inmate telephones." 47 C.F.R. § 64.710(b)(4). Only AT&T fits this
definition for the correctional institutions it serves with T-Netix software and hardware. T-Netix
does not operate as a "common carrier" with respect to any of these institutions.

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1 exempts acts or transactions of regulated utilities, such as Defendants, from the purview of the
2 statute. Secondly, even if viable under the CPA, Plaintiffs' claim is barred by the doctrine of
3 "primary jurisdiction," which vests authority to review the practices of regulated entities with the
4 administrative agency charged with their regulation. Finally, insofar as the First Amended Com-
5 plaint challenges rate disclosure for interstate calls, this subject is committed by statute to the
6 exclusive jurisdiction of the FCC, preempting application of the CPA and other state law causes of
7 action.
8

9 **B. The Regulated Telecommunications Services Challenged in This Case Are Outside the**
10 **Scope of the Washington Consumer Protection Act.**

11 Plaintiffs seek damages under RCW 80.36.530, which provides penalties for violation of the
12 CPA. This claim is barred under the plain language of the statutory exemption to the CPA and the
13 seminal state appellate case interpreting that provision with respect to telecommunications.

14 The CPA specifically provides that "[n]othing in this chapter shall apply to actions or
15 transactions otherwise permitted, prohibited or regulated under the laws of this state."

16 RCW 19.86.170. It is uncontested that Defendants are telecommunications carriers regulated by the
17 Washington Utilities and Transportation Commission ("WUTC") in their rates, terms and practices.
18 See Section II.B. *infra*. As regulated entities, any practice or transaction of Defendants, even if it
19 could otherwise be deemed "unfair" under the CPA, is specifically exempt from statutory liability.
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21 The Court of Appeals for Division 1 applied RCW 80.36.530 to bar CPA relief against a
22 telephone company in circumstances analogous to those presented here in *D.J. Hopkins, Inc. v. GTE*
23 *Northwest, Inc.*, 89 Wn. App. 1, 949 P.2d 1220 (Wash. 1997), which upheld dismissal of a claim for
24 allegedly unfair telephone billing practices. In *Hopkins*, the court reviewed the many statutory
25 requirements imposed on telephone service providers, including the publishing of tariffs and the
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1 WUTC's authority to review all rates. *Id.*, 89 Wn. App. at 4, 949 P.2d at 1223. On the basis of this
2 extensive regulation, the court held that any claim as to alleged "overcharges" was barred by the
3 statutory exemption of the WCPA for regulated services. *Id.*

4 The holding in *Hopkins* likewise bars the claim in this case. Here, Plaintiffs seek damages
5 under the WCPA for the alleged failure to disclose rates applied to inmate telephone service prior to
6 1999. Defendants are subject to the same WUTC oversight and regulation as was GTE in *Hopkins*,
7 which by definition makes them "regulated entities" under the Section 80.36.530 CPA exemption.
8 Indeed, Defendants are subject to myriad rate publication requirements and may be sanctioned by
9 the WUTC for failure to comply with those requirements. *E.g.*, RCW 80.36.130. Therefore,
10 because Defendants' actions are "regulated under the laws of this state," Plaintiffs' CPA claim is
11 defective and the Amended Complaint must be dismissed with prejudice for failure to state a claim
12 for relief.
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15 **C. The Fairness of Inmate Telephone Rate Disclosures Is Subject to the Primary
16 Jurisdiction of the FCC and the WUTC.**

17 The doctrine of primary jurisdiction requires that claims falling within the peculiar subject
18 matter of a regulatory agency should be referred by courts to that agency for decision.⁵ Both the
19 FCC and the WUTC have promulgated rules providing detailed rate disclosures for inmate service
20 providers. In a transparent attempt to end-run the primary jurisdiction of these expert agencies,
21 Plaintiffs challenge rate disclosure practices for the period before the federal and state rules became
22 effective. Accordingly, the Court should defer to the plenary authority granted to the FCC and the
23 WUTC and either dismiss or hold Plaintiffs' claim in abeyance pending a decision by these agencies
24 under the doctrine of primary jurisdiction.
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1 1. The Court Should Defer on Primary Jurisdiction to the FCC As To the Interstate
2 Portion of Plaintiffs' Claim.

3 Insofar as it challenges rate disclosures for interstate calls, Plaintiffs' claim falls within the
4 particular expertise of the FCC. Under Section 2 of the Communications Act of 1934, 47 U.S.C. §
5 152, the FCC has exclusive jurisdiction over interstate telecommunications. Pursuant to that
6 authority, the FCC pervasively regulates the rates and practices of all interstate telephone carriers.
7 Indeed, the FCC has for years considered rules applicable to inmate telecommunications services
8 and has, by regulation, directly addressed the subject matter of the Complaint in this case. As a
9 result, the FCC is uniquely qualified to investigate all matters relating to the provision of interstate
10 telephone service, including the scope, timeliness and adequacy of rate disclosures.

11 The doctrine of primary jurisdiction has been employed for decades by the Supreme Court
12 and federal courts of appeal. A landmark case establishing the doctrine was *United States*
13 *Navigation Co. v. Cunard S.S. Co.*, 284 U.S. 474 (1932), in which the Supreme Court deferred to the
14 expertise of the Interstate Commerce Commission on the issue of international shipping regulation.
15 There the Court reasoned that "[p]reliminary resort to the Commission 'is required because the
16 enquiry is essentially one of fact and of discretion in technical matters.'" *Cunard*, 284 U.S. at 482
17 (citation omitted). The doctrine was employed in scores of subsequent ICC and FCC cases, in which
18 the Court explained that the judiciary should defer to administrative agency primary jurisdiction "in
19 cases raising issues of facts not within the conventional expertise of judges . . . [A]gencies created by
20 Congress should not be passed over." *Far East Conference v. United States*, 342 U.S. 570, 574

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26 ⁵ *E.g., Reiter v. Cooper*, 507 U.S. 258 (1993); *Ricci v. Chicago Mercantile Exchange*, 409
U.S. 289 (1973); *United States v. Western Pac. R.R.*, 352 U.S. 59 (1956).

1 (1956).⁶ The result of a primary jurisdiction dismissal is not to rob courts of jurisdiction over civil
2 litigation, but to “stay[] further proceedings so as to give the parties reasonable opportunity to seek
3 an administrative ruling.” *Reiter v. Cooper*, 507 U.S. 258, 268 (1993).

4 The claim in this case raises precisely the highly technical, regulatory-based issues that lie at
5 the heart of the primary jurisdiction doctrine. Should inmate services be subject to special rate
6 disclosure rules or be treated like other payphone and operator services? The answer presents issues
7 of policy, fact, comity and telecommunications technology that lie especially within the competence
8 of the FCC.

9
10 Indeed, the FCC has already investigated inmate services and determined that “an excep-
11 tional set of circumstances . . . warrants their exclusion from the regulation” adopted for typical
12 payphone service providers. *Policies and Rules Concerning Operator Service Providers*, 6 FCC
13 Rcd. 2744, 2752 (1991)(“FCC Operator Service Order”); *accord*, *Amendment of Policies and Rules*
14 *Concerning Operator Service Providers and Call Aggregators*, 10 FCC Rcd. 1533, 1534-45 (1995).
15 On the other hand, in 1998 the FCC adopted a regulation (effective October 1999) that expressly
16 requires real-time rate disclosures for inmate services, but declined to impose retroactive relief.
17 Thus, under Section 64.710 of the FCC’s Rules, titled “Operator Services for Prison Inmate Phones,”
18 it is a requirement for “[e]ach provider of inmate operator services” to:
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21 (1) Identify itself, audibly and distinctly, to the consumer before con-
22 necting any interstate, domestic, interexchange telephone call and disclose imme-
23 diately thereafter how the consumer may obtain rate quotations, by dialing no more
24 than two digits or remaining on the line, for the first minute of the call and for
additional minutes, before providing further oral advice to the consumer how to
proceed to make the call;

25 ⁶ The primary jurisdiction doctrine is designed to preserve uniformity in the regulation and
26 governance of regulated entities. Through primary jurisdiction referrals, “[u]niformity and
consistency of regulation of business entrusted to a particular agency are secured.” *Far East*
Conference, 342 U.S. at 574. *See also* *Cunard*, 284 U.S. at 482.

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2 (2) Permit the consumer to terminate the telephone call at no charge be-
fore the call is connected; and

3 (3) Disclose immediately to the consumer, upon request and at no charge
4 to the consumer—

5 (i) The methods by which its rates or charges for the call will be
collected; and

6 (ii) The methods by which complaints concerning such rates,
7 charges or collection practices will be resolved.

8 47 C.F.R. § 64.710(a). See *Billed Party Preference for InterLATA 0+ Calls*, 13 FCC Rcd. 6122,
9 6156, 1998 FCC LEXIS 460 (1998)(holding that “an outbound calling monopoly to a single [long-
10 distance carrier] serving the particular prison . . . recognize[s] the special security requirements
11 applicable to inmate calls.”).

12 As one federal court observed in dismissing a similar inmate class action, in its *Billed Party*
13 *Preference* decision the FCC “mandated oral disclosure requirements for interstate collect calls
14 initiated by prison inmates but rejected a billed party preference system and setting inmate tariff rate
15 caps.” *Daleure v. Kentucky*, slip op. at 6-11 (citing 63 Fed. Reg. 11612; 47 CFR § 64.710).
16 Whether or not inmate service providers may or should be penalized for failing to offer real-time rate
17 disclosures, for interstate calls, prior to the effectiveness of Section 64.710 is a question clearly
18 committed to the primary jurisdiction of the FCC. Therefore, this Court should dismiss the
19 Amended Complaint and deny Plaintiff prayer for injunctive relief. In the alternative, the Court
20 hold the case in abeyance pending an FCC investigation of the practices of which Plaintiffs
21 complain.
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1 2. Plaintiffs' Claim Relating to Provision of Intrastate Services Is Within the Primary
2 Jurisdiction of the WUTC.

3 Insofar as Plaintiffs' claims arise from inmate-initiated calls that terminate within the State of
4 Washington, known as "intrastate" calls, First Amended Complaint ¶ 1-2, the claims are plainly
5 subject to the primary jurisdiction of the WUTC, which has been granted expansive authority over
6 all telecommunications within Washington. *See* RCW 80.36.010 *et seq.* Therefore, under the
7 primary jurisdiction doctrine as applied by state courts in Washington, this Court should dismiss the
8 Complaint, or in the alternative, refer the matter to the WUTC for consideration.

9 Under RCW Chapter 80, the rates, services and practices of any telecommunications
10 company are committed to the jurisdiction of the WUTC. It mandates the WUTC to review "the
11 rules, regulations or practices of any telecommunications company." RCW 80.36.140. In addition,
12 "every telecommunications company" is required to file tariff schedules with the WUTC that list the
13 "rates, tolls, rentals and charges" for all services. *Id.* 80.30.100. No telephone company may divert
14 from, decrease, or provide a discount from the charges provided in its public tariff on penalty of law.
15 *Id.* 80.36.130.

16 The Supreme Court of Washington has accordingly held that these provisions provide the
17 WUTC with "broad, generalized powers" for regulating telecommunications carriers. *US West*
18 *Communications, Inc. v. WUTC*, 134 Wn.2d 74, 86, 949 P.2d 1337, 1342 (1998). More importantly,
19 in accordance with the WUTC's plenary authority over the investigation, review and approval of
20 every telecommunications carrier's rates and practices, the Court has accorded it primary jurisdiction
21 over all court claims falling within its purview. *Moore v. Pacific Northwest Bell*, 34 Wn. App. 448,
22 662 P.2d 398 (1983); *see Hopkins*, 89 Wn. App. at 8, 947 P.2d at 1224-35. Under the state primary
23 jurisdiction doctrine, courts "usually defer to agency jurisdiction if enforcement of a private claim
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IN UDD V. AT&T (T-NETIX) PLEADING: Page 321 ON TO DISMISS.DOC

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1 involves a factual question requiring expertise that the courts do not have[.]” *Hopkins*, 89 Wn. App.
2 at 7, 947 P.2d at 1224; see *Moore*, 34 Wn. App. at 451, 662 P.2d at 401.⁷

3 The Supreme Court has devised a three-part test for considering whether the doctrine of
4 primary jurisdiction is applicable. *In re Real Estate Brokerage Antitrust Litig. v. Coldwell Banker*
5 *Residential Brokerage*, 95 Wn.2d 297, 622 P.2d 1185 (1980). First, the administrative agency must
6 have the authority to resolve the disputed issue. Second, the agency must have “special
7 competence” over the subject matter which renders it peculiarly qualified to settle the dispute.
8 Third, the underlying claim must regard subject matter for which the agency has developed a
9 pervasive regulatory scheme. *Id.* at 302-303, 622 P.2d at 1185. In accordance with this standard,
10 the court of appeals in *Hopkins* found primary jurisdiction appropriate for the unfair billing claim
11 asserted against GTE, and accordingly dismissed the case in its entirety. *Hopkins*, 89 Wn. App. at 5,
12 947 P.2d at 1225.
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15 Dismissal is equally warranted in this case. The WUTC easily meets the criteria of the
16 Supreme Court’s *Real Estate Brokerage* test. In addition to being charged by statute to regulate all
17 aspects of telecommunications in Washington, the WUTC is uniquely qualified to investigate the
18 practices of inmate telephone services providers. And the WUTC retains the necessary expertise and
19 investigative authority to determine whether Defendants in fact failed comply with its inmate rate
20 disclosure requirements. Just as the scope of rules regarding interstate rate disclosures in the
21 complex setting of inmate telephone services is committed to the primary jurisdiction of the FCC, so
22 too is the issue of intrastate rate disclosure rules committed to the primary jurisdiction of the WUTC.
23
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25 ⁷ The primary jurisdiction doctrine is not intended to preclude eventual disposition of a case
26 in a court of competent jurisdiction. *Moore*, 34 Wn. App. at 451, 662 P.2d at 401. Rather, it
represents a policy of deference by which the court holds its review in abeyance pending

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1 As in *Hopkins*, the Court should therefore dismiss the Complaint with prejudice and refer the matter
2 to the WUTC for decision.

3 **D. Any State Law Claim Arising out of Interstate Inmate Services is Preempted by Federal**
4 **Statute and FCC Regulation.**

5 The First Amended Complaint does not disguise the fact that Plaintiffs challenge, in part, rate
6 disclosure practices associated with interstate inmate services. First Amended Complaint ¶ 3
7 (“Plaintiff Zuraya White . . . paid for interstate long-distance calls[.]”) However, Congress has the
8 authority under the Commerce Clause to exercise sole jurisdiction over interstate commerce. *Pike v.*
9 *Bruce Church*, 397 U.S. 137 (1970). Congress may delegate that exclusive jurisdiction by statute to
10 a federal agency. *Louisiana Public Service Comm’n v. FCC*, 106 S. Ct. 1890 (1986). In the federal
11 Communications Act, Congress granted the FCC exclusive jurisdiction over all interstate com-
12 munications. 47 U.S.C. § 152. This jurisdiction applies to all communications, including telephone
13 calls, that cross state boundaries as well as the services that are an integral part of those services and
14 are not separable from them. *Louisiana Pub. Serv. Comm’n*, 106 S. Ct. at 1898. The establishment
15 of this exclusive jurisdiction is designed to ensure uniformity of regulation in telecommunications.
16 *AT&T Corp. v. Iowa Utils. Bd.*, 120 F.3d 753 (8th Cir. 1999).

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18
19 In matters where Congress has explicitly vested exclusive jurisdiction with a federal agency,
20 that jurisdiction preempts any state regulation or legislation on the subject. *Louisiana Pub. Svc.*
21 *Comm’n*, 106 S. Ct. at 1899; *Capital Cities Cable, Inc. v. Crisp*, 104 S. Ct. 2694, 2700 (1984);
22 *National Ass’n of Reg’y Util. Comm’rs*, 746 F.2d 1492 (D.C. Cir. 1984). Consequently, neither the
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26 determination of complex regulatory issues better suited to an administrative agency. *Id.* This
policy achieves the goals of uniformity and comity in the same manner as the federal doctrine.

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1 WUTC nor this Court may interfere with the exclusive jurisdiction of the FCC by applying state-
2 specific statutes, such as the WCPA, to rate disclosures associated with interstate inmate services.

3 More specifically, operator services are governed as a matter of federal law by the Telephone
4 Operator Consumer Services Improvement Act of 1990, 47 U.S.C. § 226 *et seq.* ("TOCSIA").
5 TOCSIA imposes numerous requirements on operator services providers, those defined by the
6 statute as "aggregators," or providers of services for the general public, for interstate calls. *See id.*
7 §§ 226(a)(2), (a)(7). Most importantly for purposes of this case, TOCSIA requires all operator
8 services providers to "disclose immediately to the consumer, upon request and at no charge to the
9 consumer . . . a quote of its rates or charges for the call; the methods by which such rates or charges
10 will be collected; and the methods by which complaints concerning such rates, charges, or collection
11 practices will be resolved." *Id.* § 226(b)(1)(C).

12 Pursuant to this legislative mandate, the FCC has promulgated rules to implement TOCSIA.
13
14 These rules apply, according to the plain language of the statute, to operator services provided to
15 "aggregators." Yet the FCC expressly declined to designate providers of inmate telephone operator
16 services or their correctional institution customers as aggregators subject to these obligations. *FCC*
17 *Operator Service Order*, 6 FCC Rcd. at 2752. The FCC based its conclusion on the particular
18 requirements of inmate services, including the ability to block calls to certain numbers in order to
19 prevent inmate harassment of judges, jurors and others, as well as the fundamental requirement that
20 inmate calls be collect-call only. *Id.* at 2749. For these reasons, the FCC concluded, "the provision
21 of such phones to inmates presents an exceptional set of circumstances that warrants their exclusion
22 from the regulation being considered." *Id.* at 2752. Only in 1998 did the FCC modify this holding,
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1 ruling as addressed above that inmate operator services providers must offer a real-time rate
2 disclosure mechanism on interstate calls.

3 Where an authorized federal agency has set a policy regarding interstate telecommunications
4 services, that decision preempts state and local authorities from creating any statute or regulation
5 inconsistent with that policy. *Louisiana Pub. Svc. Comm'n*, 106 S. Ct. at 1899; *Crisp*, 104 S. Ct. at
6 2701; *NARUC*, 748 F.2d at 1499. The power of the FCC to regulate interstate telecommunications,
7 such as interstate telecommunications provided to inmates, "could be totally frustrated by contrary
8 state regulation." *Crisp*, 104 S. Ct. at 2701. Therefore, Plaintiffs' attempt to seek damages on the
9 basis of general state consumer protection law necessarily fails as to interstate communications
10 within the FCC's exclusive jurisdiction. The First Amended Complaint should accordingly be
11 dismissed as to any claim arising out of interstate telephone calls made by Washington inmates.
12


13 VI. CONCLUSION

14 For all these reasons, Defendant T-Netix, Inc. requests that the Court dismiss the First
15 Amended Complaint, with prejudice.

16 Respectfully submitted on August 25, 2000,

17
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