

**TAB 25**

**COPY**

BEFORE THE  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL,

Complainants,

v.

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

Respondents.

Docket No. UT-042022

**T-NETIX, INC.'S MOTION FOR  
SUMMARY DETERMINATION**

**TABLE OF CONTENTS**

**I. INTRODUCTION**..... 1

**II. SUMMARY**..... 1

**III. EVIDENCE RELIED UPON**..... 2

**IV. STANDARD OF REVIEW**..... 3

**V. BACKGROUND**..... 3

**VI. ARGUMENT**..... 5

    A. T-NETIX IS AN EQUIPMENT PROVIDER IN THIS CASE..... 5

        (1) T-NETIX Is Identified as a “Station Provider” in the AT&T  
            Contract with the Washington DOC..... 5

        (2) T-NETIX Provided Software, Equipment and Maintenance  
            Services to AT&T..... 6

    B. T-NETIX DOES NOT SATISFY THE DEFINITION OF AN  
        OPERATOR SERVICES PROVIDER..... 7

        (1) T-NETIX Did Not “Provide a Connection” For Any of the Calls  
            Complainants Received..... 8

        (2) T-NETIX Did Not “Arrange For Billing” of the Calls that  
            Complainants Received..... 9

(3)	T-NETIX Did Not “Arrange for Completion” of the Calls that Complainants Received .....	9
(4)	T-NETIX’s Acquisition of Gateway’s OSP Certification Does Not Demonstrate That It Acted as an OSP in This Case .....	10
C.	THE LEC WAIVERS EXEMPTED ALL DOCUMENTED CALLS FROM THE RATE DISCLOSURE RULE.....	11
<b>VII.</b>	<b>CONCLUSION .....</b>	<b>12</b>

## **I. INTRODUCTION**

1. Respondent T-NETIX, Inc. (“T-NETIX”), through counsel and pursuant to WAC 480-09-426, hereby moves for summary determination against Complainants on the grounds that: (1) T-NETIX is not an operator services provider and is not bound by WAC 480-120-141, and (2) the exemptions and waivers granted to GTE, US West and PTI exempted all documented calls from the rule, precluding liability for T-NETIX.

## **II. SUMMARY**

2. All evidence in this record demonstrates conclusively that T-NETIX did not act as an operator services provider (“OSP”) in this case – not for any of the institutions involved or the calls that Complainants challenge. T-NETIX satisfies no part of the Commission’s definition of an OSP, WAC 480-120-021, and did not perform any of the telecommunications functions outlined in that definition. Rather, as the contracts and the expert testimony of Alan K. Schott prove, the local exchange carriers (“LECs”) – GTE, US West, or PTI – performed all of these functions, rendering them the OSP as a matter of law for all documented calls that Complainants received. T-NETIX’s role in this case was simply that of an equipment provider; Complainants’ theory would be akin to assessing penalties on Lucent or Nortel for the equipment they provide to Qwest, an obviously absurd result.

3. Indeed, the fact that the LECs acted as OSPs is demonstrated by their obtaining express exemptions, as well as waivers, from the rate disclosure requirements of WAC 480-120-021. That these carriers found it incumbent to seek relief from this rule shows in itself that they were OSPs – if they were not OSPs, the exemptions and waivers would not have been necessary. Further, if the LECs were not deemed OSPs as a matter of law, the Commission would not have granted such relief. Having received such relief – upheld as valid Commission actions by the Supreme Court of Washington – the LECs bore no duty to Complainants to provide rate quotes. This duty cannot be transferred to T-NETIX simply by virtue of its being a remaining defendant in this case.

4. Judgment should therefore be entered as to T-NETIX as a matter of law, because (a) it is not subject to the obligations of WAC 480-120-021, and therefore (b) cannot be liable for any alleged omission of rate quotes in the inmate calls that Complainants received.

### **III. EVIDENCE RELIED UPON**

5. T-NETIX relies upon the following evidence in this Motion that has either been filed with the Commission in this docket or has been produced in this docket:

- a. Supplemental Affidavit of Alan K. Schott in Support of T-NETIX's Motion for Summary Determination (July 27, 2005) ("Schott Aff.").
- b. T-NETIX contract with AT&T Corp. dated June 4, 1997 (TNXWA00741-772) ("1997 Contract").
- c. T-NETIX Response to Complaint (December 15, 2004) ("Answer").
- d. T-NETIX Response to Complainants' Data Request No. 11 (April 21, 2005).
- e. AT&T Response to Complainants Data Request No. 14 (April 4, 2005).
- f. Amendment to T-NETIX/AT&T Contract effective January 1, 2001 (TNXWA00773-787) ("2001 Amendment").
- g. Amendment No. 3 to Agreement Between the State of Washington Department of Corrections and AT&T Corporation ("Amendment No. 3").
- h. Master Agreement between AT&T and Washington Department of Corrections (1992)("AT&T/DOC Agreement").
- i. Letter from John Giannaula, T-NETIX, to Sandy Hornung, AT&T (March 10, 1998) ("March 1998 Letter").
- j. T-NETIX Motion for Summary Determination (April 21, 2005) ("T-NETIX Motion").
- k. Complainants' Response to T-NETIX, Inc.'s Motion for Summary Determination (May 6, 2005) ("Response to T-NETIX Motion").
- l. Transcript (June 28, 2005) ("Tr.").
- m. Order Denying T-NETIX's Motions for Summary Determination and to Stay Discovery (July 18, 2005) ("Order").
- n. Supplemental Affidavit of Nancy Lee (July 28, 2005) ("July 28 Lee Aff.").
- o. T-NETIX Document Production TNXWA01240-1294.

#### IV. STANDARD OF REVIEW

6. WAC 480-09-426 states that “[a] party may move for summary determination if the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is *no genuine issue as to any material fact* and the moving party is *entitled to summary determination in its favor*.” (Emphasis added.) The rule further provides that on review of this motion, the Commission “will consider the standards applicable to a motion made under CR 56 of the civil rules for superior court.” Rule 56 of the Washington Rules of Civil Procedure applies to summary judgment motions.<sup>1</sup> Washington courts will enter summary judgment where judgment for the movant “is proper.” *Atherton Condo. Apartment-Owner Ass’n Bd. of Directors v. Blume Dev. Co.*, 115 Wash.2d 506, 516, 799 P.2d 250 (1990). That is, where “from all of the evidence, reasonable persons could reach but one conclusion.” *Vallandigham v. Clover Park School District No. 400*, — P.3d —, 2005 WL 774378, at \*3 (Wash. Apr. 7, 2005). In their review, courts – and thus this Commission – are required to view all facts and reasonable inferences in favor of the nonmovant. *Atherton*, 115 Wash.2d at 516.

#### V. BACKGROUND

7. A brief background on the nature of operator services is helpful in this case. As Alan Schott explains in his Supplemental Affidavit, operator services are a component of telecommunications services. Schott Aff. ¶ 3 (Exhibit 1). Operators services historically were provided by live operators employed by providers such as AT&T and US West. *Id.* ¶ 4. Live operators were also used in the inmate telephone market. *Id.* Their role was to take the inmate caller’s name, place the inmate on hold, and ask the called party to accept the charges. *Id.* ¶ 5. If the charges were accepted, the operator would release the holding inmate to allow the call to transmit. *Id.*

8. T-NETIX and other vendors began in the late 1980s to provide inmate OSPs with a proprietary platform that could be programmed to perform these tasks automatically. Schott Aff.

---

<sup>1</sup> Rule 56 similarly provides that summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

¶ 8. These platforms were beneficial to the service providers because they provide greater security than live operators can do. *Id.* ¶¶ 8-9. With correctional authorities becoming increasingly concerned with the security of inmate calling, removing the human component from operator services became a necessity, as did introducing additional measures such as call timing and call monitoring. *Id.* ¶ 7.

9. T-NETIX sold its platform to AT&T for this purpose. 1997 Contract (Exhibit 2). T-NETIX also provided its platform to US West, GTE, and PTI. This product consisted of “customized computer-based telephony control cards” run by proprietary software. Schott Aff. ¶ 12. T-NETIX was responsible for installing the platforms, adjusting the call restriction settings, formatting the records of the inmate calls, and providing on-site administrative support. *Id.* ¶ 12a-e. In the State of Washington, the T-NETIX [REDACTED] platform was used for all local and intraLATA calls, *id.* ¶ 13, which are the only types of calls that Complainants have documented in this case.

10. What is important to recognize is that inmate services comprise many different components: equipment, OSP service, local calling, intraLATA calling, interLATA calling, and international calling. At any given facility, the parties providing these different components may differ. An entity that provides local calling in one facility may provide intraLATA calling at another. Further, an entity that provides only equipment at one facility may be the prime contractor – providing equipment plus all types of calling service – at another.

11. These permutations are the result of the procurement and contracting system. Different entities win the bids for different facilities. Often it is the larger carriers, such as AT&T, that win the contracts for the largest facilities – in Washington, AT&T is the prime contractor for all Department of Corrections (“DOC”) sites. (Exhibit 16)<sup>2</sup> In county or municipal jails, often the smaller carriers win to become prime contractors. And the same small carriers that

---

<sup>2</sup> RCW 39.04.210 and .220 govern public works contracts for correctional facilities. The public bidding process is administered by the DOC under the supervision of the Washington Department of General Administration, in accordance with RCW 39.04.210(1).

are prime to a county jail may also be a subcontractor to a larger carrier that is prime to a large facility. In this case, T-NETIX is the subcontractor to AT&T, as are all of the Washington incumbent LECs.

12. Accordingly, the role of any entity in inmate calling must be evaluated on a site-specific basis. Roles are not static across all facilities or services. In this case, T-NETIX's presence should be evaluated for the facilities from which Complainants' calls originated. These facilities are Monroe, McNeil Island, Airway Heights,<sup>3</sup> and Clallam Bay.<sup>4</sup>

## **VI. ARGUMENT**

### **A. T-NETIX IS AN EQUIPMENT PROVIDER IN THIS CASE**

13. T-NETIX's role in all four of the correctional facilities from which Complainants received calls – McNeil Island, Monroe, Airway Heights, and Clallam Bay – is solely as an equipment and software provider. All contractual evidence in this record, including documents produced to Complainants, demonstrates conclusively that T-NETIX was engaged to provide, and did provide, only equipment, software and maintenance services to support inmate telecommunications providers.

14. Complainants do not dispute that all calls of which they complain occurred on or before November 30, 2000. Response to T-NETIX Motion ¶¶ 24-26 (Exhibit 5); Tr. at 40:13-41:3 (Exhibit 3). As demonstrated herein, all contracts in effect through that date demonstrate that T-NETIX was not hired to provide operator services.

#### **(1) T-NETIX Is Identified as a “Station Provider” in the AT&T Contract with the Washington DOC**

15. Amendment No. 3 to AT&T's contract with the Washington DOC states that:

---

<sup>3</sup> Other than Ms. Herivel's declaration dated May 11, 2005, there is no evidence that she received a call from Airway Heights – neither a phone bill nor a record in T-NETIX's systems. Tr. at 28:1-14 (Exhibit 3).

<sup>4</sup> Ms. Judd's phone bills state that she received a call from Clallam Bay in July 1996, years before T-NETIX became the local services provider there. Ms. Judd did not, however, identify Clallam Bay as a facility in her response to T-NETIX Data Request No. 3. T-NETIX Motion at 8 n.2 (Exhibit 4). Complainants have not updated their response since this fact was pointed out to them in T-NETIX's Motion dated April 21, 2005.



[T]he 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.** (Emphasis added.)(Exhibit 6)

AT&T affiant Frances M. Gutierrez confirmed that provision in paragraph 11 of her affidavit, filed December 15, 2004.

16. “**Station**” is a defined term under WAC 480-120-021: “**a telephone instrument** installed for the use of a subscriber to provide toll and exchange service.” (Emphasis added.) Thus, Amendment No. 3 required T-NETIX to provide phones to certain facilities that AT&T served. That Amendment was signed by AT&T on February 14, 1997 and was effective on that day. Accordingly, as a matter of law, T-NETIX was simply the provider of inmate phones.

(2) **T-NETIX Provided Software, Equipment and Maintenance Services to AT&T**

17. The T-NETIX/AT&T contract of June 4, 1997 (“1997 Contract”), comports exactly with Amendment No. 3 to AT&T’s contract with the DOC. It states that T-NETIX will provide equipment (TNXWA00744) and software (TNXWA00748), will install the equipment (TNXWA00745), and will maintain all equipment (TNXWA00754). With the addition of the software needed to activate the phones, or “stations,” the 1997 Contract simply creates an agreement between AT&T and T-NETIX to effectuate what AT&T told the Washington DOC (in Amendment No. 3) would occur. Thus, for the four correctional facilities at issue – McNeil Island, Monroe, Clallam Bay and Airway Heights – T-NETIX only provided the inmate payphones.

18. Nothing in the 1997 Contract requires T-NETIX to carry calls, provide operator services, or make rate disclosures. Nor does the 1997 Contract mention that any party has a rate disclosure obligation. In fact, rate disclosures are not mentioned until the 2001 Amendment to the AT&T/T-NETIX 1997 Contract, which became effective January 1, 2001. (Exhibit 7.)

19. The 2001 Amendment includes a provision regarding a “Chip Change Project,” which was “described in Schedule C.” TNXWA00774. Schedule C of the 2001 Amendment

states that T-NETIX will “replace certain chips at all AT&T/T-Netix locations in order to ensure platform compliance with FCC Order No. 96-424.”<sup>5</sup> TNXWA00785.

20. Such compliance would include the provision of disclosures. Schedule C of the 2001 Amendment actually provides example disclosures that AT&T wanted to have made via the T-NETIX platforms. TNXWA00787.<sup>6</sup> These disclosures include rate disclosures:

*“You will be charged the maximum of <Three dollars and ninety four cents> for the first minute and <sixty-nine cents> for each additional minute.”*

*Id.* (emphasis in original). This type of provision occurs for the first time in the 2001 Amendment. Its appearance in that document demonstrates that January 1, 2001 was the earliest time that T-NETIX was obligated to assist AT&T with rate disclosures (and only for interstate calls). This change in the AT&T/T-NETIX arrangement thus shows that T-NETIX was not expected to provide or enable any rate disclosures prior to that date, and thus was not expected to comply with WAC 480-120-141.

**B. T-NETIX DOES NOT SATISFY THE DEFINITION OF AN OPERATOR SERVICES PROVIDER**

21. The definition of “operator service provider” is:

[A]ny corporation ... or person **providing a connection to intrastate or interstate long-distance or to local services** from locations of call aggregators. The term “operator services” in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer **to arrange for billing or completion, or both**, of an intrastate telephone call through a method other than: Automatic completion with billing to the telephone from which the call originated; or completion through an

---

<sup>5</sup> There is no FCC Order by that number, but the provision is likely intended to refer to federal rules regarding inmate calling. Such rules could only apply to interstate calling as a matter of jurisdiction; Section 1 of the Communications Act of 1934 grants the FCC jurisdiction only over interstate matters. 47 U.S.C. § 151.

<sup>6</sup> Schedule C discusses three T-NETIX platforms (TNXWA00785-786), but as Alan Schott has stated in his sworn Affidavit, only the [REDACTED] platform operated in Washington for the calls at issue here. Schott Aff. ¶ 13.

access code used by the consumer with billing to an account previously established by the consumer with the carrier.<sup>7</sup>

WAC 480-120-021. (Emphasis added). No component of this definition applies to T-NETIX in this case.

(1) **T-NETIX Did Not “Provide a Connection” For Any of the Calls Complainants Received**

22. Evidence in the record demonstrates as a factual matter that T-NETIX does not provide “a connection from ... locations of call aggregators.” WAC 480-120-021. First is a letter contract from T-NETIX to AT&T stating that, beginning March 3, 1998, T-NETIX “will provision the local traffic on AT&T’s behalf.” March 1998 Letter (Exhibit 8).<sup>8</sup> As T-NETIX explained in its response to Complainants’ Data Request No. 41, “provision the local traffic’ required **obtaining the local phone line** from the phone to the LEC switch and billing end users for local calls.” Exhibit 9. (Emphasis added.) But prior to the March 1998 Letter, T-NETIX had not ‘obtained the local phone line’ at these facilities, and thus had not provided a connection. Because no Complainant has received a call from any of the facilities affected by the March 1998 Letter, T-NETIX did not at any time act as an OSP for the Complainants.

23. The attached Supplemental Affidavit of Alan K. Schott explains and illustrates in closer detail how T-NETIX equipment is configured. Schott Aff. Figure 1. The [REDACTED] platform is [REDACTED]. The [REDACTED] connects to the public switched telephone network (PSTN) [REDACTED]. The loop terminates to the LEC end office switch, when then routes the call to the carrier. The [REDACTED] itself is thus outside the PSTN. Schott Aff. ¶ 15.

24. The evidence is thus clear that T-NETIX was not the entity that provided the transmittal pathway to the LEC switch or the PSTN. It cannot have, as the definition requires,

<sup>7</sup> A “call aggregator” is “any corporation ... or person who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services[.]” *Id.* In this instance, Washington correctional facilities are the call aggregators.

<sup>8</sup> Affected facilities: Washington Women’s Correctional Center; Coyote Ridge; Pine Lodge Pre-Release; Olympic Correctional; and Clallam Bay Correctional. Of this list, the only facility implicated in this case is Clallam Bay. *But see supra* n.3.

“provide[d] a connection to intrastate or interstate long-distance or to local services.” WAC 480-120-021. T-NETIX therefore fails to satisfy the Commission’s definition of an OSP.

**(2) T-NETIX Did Not “Arrange For Billing” of the Calls that Complainants Received**

25. The next operative component of the definition of an OSP is to “arrange for billing or completion, or both, of an intrastate telephone call.” WAC 480-120-021. T-NETIX does not arrange for billing. As T-NETIX stated in its Answer, AT&T, as the carrier of international calls, is responsible for ensuring that bills are produced for the calls it carries. Answer p.3 (Exhibit 10). Similarly, local and intraLATA calls are billed by the LEC that carried them. T-NETIX Response to Data Request No. 11 (Exhibit 11); AT&T Response to Data Request No. 14 (Exhibit 12).

26. T-NETIX’s role in this process was simply to provide information about the call to the billing entity. These call detail records (“CDRs”) are transmitted to the OSP to be made into 0+ call records. Schott Aff. ¶ 18. The LEC (for local and intraLATA calls) or the IXC (for interLATA calls) then processes the records into bills. *Id.* Carriers often use a separate billing agent to create bills. *Id.*

27. Figure 1 of the Schott Affidavit illustrates this process. It shows that the T-NETIX platform stores the data of inmate-initiated calls. This data is [REDACTED] It is then provided to the LEC, IXC, or their billing agent. Thus, the bill creation process is performed by entities other than T-NETIX, and T-NETIX has no role in sending the bills or collecting the payments.

28. This evidence demonstrates that T-NETIX does not “arrange for billing” of intrastate calls as the definition of OSP requires. WAC 480-120-021.

**(3) T-NETIX Did Not “Arrange for Completion” of the Calls that Complainants Received**

29. The definition of OSP also requires that the entity “arrange for ... completion ... of an intrastate call.” WAC 480-120-021. T-NETIX’s equipment does not ‘arrange for completion’

of calls. Call completion occurs through the routing of calls, a process that begins at the LEC switch.

30. The Schott Affidavit explains the limited role that T-NETIX's platform plays in inmate calls. It takes the calling inmate's name, outpulses the call to the LEC trunk which then reaches and is routed by the LEC switch, and essentially places the inmate on hold pending authorization. Schott Aff. ¶ 12g. When the called party picks up, the T-NETIX platform re-plays the inmate's name as the calling party and requests authorization. If the called party authorizes the call [REDACTED] the T-NETIX platform releases the hold and allows the audio path to go through. *Id.* ¶ 12g-h.

31. Completion of the call is performed by the LEC switch, which routes the call, and any other switch in the call path that ensures that the call reaches the called party. All signaling functions required to complete this process are enabled by the LEC switch, and not by T-NETIX. Thus, the LEC is the primary party responsible for "arranging for ... completion ... of an intrastate call" under WAC 480-120-021, rendering it the OSP as well as the call's carrier.

**(4) T-NETIX's Acquisition of Gateway's OSP Certification Does Not Demonstrate That It Acted as an OSP in This Case**

32. T-NETIX has produced documents to Complainants, having been instructed to comply with all Data Requests expeditiously, indicating that T-NETIX petition the WUTC to transfer the OSP certification of Gateway Technologies, Inc. to T-NETIX. TNXWA01240-1294 (Exhibit 13). These documents do not mean that T-NETIX acted as an OSP in this case.

33. The attached Supplemental Affidavit of Nancy Lee ("July 28 Lee Aff.") explains the situation in detail, as do the documents that T-NETIX produced. Gateway Technologies, Inc. ("Gateway") was a Texas corporation providing inmate calling services throughout the United States. July 28 Lee Aff. ¶ 3 (Exhibit 14); TNXWA01278 (Exhibit 13). It was founded in 1989, and was a leading competitor of T-NETIX. Gateway was certified by the Commission as an operator services provider. July 28 Lee Aff. ¶ 3; TNXWA01264. Gateway was not a party to any

contract at issue in this case. July 28 Lee Aff. ¶ 4. It did not serve Monroe, McNeil, Airway Heights or Clallam Bay. *Id.*

34. In June 1999, T-NETIX acquired the stock and assets of Gateway. July 28 Lee Aff. ¶ 5. In accordance with T-NETIX's general practice, it petitioned to transfer Gateway's certifications, by changing the name on the Gateway certificate, in all states in which T-NETIX provided or wished to provide service. *Id.* ¶ 5; TNXWA01292. T-NETIX petitioned the WUTC for such a transfer on January 9, 2001. July 28 Lee Aff. ¶ 6; TNXWA01292. This transfer was granted on January 25, 2001. July 28 Lee Aff. ¶ 6; TNXWA01291.

35. This case regards four correctional facilities, none of which were served by Gateway equipment. T-NETIX has been the equipment provider at these facilities for the entire relevant period of this case, August 1996 to August 2000. Thus, neither Gateway's OSP certification nor T-NETIX later acquisition of that certificate have any bearing on this case. They do not support the suggestion that T-NETIX acted as an OSP to Complainants or the inmates who called them.

**C. THE LEC WAIVERS EXEMPTED ALL DOCUMENTED CALLS FROM THE RATE DISCLOSURE RULE**

36. It is not subject to dispute that GTE (now Verizon), US West (now Qwest), and PTI (now CenturyTel) were exempt from WAC 480-120-141, first by the rule's express language and later by waivers that were effective through December 31, 2000. *Order* ¶ 22 (Exhibit 15); *Judd v. AT&T*, 116 Wash. App. 761, 66 P.3d 1102 (2003), *aff'd* 52 Wash.2d 195, 95 P.3d 337 (2004). These exemptions cover all calls that these LECs carried. As such, none of the documented calls that Complainants have identified were required to include rate disclosures.

37. As demonstrated in Section VI, subsection B above, T-NETIX does not meet the definition of an Operator Services Provider in WAC 480-120-021. It did not 'provide a connection' and did not 'arrange for billing.' Rather, the entities who performed those functions were US West, GTE and PTI. It was the resident LEC that provided the trunk connecting the prison to the PSTN, and the LEC, or its billing agent, that was responsible for sending bills out.

Schott Aff. ¶¶ 16, 20. Accordingly, the LEC satisfied the role of OSP in this case as defined in WAC 480-120-021. Indeed, the AT&T/DOC Agreement specifically states that the LECs will provide operator services. Exhibit 16, at p. 3.

38. Moreover, the effect of the LEC waivers is intuitive as a practical matter. The fact that the LECs requested these waivers demonstrates their acknowledgment that they were the OSPs and that WAC 480-120-021 applied to them. It would be nonsensical for a party to seek a waiver of a rule that did not apply to it. Moreover, the Commission likely would not grant such a waiver, because the party would have no standing to seek it. Reviewing a waiver request would be a waste of the Commission’s time, and surely it would not have been granted.

39. Yet the Commission granted the waiver, and in so doing effectively assured the GTE, US West and PTI that the calls they carried – local and intraLATA – are not subject to the rate disclosure obligation of WAC 480-120-021. Those calls were “safe.” And among those calls are all of the calls that Complainants received.

40. Complainants’ aim in this further proceeding is to make T-NETIX and/or AT&T liable for not performing a task that the Commission made clear need not be done. Having lost GTE, US West and PTI as sources of damages, they look to T-NETIX and AT&T. This attempt must fail. The parties that owed a duty to disclose rates to Complainants were relieved of that duty. Complainants cannot now transfer that duty to T-NETIX.

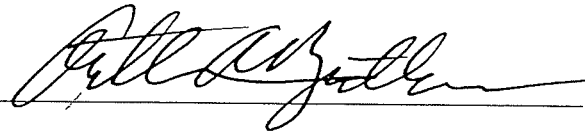
## VII. CONCLUSION

41. For all these reasons, judgment should be entered in favor of T-NETIX.

//  
//  
//  
//  
//  
//

DATED this 28th day of July, 2005.

ATER WYNNE LLP -

By 

Arthur A. Butler, WSBA #04678  
601 Union Street, Suite 5450  
Seattle, Washington 98101-2327  
Tel: (206) 623-4711  
Fax: (206) 467-8406  
Email: [aab@aterwynne.com](mailto:aab@aterwynne.com)

*and*

Of Counsel:  
Glenn B. Manishin  
Stephanie A. Joyce  
Kelley Drye & Warren LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036



## CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of July, 2005, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn  
Executive Secretary  
Washington Utilities and Transportation  
Commission  
1300 S Evergreen Park Drive SW  
Olympia, WA 98504-7250

Hand Delivered  
 U.S. Mail (first-class, postage prepaid)  
 Overnight Mail (UPS)  
 Facsimile (360) 586-1150  
 Email (records@wutc.wa.gov)

I hereby certify that I have this 28th day of July, 2005, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

### ***On Behalf Of AT&T:***

Ms. Letty S. Friesen  
AT&T Communications of the Pacific  
Northwest  
Law Department  
919 Congress Avenue, Suite 900  
Austin TX 78701-2444

Hand Delivered  
 U.S. Mail (first-class, postage prepaid)  
 Overnight Mail (UPS)  
 Facsimile (303) 298-6301  
 Email (lsfriesen@att.com)

*Confidentiality Status: Highly Confidential*

### ***On Behalf Of T-Netix:***

Stephanie A. Joyce  
Kelley Drye & Warren LLP  
1200 19th Street NW, Suite 500  
Washington DC 20036-2423  
*Confidentiality Status: Highly Confidential*

Hand Delivered  
 U.S. Mail (first-class, postage prepaid)  
 Overnight Mail (UPS)  
 Facsimile (202) 955-9792  
 Email (sjoyce@kelleydrye.com)

### ***On Behalf Of T-Netix:***

Glenn B. Manishin  
Kelley Drye & Warren LLP  
1200 19th Street NW, Suite 500  
Washington DC 20036-2423  
*Confidentiality Status: Public*

Hand Delivered  
 U.S. Mail (first-class, postage prepaid)  
 Overnight Mail (UPS)  
 Facsimile (202) 955-9792  
 Email (gmanishin@kelleydrye.com)