[Service Date April 21, 2010]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD AND TARA HERIVEL,	)	DOCKET UT-042022
Complainants,	)	ORDER 23
v.	)	
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AND T-NETIX, INC.,	)	INITIAL ORDER DENYING IN PART AT&T'S AMENDED MOTION FOR SUMMARY DETERMINATION AND GRANTING T-NETIX'S MOTION AND AMENDED MOTION
Respondents.	)	FOR SUMMARY DETERMINATION

1 ***SYNOPSIS.*** *This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order denies in part the Amended Motion for Summary Determination filed by AT&T Communications of the Pacific Northwest, Inc. ; by finding that AT&T, and not T-Netix, was the operator service provider for Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallum Bay, from June 4, 1997 to December 31, 2000. AT&T's Amended Motion which requests that the Commission find AT&T did not violate any of the Commission's OSP rate disclosure regulations is held in abeyance pending further Commission proceedings. This Order grants the Motion and Amended Motion for Summary Determination filed by T-Netix, Inc.*

2 **NATURE OF PROCEEDING.** Docket UT-042022 involves a formal complaint filed with the Washington Utilities and Transportation Commission (Commission) by Sandy Judd and Tara Herivel (Complainants)[1] against AT&T Communications of

[1] Zuraya Wright filed suit, in conjunction with Ms. Judd and Ms. Herivel, against Respondents in the Superior Court of Washington for King County (Superior Court or Court). See, Exhibit A-2.

the Pacific Northwest, Inc. (AT&T), and T-Netix, Inc. (T-Netix, collectively with AT&T, Respondents).[2] Complainants request that the Commission resolve certain issues under the doctrine of primary jurisdiction and pursuant to the referral by the Superior Court.

3 **APPEARANCES.** Chris R. Youtz, Sirianni Youtz Meier & Spoonemore, Seattle, Washington, represents Complainants. Letty Friesen, AT&T Law Department, Austin, Texas, and Charles H. R. Peters, Schiff Hardin, LLP, Chicago, Illinois, represent AT&T. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, and Stephanie A. Joyce, Arent Fox LLP, Washington, D.C., represent T-Netix.

4 **PROCEDURAL HISTORY.** This matter has an extensive history, dating back to when the complaint was first filed in 2000 in the Superior Court. Complainants alleged in their complaint that they received collect calls from inmates in Washington State correctional facilities served by Respondents, that Respondents provided operator services to the correctional facilities and that Respondents were operator service providers (OSPs)[3] who violated the rate disclosure statute[4] by failing to assure

---

As Ms. Wright's claim is restricted to interstate inmate telephone calls, and our jurisdiction extends only to intrastate telephone calls, we will not address Ms. Wright's claim in this order.

[2] Complainants originally named five telecommunications companies in their suit in Superior Court. In addition to Respondents, Complainants also filed suit against Verizon Northwest, Inc., f/k/a GTE Northwest, Inc. (Verizon), Qwest Corporation, f/k/a U.S. West Communications, Inc. (Qwest), and CenturyTel Telephone Utilities, Inc., f/k/a CenturyTel Telephone Utilities, Inc. and Northwest Telecommunications, Inc., d/b/a PTI Communications, Inc. (CenturyTel). Verizon, Qwest, and CenturyTel were subsequently dismissed from the action. Exhibit A-46. The Washington Court of Appeals affirmed the trial court's ruling, as did the Supreme Court of Washington. *Judd, et al., v. American Telephone and Telegraph Company, et al.*, 116 Wash.App. 761, 766, 66 P.3d 1102 (2003) and *Judd v. Am. Tel. & Tel. Co.*, 152 Wash.2d 195, 198, 95 P.3d 337 (2004).

[3] While WAC 480-120-021 (1989) and (1991) classify entities that provide connections from call aggregators to local and interexchange carriers (IXC) as alternate operator services companies, WAC 480-120-021 (1999) changed the term for these entities to OSP. As the Superior Court refers to them as OSPs, we will do likewise in this Order.

[4] RCW 80.36.520 provides that:

> [t]he utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternative operator services company, assure appropriate disclosure to

rate disclosures for the collect calls Complainants received. Following the Superior Court's dismissal of three defendants from the suit and the subsequent affirmations of the Court's verdict, the Superior Court referred two questions to the Commission under the doctrine of primary jurisdiction:[5]

> 1) Whether Respondents were OSPs under the contracts at issue herein, and
> 2) If so, if the regulations have been violated.[6]

5 On November 17, 2004, Complainants filed a formal complaint with the Commission under the court's referral. In that filing, Complainants expanded their arguments further, claiming that Respondents had violated the Commission's rule requiring that OSPs provide rate quote information to consumers.[7] In violating the Commission's rule, Complainants allege that Respondents also violated the Washington Consumer Protection Act (WCPA).[8] On December 15, 2004, AT&T filed an answer to the formal complaint and a Motion for Summary Determination (AT&T's Motion), requesting that the Commission find that AT&T was not an OSP during the period in question and that AT&T had not violated the Commission's regulations applicable to OSPs. On December 16, 2004, T-Netix filed its answer to the formal complaint. Due

---

consumers of the provision and the rate, charge or fee of services provided by an alternative operator services company.

[5] Primary jurisdiction is a doctrine which requires that issues within an agency's special expertise be decided by the appropriate agency. *Tenore, v. AT&T Wireless Services,* 136 Wash.2d 322, 345, 962 P.2d 104, 115 (1998).

[6] *Judd v. Am. Tel. & Tel. Co.*, 136 Wash.App. 1022, not reported in P.3d, (2006).

[7] *See,* WAC 480-120-141 (1991) and (1999).

[8] RCW 80.36.530 provides that:

> In addition to the penalties provided in this title, a violation of RCW 80.36.510, 80.36.520, or 80.36.524 constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of RCW 80.36.510, 80.36.520, or 80.36.524 are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved.

to intervening motions relating to discovery and standing, AT&T's Motion was never adjudicated.

6 On July 28, 2005, T-Netix filed a Motion for Summary Determination (T-Netix's Motion.) In its Motion, much like that of AT&T, T-Netix alleges that it was not an OSP for certain inmate collect calls and that the exemptions of Verizon, Qwest, and CenturyTel should preclude liability for T-Netix.[9]

7 Concurrently, T-Netix filed a Motion for Summary Judgment (Summary Judgment Motion) with the Superior Court, alleging that the Complainants had suffered no injury and therefore lacked standing to bring the action.[10] On September 6, 2005, the Superior Court granted T-Netix's Summary Judgment Motion and revoked its referral to the Commission.[11] The Superior Court later clarified that the ruling also applied to AT&T.[12] As a result, neither AT&T's nor T-Netix's Motions before the Commission were addressed.

8 On September 7, 2005, T-Netix filed a Motion to Dismiss with the Commission based on the Court's revocation of the referral. On October 28, 2005, the Commission issued Order 07, granting T-Netix's Motion to Dismiss the complaint against both T-Netix and AT&T and found that, "a primary jurisdiction referral does not invoke an agency's independent jurisdiction, but is derivative of that of the court in which the matter is pending."[13]

---

[9] Exhibit T-1HC, at 1.

[10] *Judd v. Am. Tel. & Tel. Co.*, King County Superior Court, No. 00-2-17565-5 SEA, *T-Netix's Motion for Summary Judgment*, July 26, 2005.

[11] *Judd v. Am. Tel. & Tel. Co.*, King County Superior Court, No. 00-2-17565-5 SEA, *Order Granting Defendant T-Netix' Motion for Summary Judgment*, September 6, 2006.

[12] *Judd*, 136 Wash.App. 1022, not reported in P.3d, (2006).

[13] *Judd v. Am. Tel. & Tel. Co.*, Docket UT-042022, Order 07, Order Granting T-Netix's Motion to Dismiss and Dismissing Complainants' Action, ¶ 19, quoting *International Ass'n of Heat and Frost Insulators and Asbestos Workers v. United Contractors Ass'n, Inc.*, 483 F.2d 384, 401 (3rd Cir. 1973).

9 On December 18, 2006, the Washington Court of Appeals reversed the lower court's decision on T-Netix's Summary Judgment Motion and remanded the case back to the Superior Court.[14] On December 4, 2007, the Supreme Court of Washington denied T-Netix's request for review.[15] On March 21, 2008, the Superior Court issued an order reinstating the referral to the Commission for the determination of the issues:

1) Whether AT&T or T-Netix were OSPs, and
2) Whether they violated the Commission's disclosure regulations.

10 On August 21, 2008, the Commission convened a prehearing conference before Administrative Law Judge Marguerite E. Russell (ALJ).[16] On October 2, 2008, the Commission entered Order 09 establishing a briefing schedule for AT&T's and T-Netix's motions.

11 The parties requested amendments to the discovery and briefing schedules on several occasions subsequent to the Commission's entrance of Order 09.[17]

12 AT&T filed an Amended Motion for Summary Determination (AT&T's Amended Motion) on August 24, 2009.[18] On August 27, 2009, T-Netix filed its Amended Motion for Summary Determination (T-Netix's Amended Motion).

---

[14] *Judd*, 136 Wash.App. 1022, not reported in P.3d, (2006).

[15] *Judd v. Am. Tel. & Tel. Co.*, 162 Wash.2d 1002, 175 P.3d 1092 (2007).

[16] During scheduling discussions at the prehearing conference, it became clear that the parties did not agree on the status of the procedural schedule as it existed when the Superior Court rescinded its referral. Following briefing by the parties, the Commission entered Order 09 finding that both AT&T's and T-Netix's Motions were still pending before the Commission and that the procedural schedule should accommodate decision on the motions.

[17] There were no less than ten requests to modify the procedural schedule from October 2008 to August 2009.

[18] AT&T neglected to request leave to amend its original pleading. Following a telephonic conference on August 25, 2009, between the parties and the ALJ, AT&T and T-Netix both filed motions for leave to amend their original motions for summary determinations, stating that the original motions were more than 4 years. In Order 21, entered on August 28, 2009, the Commission granted AT&T's and T-Netix's request for leave to file amended motions for summary determination.

13 On September 10, 2009, Complainants filed a Memorandum in Opposition to T-Netix's and AT&T's Amended Motions (Complainants' Opposition); T-Netix filed its Opposition to AT&T's Amended Motion (T-Netix's Opposition); and AT&T filed its Response to T-Netix's Amended Motion (AT&T's Response).

14 On September 24, 2009, AT&T filed its Reply in Support of its Amended Motion (AT&T's Reply) and T-Netix filed its Reply in Support of its Amended Motion (T-Netix's Reply).

15 The Commission, on October 8, 2009, issued Bench Request No. 1 to T-Netix stating that T-Netix had provided duplicative exhibits, Exhibits 5 and 10, in its original Motion. Bench Request No. 1 requested that T-Netix file a list of its intended exhibits to clarify which exhibits should have been attached to the Motion. T-Netix filed a Response to Bench Request No. 1 on October 12, 2009, acknowledging that the wrong document had been provided to the Commission as Exhibit 5 and rectifying that error by including the appropriate document for Exhibit 5 and a list of exhibits T-Netix intended to file with its Motion.

16 On January 4, 2010, the ALJ issued Bench Request No. 2 to AT&T, noting that the company had alleged that it was certified as a local exchange carrier (LEC) by the Commission, but provided conflicting dates for the certification. Bench Request No. 2 asked that AT&T, *inter alia*, clarify the date of its certification and provide a copy of the Commission-issued certificate. On January 15, 2010, AT&T responded to Bench Request No. 2 stating that it was certificated as a LEC on January 24, 1997, in Docket UT-960248. AT&T included a copy of its LEC certification, asserting that it had not surrendered its LEC certificate, nor had the Commission revoked it.

17 The Commission issued Bench Request No. 3 to AT&T, explaining that AT&T had advanced the theory of collateral estoppel in response to Complainants arguments regarding RCW 80.36.520. Bench Request No. 3 requested that AT&T provide a copy of its Motion to Dismiss filed with the Superior Court and which was the subject of the Court's October 10, 2000, order. AT&T filed its response to Bench Request No. 3 on February 5, 2010, with a copy of its Motion to Dismiss. AT&T also included a copy of Verizon's Motion to Dismiss, arguing that Verizon had made the same argument.

18 On March 4, 2010, the Commission issued Bench Request No. 4 to T-Netix asking the company to indicate whether its P-III Premise call platform[19] had the ability, from June 1996 to December 2000, to provide consumers with instructions on how to receive rate quotes and provide consumers with rate quotes. T-Netix responded to Bench Request No. 4 and stated that the platform did have the capacity to accomplish both actions.

19 The Commission issued Bench Request Nos. 5 and 6 on March 19, 2010. Bench Request No. 5 noted that AT&T had alleged that T-Netix had contracted with the LECs for T-Netix to connect calls from the correctional facilities to local and long-distance service providers and to provide operator services at the correctional facilities. The Bench Request sought the contract(s) between T-Netix and the LECs on which AT&T based the allegation. AT&T responded by stating that T-Netix had not produced any contracts between the LECs and T-Netix for the relevant time period, but that T-Netix employees and agents had indicated during discovery that T-Netix had a business relationship with the LECs.

20 Bench Request No. 6 indicated that Amendment No. 3 to the DOC contract required T-Netix to remit a twenty-seven percent (27 percent) monthly commission to the DOC for local calls. The Bench Request asked that T-Netix explain what services or activities, if any, T-Netix was providing upon which the monthly commission was based. T-Netix filed its response explaining that it leased facilities to provide local calls on behalf of AT&T. According to T-Netix, AT&T agreed to reimburse T-Netix for the commission T-Netix paid on local calls placed after March 3, 1998, from the five DOC facilities T-Netix served.

---

[19] In its Motion, T-Netix treated the name of its platform as highly confidential, yet T-Netix disclosed the name of the computer platform system in its Amended Motion. On January 19, 2010, the Commission issued a Notice of Commission Challenge to Assertion of Highly Confidential Designation and Notice of Intent to Make Information Public (Challenge Notice). The Challenge Notice indicated that, since T-Netix had already disseminated the moniker in filings that are public records, the company had waived its right to designate the information as highly confidential. The Challenge Notice also stated that the Commission would treat the name of T-Netix's computer platform as public information as of January 29, 2010.

21 On April 8, 2010, the Commission issued Notice of Final Exhibit List (Notice). The Notice stated that the attached exhibit list was complete and that each exhibit had been admitted on the date it was filed with the Commission. The Notice also requested that the parties file any objection or corrections to the exhibit list by Noon on April 12, 2010. None of the parties filed objections or corrections to the final exhibit list.

22 On April 8, 2010, AT&T filed with the Commission its Motion for Leave to File a Response Regarding Bench Request No. 6 (Motion for Leave) and its Response.[20] In its Motion for Leave, AT&T claims that T-Netix's Response to Bench Request No. 6 is "vague, ambiguous, and, particularly with respect to references it makes to AT&T, misleading."[21] On April 9, 2010, T-Netix filed its Opposition and Response to AT&T's Motion for Leave (T-Netix's Opposition and Response). T-Netix asserts that AT&T has failed to cite to any authority which would allow it to respond to a bench request directed only to T-Netix.[22] T-Netix also alleges that AT&T's Response is misleading, factually incorrect, and that it should be stricken.[23]

23 On April 12, 2010, the Commission issued Order 22 denying AT&T's Motion for Leave. The Commission found that AT&T's Motion for Leave was lacking in any real substance and fails to indicate how its supplementation of the record would assist the trier of fact.

MEMORANDUM

24 The Superior Court referred two questions to the Commission: 1) whether AT&T or T-Netix were OSPs and 2) whether each violated the Commission's rate disclosure regulations. Complainants' lawsuit, filed in Superior Court, alleges that they received operator-assisted collect calls from four Washington state correctional facilities and

---

[20] AT&T's pleading was actually captioned "AT&T's Unopposed Motion for Leave to File its Amended Motion for Summary Determination." The pleading did, however, contain the appropriate title elsewhere in the text. As T-Netix has indicated, AT&T's Motion for Leave was not unopposed.

[21] AT&T's Motion for Leave, ¶ 2.

[22] T-Netix's Opposition and Response, ¶ 5.

[23] *Id.*, ¶ 6.

were not given the option of hearing rate quotes before accepting the collect calls in violation of the Commission's rate disclosure rules.[24] Complainants have alleged that the Respondents were each responsible, under the Commission's regulations,[25] for disclosing the collect calling rates, and that, by failing to comply with the Commission's regulations, the Respondents have violated the WCPA.[26] The Complainants claim that they received the calls in question from June 1996 through December 31, 2000. The Commission limited the scope of discovery in this matter accordingly.[27]

I. GOVERNING LAW

25 In ruling on the Respondents' motions, we consider our rule governing summary determination. WAC 480-07-380(2) provides:

> A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the [C]ommission will consider the standards applicable to a motion made under CR 56 of the Washington [S]uperior [C]ourt's [C]ivil [R]ules.

26 As a result, our decision really is two-fold. First, we must review the pleadings and supporting evidence to ascertain whether there is a dispute as to any question of fact material to our determination of the issues that cannot be resolved without resorting to further process, i.e., an evidentiary hearing, to develop additional evidence. Second, if we can make all findings of fact necessary to a decision on the basis of the

---

[24] The four correctional facilities are: the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallum Bay.

[25] *See*, WAC 480-120-141.

[26] *See*, RCW 19.86.010, *et seq.*, and RCW 80.36.530.

[27] *See*, Order 14 (January 9, 2009).

pleadings and supporting evidence, we consider that evidence in the light most favorable to the nonmoving party[28] and determine whether the moving party is entitled to judgment as a matter of law.[29] We will grant motions for summary determination only where reasonable minds "could reach but one conclusion from all the evidence."[30]

27 The nonmoving party may not rely upon speculation or argumentative assertions in meeting their burden.[31] As the Court of Appeals has stated, "[e]xpert testimony must be based on the facts of the case and not on speculation or conjecture."[32] CR 56(e) provides that declarations containing conclusory statements that are unsupported by facts are insufficient for purposes of summary determination.[33]

28 The first issue referred to us under the doctrine of primary jurisdiction is whether AT&T or T-Netix was an OSP. From 1991 to 1999, WAC 480-120-021 defined an OSP as:

> 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. 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: (1) automatic completion with billing

---

[28] *Activate, Inc., v. State, Dept. of Revenue*, 150 Wash.App. 807, 812, 209 P.3d 524 (2009) (citing *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wash.2d 16, 26, 109 P.3d 805 (2005).

[29] CR 56(c).

[30] *Activate*, 150 Wash.App. at 812, (citing *Vallandigham*, 154 Wash.2d at 26).

[31] *Marshall v. Bally's Pacwest, Inc.*, 94 Wash.App. 372, 377, 972 P.2d 475 (1999) (citing *Vacova Co. v. Farrell*, 62 Wash.App. 386, 395, 814 P.2d 255 (1991).

[32] *Davies v. Holy Family Hospital*, 144 Wash.App. 483, 493, 183 P.3d 283 (2008) (citing *Seybold v. Neu*, 105 Wash.App. 666, 677, 19 P.3d 1068 (2001).

[33] CR 56(e) and *Davies*, 144 Wash.App. at 496 (citing *Guile v. Ballard Cmty. Hosp.*, 70 Wash.App. 18, 25, 851 P.2d 689 (1993).

> to the telephone from which the call originated, or (2) completion through an access code use by the consumer with billing to an account previously established by the consumer with the carrier.[34]

29 In 1999, we modified WAC 480-120-021 by, *inter alia*, removing the exemption of LECs from the definition of an OSP.

30 The second question on referral from the Superior Court is, if either T-Netix or AT&T was an OSP, whether either violated our rate disclosure regulations. This issue implicates WAC 480-120-141. In 1991, WAC 480-120-141(5)(a)(iv)(A)-(C) mandated that an OSP:

> Identify the [OSP] providing the service audibly and distinctly at the beginning of every call, and again before the call is connected, including an announcement to the called party on calls placed collect...The [OSP] shall immediately, upon request, and at no charge to the consumer, disclose to the consumer: (A) a quote of the rates or charges for the call, including any surcharge; (B) the method by which the rates or charges will be collected; and (C) the methods by which complaints about the rates, charges, or collection practices will be resolved.

31 In 1999, we revised WAC 480-120-141 so that OSPs were required to verbally advise consumers how to receive a rate quote. Specifically, the modified regulation provided that:

> Before an operator-assisted call from an aggregator location may be connected by a presubscribed OSP, the OSP must verbally advise the consumer how to receive a rate quote, such as by pressing a specific key or keys, but no more than two keys, or by staying on the line.[35]

---

[34] WAC 480-120-021 (1991).

[35] WAC 480-120-141(2)(b) (1999).

II. UNDISPUTED FACTS

32 The facts material to our determination of the legal questions before us are those that tell us what whose responsibility it was to provide the operator services at the correctional facilities and how they went about providing such services. Based on the affidavits, deposition transcripts, and other documents attached as exhibits to the parties' various pleadings, we find the following facts well established in this matter. These facts are summarized below.

33 In 1992, AT&T entered into a contract (DOC contract) with the State of Washington Department of Corrections (DOC) to provide telecommunication services and equipment to various inmate correctional institutions and work release facilities.[36] The DOC contract authorized AT&T to subcontract with three LECs, Verizon, Qwest, and CenturyTel, for the provision of public telephone sets and equipment, lines, Dictaphone recording/monitoring equipment,[37] and local and intraLATA telephone service and operator service.[38] AT&T would only provide "0+" interLATA and international operator assisted long distance service on its own.[39]

34 In their subcontracts, the LECs agreed to provide public pay telephones and equipment and deliver interLATA traffic originating from the public pay telephones

---

[36] While the DOC contract addresses public telephones made available to inmates for collect calls as well as other public telephones located on the facility premises for use exclusively by staff and visitors, Complainants' suit and thus the Commission's examination are limited to the former.

[37] Both AT&T and T-Netix have detailed the special challenges involved in providing inmate telecommunications services. *See*, Exhibit A-12, ¶ 6 and Exhibit A-19HC, ¶¶ 6-10. Inmate telecommunications systems generally need to be equipped with call control features such as call monitoring and recording equipment. *See*, Exhibit A-19HC, ¶ 7. They formerly employed live operators but now use automated operators, thereby avoiding the possibility of threats and manipulation by inmates to which live operators were subjected. *Id.* Furthermore, inmates are only allowed to call pre-approved telephone numbers in order to prevent harassment of witnesses and intimidation of the law enforcement community. *Id.*, ¶ 9. As such, inmate telecommunications systems need to be able to screen the telephone numbers inmates attempt to call. *Id.*

[38] *See*, Exhibit A-8.

[39] *Id.*

to AT&T's Point of Presence (POP) over switched access facilities.[40] The LECs also contracted to complete all "0+" local and intraLATA telephone calls, provide various live or mechanical operator announcements, and provide call timing and call blocking features.[41]

35 Amendment No. 2 to the DOC contract, executed in 1995, required AT&T to "arrange for the installation of certain call control features for intraLATA, interLATA, and international calls" which AT&T was to carry.[42] The Amendment mandated that AT&T would "install and operate such call control features through its subcontractor Tele-Matic Corporation.[43] Further in 1995, the Commission recognized the acquisition of Tele-Matic Corporation by T-Netix.[44] T-Netix was retained to provide a computerized platform at the correctional facilities that would feature call control provisions as well as various support functions for the platform.[45]

36 In 1997, T-Netix sold its P-III Premise platform to AT&T.[46] In Washington state, the P-III Premise platform was used for all local and intraLATA calls, which are the only

[40] Exhibit A-9 (for Verizon), ¶ 3(a) and (b); Exhibit A-10 (for Qwest), ¶ 3(a) and (b); and Exhibit A-11 (for CenturyTel), ¶ 4(a) and (b). CenturyTel was responsible for delivering both interLATA and intraLATA traffic.

[41] Exhibit A-9, ¶ 3(c), (g), and (h); Exhibit A-10, ¶ 3(c), (g), and (h); and Exhibit A-11, ¶ 4(c), (g), and (h). CenturyTel was only responsible for completion of "0+" local calls, not "0+" intraLATA calls.

[42] Exhibit A-8, Amendment No. 2, ¶ 1.

[43] *Id.*

[44] Exhibit C-13, at 1.

[45] Exhibit T-25, ¶ 13; Exhibit A-1HC, ¶¶ 12, 13; and Exhibit C-1C, ¶¶ 18, 19.

[46] Exhibit T-1HC, ¶ 9. *See* Exhibit T-2C. The issue of who owns the platform is at the crux of any determination of which Respondent acted as the OSP. Yet, the parties have designated the June 4, 1997, contract, where T-Netix sells title of the platform to AT&T, as confidential, and they have redacted the entire document. This has served to complicate the Commission's discussion of the contract immeasurably. The few references to the content of the contract used by the Commission are taken directly from the parties' pleadings and not the contract itself. However, these references have been verified using the contract.

types of calls Complainants have documented in this case.[47] T-Netix was responsible for installing the platform, adjusting the call restriction settings, formatting the records of the inmate calls, and providing on-site administrative support.[48]

37 A typical call from the correctional facilities interacting with T-Netix's P-III platform would have progressed as follows:

1. The inmate lifts the handset and dials the desired "0+" destination number and, if required, a personal identification number.[49]
2. The platform screens the number against a list of prohibited numbers.[50]
3. For a valid call, the platform prompts the caller to record his name.[51]
4. The platform will seize a dedicated outbound trunk and, after receiving [a] dial tone, will outpulse[52] the destination number as a 1+ call.[53]
5. The LEC end office switch will then route the call to either an interexchange carrier (IXC) switch or to a LEC's switch, depending on the jurisdictional nature of the call and which carrier is the designated telecommunications provider for the type of call being made.[54]
6. If the called party answers the telephone, the platform will announce that they have a call from an inmate and then play the inmate's recording.[55]

---

[47] *Id.*

[48] *Id.* Exhibit A-19HC, ¶ 12a-e.

[49] Exhibit A-19HC, ¶ 18(a) and (b) and Exhibit A-20HC, ¶ 14.

[50] Exhibit A-20HC, ¶ 14 and Exhibit A-19HC, ¶ 18(c).

[51] Exhibit A-20HC, ¶ 14 and Exhibit A-19HC, ¶ 18(d). T-Netix explains that, if the call is prohibited, the platform will play a rejection message and return simulated dial tone to allow for another attempt. *Id.*

[52] Outpulsing is the process of transmitting address information over a trunk from one switching center to another. BLACK'S LAW DICTIONARY 583, (19th ed. 2003).

[53] Exhibit A-20HC, ¶ 14 and Exhibit A-19HC, ¶18(e).

[54] Exhibit A-20HC, ¶ 14 and Exhibit A-19HC, ¶ 18(f).

[55] Exhibit A-20HC, ¶ 14 and Exhibit A-19HC, ¶ 18(g).

7. The platform then gives the recipient the option of accepting the call or rejecting the call.[56]
8. While this interaction is proceeding, the platform does not make a connection for the audio path between the inmate and the called party.[57]
9. If the recipient accepts the call, the platform will complete the audio path and the call proceeds, as would a normal call.[58]
10. The platform performs multiple fraud detection tests throughout the duration of the call.[59]
11. When the call has ended, the platform will record the call details, 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.[60]

38 T-Netix provided support for the platform including: installation and removal of the call control platforms; performance of diagnostic checks and housekeeping functions of the systems; implementation of revisions to the call restrictions; formatting call records for the service providers for billing purposes; and provision of on-site personnel to administer the equipment.[61]

39 In 1997, AT&T and the DOC agreed to amend their original contract (Amendment No. 3) to delete CenturyTel as a subcontractor and include T-Netix as a station provider.[62] Amendment No. 3 also terminated CenturyTel's subcontract in its entirety.[63]

---

[56] *Id.*

[57] *Id.*

[58] *Id.* and Exhibit A-19HC, ¶ 18(h).

[59] Exhibit A-19HC, ¶ 18(i).

[60] Exhibit A-20HC, ¶ 14 and Exhibit A-19HC, ¶ 18(j) and (k).

[61] Exhibit T-25, ¶ 13.

[62] Exhibit A-8, Amendment No. 3.

III. REFERRAL QUESTIONS

40 While the Superior Court referred two questions to the Commission, the Motions themselves only address the first question, *i.e.*, whether AT&T or T-Netix was the OSP. The second referral question, whether either AT&T or T-Netix violated the Commission's OSP rate disclosure regulations, is not addressed in this order. The parties did not raise this issue in their pleadings and did not present the Commission with facts upon which it could make a determination regarding this issue. Following the review period for this initial order, a prehearing conference will be scheduled to determine how best to address this next phase of the referral.

A. DID AT&T OR T-NETIX PROVIDE THE CONNECTION BETWEEN THE CALL AGGREGATOR LOCATIONS AND LOCAL OR LONG-DISTANCE SERVICE PROVIDERS AND THUS SERVE AS THE OSP?

1. AT&T's Arguments

41 AT&T asserts that it was not the OSP, as defined by the Commission's rule, for any of the calls in question since it did not provide the connection between the call aggregators, *i.e.*, the prisons, and the intrastate long distance or local service providers. As a result, AT&T contends that it should not be held liable for any failure to disclose rates.[64]

42 AT&T notes that the DOC contract did not anticipate that AT&T would provide the connection of inmate telephone calls from the call aggregator to its point of presence (POP).[65] According to AT&T, the LEC contracts required the LECs to make operator announcements " ... for all personal calls made from Inmate Public Telephones that the call is coming from a prison inmate and that it will be recorded and may be

---

[63] *Id.*

[64] Exhibit A-1HC., ¶ 5.

[65] *Id.*, ¶ 10.

monitored and/or intercepted."[66] AT&T asserts that the LECs hired T-Netix to "connect calls from the prisons at issue to local or long-distance service providers and provide the operator services for such calls."[67] AT&T claims that T-Netix provided these services to the LECs through its P-III Premise platform.[68] However, AT&T admits that the assertion that the LECs hired T-Netix to provide operator services is based solely on the statement of T-Netix employees and agents who testified during discovery to a business relationship between T-Netix and the LECs.[69]

43 AT&T asserts that T-Netix was the OSP, through the software platform that provided the operator services.[70] In fact, AT&T argues that Complainants have already admitted that T-Netix was the OSP that provided operator services for the calls in question.[71] AT&T relies on the statement of T-Netix's employee, J.R. Roth, who stated that "[a]s the OSP we verbally advise the consumer how to receive a rate quote."[72] Further, T-Netix petitioned the FCC for a waiver of its obligation to announce actual rates to consumers because T-Netix alleged that it did not have the technical capabilities to do so.[73] AT&T claims that, in its petition, T-Netix admitted that it served access lines and was the "sole service provider in ... these facilities."[74]

---

[66] Exhibit A-9, ¶ 3(g), Exhibit A-10, ¶ 3(g), and Exhibit A-11, ¶ 4(g).

[67] Exhibit A-1HC, ¶ 15. AT&T's Response to Bench Request No. 5.

[68] *Id.*

[69] AT&T's Response to Bench Request No. 5, ¶ 2. AT&T states that it does not possess any contracts in which T-Netix agreed to provide operator services on behalf of the LECs. *Id.* According to AT&T, the LECs acknowledged that they were required under contract to connect the calls at the facilities and provide operator services when they sought waivers of the Commission's rate disclosure regulation. *Exhibit A-1HC*, ¶ 26. By requesting waivers, AT&T argues that the LECs were recognizing that they or their agent, T-Netix, were the OSP at the prisons. *Id.*

[70] Exhibit A-1HC, ¶ 23.

[71] Exhibit A-45HC, ¶ 4. AT&T states that T-Netix's Opposition is largely duplicative of T-Netix's own Amended Motion which AT&T claims it responded to at length in AT&T's Opposition. As a result, AT&T asserts that it has incorporated by reference its Opposition and will only address any newly raised arguments found in T-Netix's Opposition. *Id.* n.1.

[72] Exhibit A-22HC, ¶ 40, citing Exhibit A-40.

[73] Exhibit A-22HC, ¶ 42, citing Exhibit A-42, ¶¶ 1, 5-8.

44 AT&T argues that T-Netix's distinction between the Commission's definition of 'operator services' and what T-Netix labels as 'operator functionality' is a *non sequitur*.[75] AT&T contends that T-Netix is attempting to divert attention from the Commission's regulatory definition of operator services and instead define operator services as the provision of switching, routing, access, and transport services.[76] AT&T argues that the Commission's definition of an OSP does not include the provision of switching, routing, access, or transport services, and T-Netix has not explained how these are related to the definition.[77]

45 AT&T asserts that it is critical to establishing the identity of the OSP to determine who provided the operator services, especially since the Commission's definition of an OSP included the term "operator services" and defined it.[78] AT&T maintains that in doing so, the Commission recognized that an OSP is a provider of operator services.[79] AT&T argues that T-Netix's witness, Alan Schott, testified that the services T-Netix provided had historically been performed by a live operator.[80] T-Netix's P-III Premise platform replaced live operators by performing the services itself.[81]

46 In addition to performing the operator services, AT&T maintains that T-Netix also provided the connections of the calls to the local or long-distance service providers. According to AT&T, the Commission's definition of an OSP does not look at every

---

[74] *Id.* citing Exhibit A-42, ¶ 8.

[75] Exhibit A-22HC, n.3.

[76] *Id.* ¶ 14.

[77] *Id.*

[78] Exhibit A-22HC, ¶ 13.

[79] *Id.*

[80] Exhibit A-22HC, ¶ 12, citing to Exhibit A-19HC, ¶¶ 5 and 8.

[81] *Id.*

connection made during the path of a telephone call.[82] The only relevant connection, AT&T surmises, is the initial connection that allowed the call to move from the call aggregator to either the local or long-distance service provider.[83] AT&T cites to Complainants' witness, Kenneth Wilson, who detailed the path an inmate-initiated collect call would take.[84] Mr. Wilson specifically stated that "[f]or a valid call, the platform will seize an outbound trunk, and after receiving dial tone will outpulse the destination number as a 1+ call."[85]

47 AT&T asserts that T-Netix's witness, Robert Rae, testified that the company's platform acted as a gatekeeper which allowed calls to go through only if certain criteria were fulfilled.[86] Mr. Wilson stated that "[i]f the [called party] accepts the call, the [T-Netix] platform will complete the audio path and the call proceeds as would a normal call."[87] Defining the term "connection" as "how a call routes through the network, the various pieces of equipment and trunks or lines or links in a call,"[88] Mr. Wilson associated connection with completion of the call "... [with] the connection [being] made when the call is complete from end to end."[89]

48 T-Netix acknowledged, according to AT&T, that it connected all of the calls from the correctional facilities to the local or long-distance carriers through the P-III platform.[90] In fact, AT&T cites to the testimony of Scott Passe, T-Netix's witness, who stated that the P-III platform was "the interface between the inmate and the ...

---

[82] Exhibit A-22HC, ¶ 17.

[83] *Id.*

[84] Exhibit A-1HC, ¶ 23 (citing to Exhibit A-20HC, ¶ 14.).

[85] Exhibit A-20HC, ¶ 14.

[86] Exhibit A-22HC, ¶ 8, citing to Exhibit A-24HC, 224:10-24.

[87] Exhibit A-20HC, ¶ 14.

[88] Exhibit C-9, at 42:10-12.

[89] *Id.* at 42:15-19.

[90] Exhibit A-22HC, ¶ 8.

[public telephone switched network]."[91] Further, AT&T points to T-Netix's data request response that "T-Netix equipment made a connection to the access line provider's facilities at the network interface device."[92]

49 AT&T disagrees with T-Netix's contention that the OSP must be a common carrier, stating that T-Netix's argument is based on the federal definition of an OSP, not the Commission's.[93] According to AT&T, T-Netix mistakenly assumes that, since the Commission stated in an order that it was "adopt[ing] the FCC's verbal disclosure requirement on an intra-state basis" that the Commission was also adopting the FCC's OSP definition.[94] AT&T argues that, had the Commission wanted to limit OSPs to common carriers, it would have.[95]

50 The Commission's order indicating that it adopted the federal verbal rate disclosure requirement does not have any impact upon the definition of an OSP.[96] AT&T asserts that the Commission's adoption of a verbal rate disclosure based on the FCC's requirement had no bearing on whom the Commission intended to perform that requirement.[97] AT&T cites to a Washington Supreme Court case in support of this assertion which mandated that "a provision of [a] federal statute cannot be grafted onto [a] state statute where the Legislature saw fit not to include such provision."[98]

51 AT&T vigorously disagrees with Complainants' attempts to hold AT&T responsible for T-Netix's failure to provide rate disclosures to consumers. Complainants contend

---

[91] *Id.* citing to Exhibit A-23, at 97:8-24.

[92] *Id.* ¶ 10, quoting Exhibit A-26.

[93] Exhibit A-22HC, ¶ 22.

[94] *Id.* ¶ 24.

[95] *Id.* ¶ 23.

[96] *Id.* ¶ 24.

[97] *Id.*

[98] *Id.* quoting *Nucleonics Alliance v. Wash. Public Power Supply System*, 101 Wash.2d 24, 34, 677 P.2d 108, 113 (1984).

that RCW 80.36.520 imposes liability for failure to disclose rates upon any entity that merely contracts with the OSP. Complainants have cited to RCW 80.36.520 which provides:

> The [Commission] shall by rule require, at a minimum, that any telecommunications company, operating as *or contracting with* an [OSP] assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an [OSP].[99]

Complainants also reference RCW 80.36.530 which states, *inter alia*, that any "violation of RCW 80.36.520 constitutes an unfair or deceptive act in trade or commerce in violation of ... the consumer protection act."

52 AT&T contends that the statute only directs the Commission to establish regulations imposing that liability.[100] Further, as AT&T notes, Complainants have made this argument before and failed when the Superior Court held that "the [Washington] legislature intended to create a cause of action ... only for violations of the regulations promulgated by the [WUTC] and did not create a cause of action for actions beyond or outside the regulations."[101] AT&T points out that, in the 1991 revision of WAC 480-120-021, the Commission explicitly removed the reference requiring the OSP to be in contractual privity with call aggregators.[102] Thus, AT&T argues that the Superior Court referred limited questions to the Commission and one of those was not whether AT&T is liable simply based on the fact that it contracted with an OSP.[103]

---

[99] (Emphasis added).

[100] Exhibit A-45HC, ¶ 11.

[101] Exhibit A-45HC, ¶ 12.

[102] Exhibit A-22HC, ¶ 28.

[103] Exhibit A-45HC, ¶ 13.

53 As a result, AT&T argues that Complainants are collaterally estopped from raising the argument again.[104] The four elements of the doctrine of collateral estoppel, AT&T explains, are:

> (1) Identical issues,
> (2) A final judgment on the merits,
> (3) The party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication, and
> (4) Application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.[105]

54 AT&T contends that Complainants argument is identical to the previously litigated issue.[106] The Superior Court's decision to reject Complainants' argument is now final.[107] AT&T argues that Complainants were the plaintiffs in the Superior Court case, and that preventing Complainants from re-litigating their argument will not work an injustice since Complainants were given a "full and fair hearing on the issues."[108]

55 In addition, AT&T contends that a T-Netix witness, Nancy Lee, stated that T-Netix's acquisition of Gateway Technologies, Inc. (Gateway) in 1999 was the acquisition of a T-Netix competitor.[109] According to AT&T, Gateway was certified as an OSP in the state of Washington, and Gateway acknowledged providing operator services in

---

[104] *Id.* ¶ 15.

[105] *Id.* citing to *Malland v. State, Dept. of Retirement Systems*, 103 Wash. 2d 484, 489, 694 P.2d 16 (1985) (en banc) and *Shoemaker v. City of Bremerton*, 109 Wash. 2d 504, 507, 745 P.2d 858 (1987) (en banc).

[106] *Id.* ¶ 16.

[107] *Id.*

[108] *Id.* AT&T posits that allowing Complainants to relitigate this argument when the Superior Court has already rejected it would violate the Fourteenth Amendment of the United States Constitution. *Id*, ¶ 17. The Fourteenth Amendment, AT&T argues, prevents entities from being punished for that which they had no knowledge was prohibited. *Id.* This, according to AT&T, violates the company's due process.

[109] Exhibit A-22HC., ¶ 41 and Exhibit A-41, ¶ 3.

Washington.[110] From these statements, combined with T-Netix's receipt of Gateway's OSP certificate, AT&T argues that T-Netix acted as an OSP at the correctional facilities.[111]

56 Finally, AT&T notes that from 1998 to 2003, WAC 480-120-141(5)(a) required that the OSP provide necessary call detail information to the billing company for billing purposes.[112] AT&T suggests that this regulation would have been unnecessary if the call provider was the OSP as well.[113]

2. Netix's Arguments

57 T-Netix requests that the Commission find that it was not an OSP for any of the correctional facilities involved and was not bound by the Commission's rate disclosure regulation. In its original Motion, T-Netix claimed that the LECs acted as the OSP, and that it only acted as an equipment provider, supplying "customized computer-based telephone control cards."[114] As proof of the LECs' responsibilities, T-Netix points to the fact that all three LECs, Verizon, Qwest, and CenturyTel, obtained exemptions and waivers from the Commission's rate disclosure requirements.[115] T-Netix indicates that it has been providing "a proprietary platform that could be programmed to perform [the operator services] automatically" to inmate OSPs since the late 1980s.[116] According to T-Netix, it sold this platform to AT&T, and the company only operated the platform at the prisons on behalf of AT&T.[117]

---

[110] *Id.*

[111] *Id.*

[112] Exhibit A-22HC, ¶ 46.

[113] *Id.*

[114] Exhibit T-1HC, ¶¶ 2, 4. In its Reply, T-Netix clarifies that the LECs were the OSP for local calls which they switched onto their own facilities and AT&T was the OSP for long-distance calls since it switched the calls at its POP to its own facilities. Exhibit T-29, ¶ 12.

[115] Exhibit T-1HC, ¶ 3.

[116] *Id.* ¶ 8.

[117] Exhibit T-13, ¶ 3.

58 T-Netix disagrees with Mr. Wilson's definition of an OSP as based on two criteria: 1) which entity performed the operator services functions and 2) which entity established an end-to-end connection.[118] With regard to the operator services prong, T-Netix argues that this examination is inappropriate because the regulation "applies to operator service providers, not operator functionality providers,"[119] and the determination of which entity provided operator services does not assist the Commission in establishing which entity actually provided the connection discussed in the regulation.[120]

59 T-Netix has raised the issue of the admissibility of Mr. Wilson's testimony and argues that his testimony is irrelevant and immaterial. T-Netix has not specifically formulated its request that the Commission exclude his testimony in a motion to strike.[121] T-Netix posits that, if the Commission finds that Mr. Wilson's opinions are admissible, then the Commission should refuse to grant AT&T's Amended Motion since Mr. Rae's testimony directly contradicts Mr. Wilson's and raises a genuine issue of material fact.[122]

60 With regard to the Commission's definition of an OSP, T-Netix argues that a connection to long distance services is established, as corroborated by AT&T's witness, Mark Pollman, "when the LEC delivered the call to AT&T, via intrastate switched access services ordered by AT&T from the LEC as a carrier, at AT&T's POP."[123] Therefore, T-Netix posits that the Commission's query should really be

---

[118] Exhibit T-25., ¶ 18. T-Netix claims that this would mean that there is no OSP for incomplete or busy telephone calls. *Id.*

[119] *Id.* ¶ 18.

[120] *Id.*

[121] Exhibit T-25 , ¶¶ 32-38.

[122] *Id.* ¶ 38.

[123] *Id.* ¶ 19, citing to Exhibit T-16, Tr. 57:1-22, 60:11-61:7.

whether the LEC, connecting to AT&T's switched access services, or AT&T, connecting to its own long-distance network, provided the necessary connection.[124]

61 To further bolster its contention that it was never an OSP for the calls in question, T-Netix points to language in Amendment No. 3 to the original DOC contract which states that the company would act as a station provider.[125] Since a "station" has been defined by the Commission as "a telephone instrument installed for the use of a subscriber to provide toll and exchange service;"[126] T-Netix concludes that its contractual obligation was simply to provide inmate phones.[127] This argument, according to T-Netix, comports with the language of the contract the company entered into with AT&T in 1997.[128] The contract is silent on the question of which entity had the obligation to fulfill the rate disclosure requirement.[129] The 2001 amendment[130] to the 1997 AT&T/T-Netix contract specifically mentions for the first time "that T-Netix was obligated to assist AT&T with rate disclosures."[131]

62 T-Netix denies having any direct relationship to the DOC, the calling parties, or the call recipients, and states that it maintained a 1:1 ratio between station lines and trunks to the LEC such that the company was acting only as a gatekeeper for approval of the calls.[132]

---

[124] *Id.*

[125] Exhibit T-1HC, ¶ 15.

[126] WAC 480-120-021.

[127] Exhibit T-1HC, ¶ 16.

[128] *Id.* ¶ 17.

[129] *Id.* ¶ 18.

[130] *Id.* Exhibit T-6C.

[131] *Id.* ¶¶ 19-20. T-Netix points out that it was only obligated to provide assistance to AT&T with the rate disclosures for interstate telephone calls. *Id.*

[132] Exhibit T-25, ¶¶ 14 and 15.

63 T-Netix concedes that the Commission's OSP regulation does not specifically define the term "connection" in the regulation.[133] Yet, T-Netix notes that AT&T provided the switching, routing, access, and transport services for intrastate interLATA inmate collect calls.[134] Robert Rae, T-Netix's witness, maintains that collect calls from the correctional facilities in question were connected to local and long-distance services by the LEC or AT&T, respectively.[135]

64 T-Netix contends that the Commission's definition of an OSP was never intended to implicate an entity that provides an end-to-end connection.[136] T-Netix admits that the platform was connected to inmate telephones over a separate plain old telephone serve (POTS) line to the central office serving the LEC.[137] However, T-Netix argues that the connection that an OSP provides has to occur prior to the call being answered since unanswered calls and "busy" phone calls have not technically been completed but they have been connected to an intrastate or interstate long-distance or local service provider.[138] The regulation, insists T-Netix, could have conditioned the OSP designation on call completion, but it did not.[139]

65 T-Netix proposes that, since the Commission's rate disclosure regulation is based on the FCC's own verbal rate disclosure requirement, the correctional facilities in question cannot be call aggregators.[140] The company argues that the FCC ruled in 1991 that its regulations did not classify correctional facilities as call aggregators, and

---

[133] Exhibit T-25, ¶ 17.

[134] *Id.*

[135] *Id.* citing to Exhibit T-17, ¶ 8 in which Mr. Rae references Alan Schott's Supplement Affidavit, Exhibit A-19HC, which Mr. Rae adopted.

[136] Exhibit T-29, ¶ 6.

[137] *Id.* ¶ 12.

[138] *Id.* ¶ 7.

[139] *Id.* ¶ 9.

[140] Exhibit T-13, ¶ 27.

responsible for the call, and disclosing that, *inter alia*, the caller may access other carriers from the public phones.[149] The regulations also required that the OSP brand itself as such at the beginning of the telephone call and provide a rate quote for the call upon request.[150]

68 T-Netix asserts that the regulations themselves require that an OSP must be a common carrier.[151] The Commission's regulation implementing the verbal rate quote in 1999 was based on the FCC's rate disclosure requirement, and the FCC specifically defined an OSP as a common carrier.[152] T-Netix also argues that the OSP serving end user customers is the entity that the Commission required to provide verbal rate quotes.[153] T-Netix cites to the Commission's adoption order, Order R- 452, which provides that OSPs are to resolve service problems directly with the interexchange carrier or other party responsible for resolving blockage problems.[154]

69 To bolster its argument that OSPs must be common carriers, T-Netix points out that both the 1991 and 1999 versions of WAC 480-120-021 refer to "operator services" as any intrastate telecommunications service.[155] The 1991 and 1999 versions of WAC 480-120-141 mandate that "telecommunications companies" providing operator

---

[149] *Id.* ¶ 22, referencing Exhibit A-5.

[150] *Id.*

[151] *Id*, ¶ 20.

[152] *Id.* ¶ 23. T-Netix quotes the federal statute as defining a "provider of operator services" to be "any common carrier that provides operator services or any other person determined by the Commission to be providing operator services." *Id.*, citing to 47 U.S.C. § 226(a)(9).

[153] Exhibit T-25, ¶ 24.

[154] *Id.* ¶ 25, citing to Exhibit A-6.

[155] Exhibit T-29, ¶ 15. WAC 480-120-021 specifically defines "operator services" as "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, or an intrastate telephone call through a method other than (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code use by the consumer with billing to an account previously established by the consumer with the carrier."

the agency later adopted a separate rule to correct this deficiency.[141] The Commission, T-Netix notes, did not adopt a separate regulation bringing these institutions under the Commission's definition, as the FCC had.[142] T-Netix asserts, therefore, that calls placed by inmates at correctional facilities are not covered by the Commission's OSP regulations and did not require verbal rate disclosures.[143] T-Netix argues that Complainants' assertion that the FCC did not forestall the state commissions from adopting greater regulations for OSPs is irrelevant.[144] In addition, T-Netix posits that the Commission has already stated that the definition of the OSP is intended to closely reflect the federal definition and even provided a point by point comparison of the two regulations.[145]

66 T-Netix argues that, contrary to AT&T's assertion, the Commission's regulation did not provide that the 'connection' in the OSP definition referred both to connecting long-distance service and connecting to the public switched telephone network (PSTN).[146]

67 T-Netix stresses that the objective of the Commission's OSP regulation has been to shield the consumer from excessive charges by carriers for calls from aggregator's payphones.[147] According to T-Netix, the rationale was that carriers providing long distance services from aggregator locations would institute high fees because of their preferred contractual status.[148] As a result, T-Netix posits, the Commission adopted regulations requiring that the OSP insure that the call aggregator posted a notice stating that: the public phone rates may be higher than normal, which OSP was

---

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] Exhibit T-29, ¶ 44.

[145] Exhibit T-13, n.9.

[146] Exhibit T-29, ¶ 13.

[147] Exhibit T-25, ¶ 21.

[148] *Id.*

services must comply with this and all other Commission telecommunications regulations.[156] T-Netix maintains that the regulations purposely designated OSPs as telecommunications companies, and thus, common carriers.[157] According to T-Netix, it did not provide any transmission, switching, or access services, and therefore, did not act as a common carrier.[158] The company argues that AT&T and the LECs served as OSPs under the Commission's regulations.[159]

70 T-Netix contends that, while it did agree to be a station provider at correctional facilities that CenturyTel had contracted to serve, none of those facilities originated any of the calls at issue in this matter.[160] T-Netix asserts that the only CenturyTel facility at issue in this matter is the Clallam Bay Corrections Center, and Complainants only allege that they received intraLATA calls from this facility.[161] T-Netix points out that neither AT&T nor Complainants have asserted that T-Netix provided intraLATA calling services at the Clallam Bay facility.[162]

71 T-Netix notes that the OSP definition also contains an explanation of the term "operator services."[163] The term "operator services" was defined in WAC 480-120-021 as:

> 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 (1) automatic completion with billing to the telephone from which the call originated,

---

[156] *Id.*

[157] *Id.* ¶¶ 17-19.

[158] *Id.* ¶ 28.

[159] *Id.*

[160] *Id.* ¶ 29.

[161] *Id.*

[162] *Id.*

[163] Exhibit T-1HC, ¶ 21.

> or (2) completion through an access code use by the consumer with billing to an account previously established by the consumer with the carrier.[164]

72 T-Netix maintains that it did not arrange for billing or completion of an intrastate telephone call.[165] AT&T and the other LECs each billed for calls that they individually carried.[166] T-Netix posits that its only role in the billing process was to provide call detail records to the billing entity.[167] For that matter, T-Netix claims that call completion was performed through the routing of calls.[168] According to T-Netix, all signaling functions required to complete the call were enabled by the LEC switch.[169]

73 In a letter to AT&T from T-Netix, the company explains that it would "provision the local traffic on AT&T's behalf."[170] That being said, T-Netix opines that this obligation "required **obtaining the local phone line** from the phone to the LEC switch and billing end users for local calls."[171] Since neither of the Complainants received a call from any of the correctional facilities affected by the March 1998 letter to AT&T, T-Netix argues that it could not have been acting as an OSP for the calls received by the Complainants.[172]

---

[164] *Id.*

[165] *Id.* ¶ 25.

[166] *Id.*

[167] *Id.* ¶ 26.

[168] *Id.* ¶¶ 29 and 31.

[169] *Id.* ¶ 31.

[170] Exhibit T-1HC, ¶ 22 and Exhibit A-12.

[171] *Id.* (Emphasis in original).

[172] *Id.*

74 T-Netix argues that AT&T's participation in interLATA collect calls reflects the company's understanding of itself as the OSP.[173] The interLATA collect calls in question were assessed AT&T service rates, were branded as AT&T telephone calls,[174] and were billed on behalf of AT&T by T-Netix.[175] T-Netix asserts that it would be absurd to have the telephone calls branded as AT&T's but find that T-Netix was the ultimate OSP since the Commission's regulations were designed to clarify for the consumer which party was actually providing the services and whose rates would be applied.[176] T-Netix maintains that there can only be one OSP for any given payphone call.[177]

75 According to T-Netix, the FCC rule for which it sought a waiver dealt directly with inmate calling services, not the general OSP rule.[178] T-Netix explains that the email from Mr. Roth which AT&T cites to was taken out of context.[179] T-Netix asserts that Mr. Roth was merely confirming that Verizon was the OSP for prisons located in its territory and that T-Netix, as the equipment supplier for Verizon, would enable Verizon to comply with its OSP regulatory responsibilities.[180]

76 T-Netix contends that there is no evidence that Mr. Roth qualifies as a "speaking agent" for T-Netix and thus his statements would not be admissible under Washington Rule of Evidence (WRE) 801(d)(2).[181] According to T-Netix, whether a declarant is a

---

[173] Exhibit T-25, ¶ 28.

[174] T-Netix acknowledges that it performed this branding function on behalf of AT&T. *Id.* ¶ 29.

[175] *Id.* T-Netix admits that it billed the recipients on behalf of AT&T. *Id.*

[176] *Id.* ¶ 30.

[177] *Id.* ¶ 31.

[178] Exhibit T-29, ¶ 63.

[179] *Id.* ¶ 66.

[180] *Id.*

[181] *Id.* n.31.

speaking agent for purposes of WRE 801(d)(2) is a question of preliminary fact governed by WRE 104(a).[182]

77 T-Netix acknowledges that it did petition the Commission for authority to acquire Gateway's OSP certificate, but the company argues that Gateway was not a party to any of the contracts at issue in this case.[183] T-Netix originally petitioned for transfer of the certificate on January 9, 2001, and the Commission granted it on January 25, 2001.[184] Not only was this transfer subsequent to any of the telephone calls received by the Complainants, T-Netix asserts that Gateway never provided equipment to any of the four correctional facilities at issue in this case.[185]

78 T-Netix asserts that Complainants' witness, Mr. Wilson, draws conclusions that are irrelevant, since they are not based upon the "connection" standard for determining the OSP and use a theory of the term "connection" that would make the OSP regulations useless.[186] Specifically, T-Netix contends that Mr. Wilson based his testimony upon an incorrect legal standard, namely that connection occurs at the point when the call is terminated to the call recipient and an end-to-end connection is established.[187] T-Netix quotes WRE 702 as mandating that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."[188] According to T-Netix, Mr. Wilson's testimony cannot be of assistance to the Commission.[189] In addition, T-Netix argues that the Commission cannot rely upon Mr. Wilson's testimony because he provides a legal opinion in declaring that

---

[182] *Id. See Condon Bros. v. Simpson Timber Co.*, 92 Wash.App. 275, 285, 966 P.2d 355 (1998).

[183] Exhibit T-1HC, ¶¶ 32-33.

[184] *Id.* ¶ 34.

[185] *Id.* ¶ 35.

[186] Exhibit T-25, ¶ 32.

[187] *Id.* ¶ 34-35.

[188] *Id.* ¶ 33.

[189] *Id.*

T-Netix, not AT&T, was the OSP.[190] According to the company, WRE 704 prohibits reliance upon expert legal opinions or opinions that address mixed questions of facts and law.[191]

79 T-Netix quotes AT&T as counseling the Commission in a prior rulemaking to amend WAC 480-120-021 in 1988, such that, "if the Commission is concerned that a facilities-based carrier such as AT&T or [Qwest] would attempt to charge a unique rate to telephone customers of a particular aggregator – beyond the rate offered to the general pubic [sic] – AT&T suggests that the definition now in WAC 480-12-021 [sic] and WAC 480-120-141 remain."[192] T-Netix points out that the Commission did as AT&T proposed and declined to revise its regulatory definition.[193]

3. Complainants' Arguments

80 According to Complainants, T-Netix not only provisioned equipment to the correctional facilities but also engaged in the regulated activity of providing operator services.[194] T-Netix, asserts Complainants, performed the duties of an OSP and received remuneration for its performance.[195] Complainants allege that T-Netix controlled the P-III platform which provided operator services such as identifying the corrections facility and the name of the inmate, branding the call, and detecting three-way calls.[196] Though T-Netix argues that Amendment No. 3 only designated the company as a "station provider," Complainants point out that T-Netix is obligated under Amendment No. 3 to pay a commission to the DOC for local calls for which it

---

[190] *Id.* ¶ 37.

[191] *Id.*

[192] Exhibit T-13, ¶ 22 and Exhibit T-21 at 4.

[193] *Id.*

[194] Exhibit C-1C, ¶ 41.

[195] *Id.*

[196] *Id.* ¶ 19, 22 and Exhibit C-6C.

would not have to if it were simply an equipment supplier.[197] The company engaged in a regulated activity and should have to abide by the rules of doing so.[198]

81 With regard to T-Netix's claim that the rate disclosure waivers the LECs received demonstrate that these companies were the OSPs, Complainants declare that there is no evidence that the LECs performed OSP duties at the facilities in question.[199] Instead, Complainants contend that it was T-Netix's platform that was present and operating at each of these locations and providing operator services.[200]

82 Complainants point out that AT&T understood that it was the OSP when it sought a waiver of its own for some of the OSP rules.[201] Additionally, they claim that AT&T attempted to comply with the Commission's rate disclosure requirements in 2000 after it was sued by the Complainants.[202] As is evidenced by a letter dated August 25, 2000, AT&T and T-Netix engaged in negotiations to implement rate disclosures for intrastate inmate telephone calls in the state of Washington.[203] This attempt at compliance with the rate disclosure regulations, argues Complainants, shows that AT&T knew it was also the OSP and that it had a responsibility to comply with the OSP regulations along with T-Netix.[204] Complainants allege that T-Netix was AT&T's subcontractor, and AT&T had ultimate control over T-Netix to ensure that the rate quotes were provided.[205]

---

[197] *Id.* ¶ 53 and Exhibit A-8, Amendment No. 3.

[198] *Id.* ¶ 41.

[199] *Id.* ¶ 57.

[200] *Id.* ¶ 57.

[201] *Id.* ¶ 21. See, Exhibit C-5.

[202] *Id.* ¶ 28.

[203] Exhibit C-1C, ¶ 25.

[204] *Id.* ¶ 28.

[205] *Id.*

83 With regard to AT&T's argument that it is not liable under RCW 80.36.520 for the failures of T-Netix to provide rate disclosures, Complainants argue that AT&T has failed to demonstrate that the Commission intended to exclude companies that contract their OSP responsibilities from compliance with the OSP regulations.[206]

84 Complainants maintain that T-Netix provided the connection to intrastate telecommunications services from call aggregator locations.[207] In this instance, Complainants note that the Court of Appeals has found that "[w]ords of a statute, unless otherwise defined, must be given their usual and ordinary meaning."[208] The logical meaning of the word 'connection' is when the call is completed end-to-end.[209]

85 Complainants' witness, Mr. Wilson, asserts that, traditionally, when an operator receives a collect call request, the operator would pull another line to contact the called party for verification that this party will accept the charges for the call.[210] Once the called party has agreed to accept the charges, the operator connected the calling party and the recipient by "plugging them together, completing the call."[211] Complainants maintain that this is the "connection" referred to in the statute and the Commission's regulation.[212]

86 Complainants contend that T-Netix's interpretation of "connection" would mean that the call is connected even before the called party listens to the voice prompt asking if they will accept the call or possibly before the call transmission reaches the called party.[213] Complainants assert that "[t]he T-Netix platform is the gateway for the call

---

[206] *Id.* ¶ 38.

[207] *Id.* ¶ 41.

[208] *Id.* ¶ 44, quoting *East v. King County*, 22 Wash.App. 247, 253, 589 P.2d 805 (1978).

[209] *Id.*

[210] *Id.* ¶ 46 and Exhibit C-2HC, ¶ 9.

[211] *Id.*

[212] *Id.*

[213] *Id.* ¶ 48.

going anywhere in the system" and if "the call placed by the inmate [does not pass] the initial security checks on the T-Netix platform, the call doesn't get beyond the prison walls."[214] Thus, Complainants contend that it is this platform that creates the connection.[215]

87 Complainants disagree with T-Netix's assertion that prisons cannot be considered call aggregators under the Commission's regulations. Complainants argue that "[t]here has never been any doubt that prisons are among the places covered by the rate disclosure statute and the Commission's rate disclosure rules."[216] According to Complainants, the Commission specifically included "prisons" in its 1989 regulation, WAC 480-120-141(2)(b), when defining OSPs as those carriers with which hotels, motels, hospitals, prisons, campuses, et cetera., contract to provide operator services to its customers.[217] The Commission's 1991 modification of the regulation stated in its introductory remarks that "[p]rison service waivers can be accomplished on a case-by-case basis."[218] For that matter, T-Netix was granted a waiver of some of its OSP responsibilities in 1993 including the requirement to include informational stickers on its inmate payphones stating how to contact the operator.[219]

88 In addition, Complainants argue that while the FCC opined that the term "call aggregator" did not include inmate payphones, the FCC also clarified that "states are not precluded from adopting greater safeguards or more stringent rules regarding OSP services and aggregator practices with regard to intrastate operator services than those that we have adopted herein for interstate services."[220] Contrary to T-Netix's suggestion that the Commission was required to follow the FCC's lead in adopting a separate and specific rule setting out the inclusion of correctional facilities in the rate

---

[214] *Id.* ¶ 49.

[215] *Id.*

[216] *Id.* ¶ 7.

[217] *Id.* ¶ 62.

[218] *Id.* ¶ 63.

[219] *Id.* ¶¶ 64-65 and Exhibit C-12.

[220] *Id.* ¶¶ 70-71, citing to Exhibit T-20, ¶ 54.

disclosure requirements, Complainants assert that would have been unnecessary given the Commission's 1989 regulation, adopted before the FCC's determination.[221]

89 ***Decision.*** Only T-Netix has alleged that there is any genuine issue of material fact and that AT&T's Amended Motion should not be granted. Complainants and AT&T did not but instead argue that the T-Netix's Motion and Amended Motion should be denied because the company is not entitled to judgment as a matter of law. However, T-Netix has failed to demonstrate that Complainants' witness, Mr. Wilson, and its own witness, Mr. Rae, have presented a genuine issue of material fact. T-Netix does not cite to any specific examples of the two witnesses disagreeing on any material facts. The selected portions of Mr. Wilson's deposition which we received from T-Netix support the conclusion that Mr. Wilson was attempting to shed light on a question of law, namely the interpretation of one of our regulations and the term "connection" contained therein. T-Netix also points to Mr. Wilson's assertion that an OSP necessarily provides operator services. Again, it is apparent from the context of Mr. Wilson's remarks that he is endeavoring to flesh out a legal definition, not raise contentious facts. Statutory construction is a question of law, not a question of fact.[222] T-Netix's lack of proof as to any genuine issue of material facts leaves us with no choice but to decline to accept T-Netix's argument. We find that no genuine issues of material facts exist, and thus move on to the merits of each party's Motion.

90 In addressing the first part of the Superior Court's referral, namely whether either AT&T or T-Netix were the OSP, we first examine the regulations at issue. During the time frame which Complainants claim to have received operator-assisted inmate telephone calls, WAC 480-120-021, defined an OSP as:

> 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. The term 'operator services' in this rule means any intrastate telecommunications service provided to a call aggregator location that

---

[221] *Id.* ¶ 74.

[222] *In re Detention of Strand*, 167 Wash.2d 180, 186, 217 P.3d 1159 (2009) (citing to *In re Det. Of Martin*, 163 Wash.2d 501, 506, 182 P.3d 951 (2008).

> 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 (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code use by the consumer with billing to an account previously established by the consumer with the carrier.[223]

The 1999 version of the regulation eliminated the LEC exemption.[224] As a result, if we find that AT&T was the OSP, we will then ascertain whether or not the company falls within the LEC exemption as AT&T claims.

91 Critical to our analysis is what, specifically, the term "connection" means within the regulatory definition of an OSP. The parties have proposed contradictory interpretations. Therefore, it is imperative that we examine the meaning of the OSP definition and the "connection" requirement.

92 When interpreting the meaning of agency regulations, the courts look no further than the plain language of a facially unambiguous administrative regulation.[225] An agency regulation is unambiguous if it is susceptible to only one reasonable interpretation after considering the entire statutory scheme, including related regulations.[226]

93 The plain meaning of a statutory provision is discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole.[227] The courts have found that

---

[223] WAC 480-120-021 (1991).

[224] WAC 480-120-021 (1999).

[225] *State, Dept. of Labor & Indus. v. Tyson Foods, Inc.*, 143 Wash.App. 576, 582, 178 P.3d 1070 (2008), citing to *Cockle v. Dept. of Labor & Indus.*, 142 Wash.2d 801, 807, 16 P.3d 583 (2001).

[226] *Tyson Foods, Inc.*, 143 Wash.App. at 582, citing to *Wash. Cedar & Supply Co., Inc. v. Dept. of Labor and Indus.*, 137 Wash.App. 592, 599-600, 154 P.3d 287 (2007) and *Dept. of Labor and Indus. v. Gongyin*, 154 Wash.2d 38, 45, 109 P.3d 816 (2005).

[227] *Det. of Strand*, 167 Wash.2d at 188 (citing to *Udall v. T.D. Escrow Servs., Inc.*, 159 Wash.2d 903, 909, 154 P.3d 882 (2007) (quoting to *Tingey v. Haisch*, 159 Wash.2d 652, 657, 152 P.3d 1020 (2007).

a word should not be read in isolation when attempting to ascertain plain meaning.[228] There is no part of a statute that should be viewed as inoperative or superfluous unless that part is the result of clear error or mistake.[229] Rules of statutory construction are also applicable to the interpretation of agency regulations.[230]

94 T-Netix's interpretation of the term is flawed when the regulation is read in its entirety. First, our definition of an OSP in WAC 480-120-021 never references switching, routing, access, and transporting as services necessary to the classification of an OSP. For that matter, "connection" cannot indicate, under the regulatory definition, every time a call is switched or transported during the journey of a telephone call. A typical telephone call can go through two, three, or more carriers and if the OSP were to be the company that transported or switched the call, there would be several OSPs for one call. We would never be able to determine who the OSP was, and that result obviously cannot be what the regulation intends.

95 In addition, our inclusion of the definition of "operator services" within the definition of an OSP is quite telling. As the case law indicates, both regulatory definitions must be read together.[231] As a result, an OSP is both a "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" and the merchant of "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 (1) automatic completion with billing to the telephone from which

---

[228] *Id.* (citing *State v. Roggenkamp*, 153 Wash.2d 614, 623, 106 P.3d 196 (2005) (quoting *State v. Jackson*, 137 Wash.2d 712, 729, 976 P.2d 1229 (1999)).

[229] *Id.* at 189, (citing to *Klein v. Pyrodyne Corp.*, 117 Wash.2d 1, 13, 810 P.2d 917 (1991)).

[230] *Linville v. State*, 137 Wash.App. 201, 209, 151 P.3d 1073 (2007) (citing *State v. Reier*, 127 Wash.App. 753, 757-58, 112 P.3d 566 (2005).

[231] *Silverstreak, Inc., v. Dep't. of Labor and Indus.*, 159 Wash.2d 868, 884, 154 P.3d 891 (2007), where the Court found that interpretations must "give meaning to every word in a regulation."

the call originated, or (2) completion through an access code use by the consumer with billing to an account previously established by the consumer with the carrier."[232]

96 The P-III Premise platform linked the calling party at the prison to the local or long-distance provider. If the inmate attempted to dial out using a number that was prohibited, it was the platform that prevented that connection to the local or long-distance service from being provided. It was the admitted gatekeeper for calls from the correctional facilities.

97 We find that the P-III platform performed the operator services at the correctional facilities. It validated the telephone numbers the inmates dialed, recorded the call details, and provided automated announcements to the call recipients indicating that they had received a call from a particular inmate. The call flow diagram that T-Netix provided supports our analysis as does Mr. Wilson's description of the collect call's path. An examination of the call path indicates that the P-III platform took the call and, after verifying that the call was valid and not prohibited, out pulsed it as a '1+' call. Based on this analysis, we find that the owner of the P-III platform, having connected the '0+' call to the local or long-distance service provider and outpulsing it as a '1+' call, is the OSP.

98 Even without examining the schematics of an inmate-initiated collect call, the contracts themselves point to the owner of the platform as an OSP. In construing a written contract, the basic principles require that: 1) the intent of the parties controls; 2) the court ascertains the intent from reading the contract as a whole; and 3) a court will not read an ambiguity into a contract that is otherwise clear and unambiguous.[233] Interpretation of an unambiguous contract is a question of law.[234]

---

[232] *See,* WAC 480-120-021. T-Netix has drawn a confounding distinction between operator services and operator functions in contending that it did not provide operator services. However, T-Netix fails to coherently distinguish between these two terms and has cited to no precedent for the distinction in the first place. Therefore, whether T-Netix labels them operator services or operator functions, an OSP is, by logic, a provider of operator services as defined under the regulation.

[233] *Mayer v. Pierce County Med. Bureau*, 80 Wash.App. 416, 420, 909 P.2d 1323 (1995) (citing to *Felton v. Menan Starch Co.*, 66 Wash.2d 792, 797, 405 P.2d 585 (1965)).

[234] *Id.* quoting *Absher Constr. Co. v. Kent School District No. 415*, 77 Wash.App. 137, 141, 890 P.2d 1071 (1995).

99 The DOC contract provided that AT&T would provide the equipment and services as required by the DOC's request for proposal. For reasons unknown to the Commission, the DOC contract also mandates that the LECs will provide the operator services at the prisons in question. That being said, it was AT&T, not the LECs, who purchased the P-III Premise call control platform from T-Netix for use at each of the correctional facilities.

100 Amendment No. 2 to the DOC contract, executed in 1995, provided that AT&T would install and operate such call control features through its subcontractor, Tele-Matic Corporation. Tele-Matic was later acquired by T-Netix. Of particular importance, the contract between AT&T and T-Netix, which was executed on June 4, 1997, provides that AT&T bought the platform from T-Netix and took title to it. T-Netix solely provided the technical and training services. AT&T has failed to establish otherwise. In fact, the August 2000 letter from AT&T to T-Netix clearly shows that AT&T had certain responsibility for the implementation of rate quotes using the platform for the Washington State correctional facilities. Therefore, AT&T, through the P-III platform, provided the connection between the call aggregator and long-distance or local service providers.

101 In contrast to AT&T's assertion that the LECs had retained T-Netix to provide operator services at the correctional facilities in question, the company has provided us with no evidence that this is the case. In fact, the only contract we have clearly demonstrates that it was AT&T who purchased title to the P-III platform.

102 In addition, the legislature and the Commission's order adopting the OSP rules indicated that the OSP disclosure rules were created, at least in part, to protect the consumer from accepting collect calls without being properly informed as to who was providing the service and at what charge. This is the reason that the regulations required the OSP to ensure that the call aggregator with whom it has contracted posts a notice of how the consumer may obtain rate information. Specifically, the rates over which the Commission expressed concern would have been AT&T's for long-distance service and the LECs' for local service, not T-Netix's. T-Netix did not directly contract with the DOC. Additionally, the rule provided that the OSP must disclose the identity of the OSP providing the service to the consumer. It was AT&T's service that was carrying the call to the call recipient and it was AT&T's

name that was branded during the telephone call. AT&T presented no evidence that T-Netix charged the Complainants for any of the calls they received or that T-Netix provided Complainants with telecommunications services that required branding. To have required T-Netix to announce its own name as the OSP would have been nonsensical and serve only to confuse the consumer.

103 It should be emphasized that call connection is not the same as call completion. There are many connections made throughout the journey that a telephone call takes. Call completion is just one of these. According to the rules, the crucial connection in establishing the OSP is the connection from the correctional facilities to the appropriate LEC service provider or to AT&T. The definition does not require that the OSP complete the call from end-to-end or even provide the connection between the calling party and the call recipient.

104 T-Netix has incorrectly argued that, since our regulations mirror the federal statute[235] and the FCC's regulations,[236] and as the FCC did not include prisons *per se* in the definition of call aggregators until 1998, that prisons are not a part of our definition. While the FCC did find that the federal law, the Telephone Operator Consumer Service Improvement Act (TOCSIA) did not intend for the term "aggregator" to include correctional facilities, T-Netix overlooks the fact that the federal statute and RCW 80.36.520 have several fundamental differences. First, TOCSIA's language defining an aggregator does not include any examples of these entities, whereas RCW 80.36.520 provides a list of aggregators including four enumerated examples as well as the important caveat that these four are not exclusive.

105 Further, TOCSIA contains a much more specialized and limited definition of call aggregators than RCW 80.36.520 or any of our regulations. TOCSIA provides that an aggregator "in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services."[237] When the FCC determined that TOCSIA did not

---

[235] Exhibit T-13, ¶ 30. The federal statute is the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), 47 U.S.C. § 226.

[236] *Id.* See, 47 C.F.R. §§ 64.703-708.

[237] 47 U.S.C. § 226(a)(2).

apply to inmate-only phones at correctional facilities, it focused, in particular, on the fact that inmates are not members of "the public" and are not "transient users of [the facility's] premises."[238] RCW 80.36.520 and the associated regulations do not contain such narrowly tailored provisions.[239]

106 The cases cited by T-Netix to advance its theory that our regulation like does not apply to correctional institutions, are inapposite. The decisions in *State v. Bobic* and *State v. Williams* support the proposition that a state statute that is "substantially similar" to a federal statute carries the same construction as the federal law. However, these cases can be distinguished from the instant case. The court in *Bobic* noted that the Washington statute in contention "does not clearly indicate whether the Legislature intended to punish a defendant multiple times for a single conspiracy."[240] The Commission's intent to include prisons within the definition of a call aggregator is clear from our order adopting the OSP regulations in 1991, after the FCC's rules were adopted and its order issued. In that order, the Commission stated that "[p]rison service waivers can be accomplished on a case-by-case basis, so no express provision is required."[241] There is no question that the Commission intended to include correctional facilities in the regulatory scheme.

107 In *Williams*, the Court of Appeals found that the statutory definition of a "security" was substantially identical to the federal definition, and in fact, was "basically derived from the federal act."[242] First, the state statute at issue in *Williams* did not clearly identify whether patent and royalty interests were included within the definition of a "security," and thus the court found it necessary to interpret the statute using legislative history.[243] The Commissions' rule, on the other hand, clearly indicated

---

[238] Exhibit T-24, at 2752, fn 30.

[239] T-Netix also points to a letter from the Commission Staff which compares the FCC's regulations with our own. However, as the April 30, 1991, letter clearly points out, "this *draft* is a *staff* document." *Exhibit T-23, at 1.*

[240] *State v. Bobic*, 140 Wash.2d 250, 263, 996 P.2d 610 (2000).

[241] Exhibit A-5, at 107.

[242] *State v. Williams*, 17 Wash.App. 368, 371, 563 P.2d 1270 (1977).

[243] *See, Williams*, 17 Wash.App. at n 1.

that a call aggregator means a "hotel, motel, hospital, *prison*, campus, pay telephone, etc."[244] In addition, the definition of a call aggregator is not "substantially identical" to the FCC's rule. T-Netix admits that the FCC's rules were implemented in 1991, at which time our regulations already stated that OSPs provided services to prisons.[245]

108 While the Commission did adopt the OSP definition to more closely reflect the federal definition, T-Netix has provided no indication that the Commission's call aggregator definition was intended to mirror the FCC's. In fact, the Commission's 1991 call aggregator definition proclaims that these entities "[make] telephones available for intrastate service to the public or to users of its premises, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones."[246] In 1991, the FCC's rule provided that an aggregator is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services."[247] Whereas the federal rule does not set out specific examples of call aggregators, the Commission's rule does.

109 Each of the parties has raised arguments with questionable relevancy to the issues that the Superior Court referred to this Commission. Complainants argue that AT&T sought and was granted a waiver of the OSP rules and therefore must have been an OSP under the Commission's rules. AT&T asserts that T-Netix received a waiver from the FCC's OSP rules and so T-Netix must have been the OSP in question. T-Netix points out that the LECs requested and were given waivers so they must be the OSPs. If the request for a waiver was enough to establish OSP liability at every facility that a company operated, there would be at least three OSPs for each of the calls at issue. Respondents and the LECs may or may not have believed that they were the OSPs responsible for telephone calls placed from correctional facilities around the state. The Commission's orders waiving the OSP regulations do not

---

[244] Exhibit A-5, at 112, (Emphasis added). WAC 480-120-141(3).

[245] *See*, Exhibit A-4, at 74, WAC 480-120-141 (1989).

[246] Exhibit A-5, at 109, WAC 480-120-021 (1991) and (1999).

[247] 47 U.S.C. § 226(a)(2).

specify at which correctional facilities the companies were providing OSP services. Further, at least one company, AT&T, has stated that it filed its request in an abundance of caution, uncertain at that point whether or not it would be acting as the OSP under the DOC contract. Even viewing the waivers in a light most favorable to Complainants, they have not presented evidence to indicate that the waiver of AT&T, or for that matter, those of the LECs or T-Netix at the federal level, demonstrates the companies' OSP status. Thus, the waivers establish only that the companies involved were attempting to protect themselves in case they were the OSP. The waivers alone are not demonstrative proof that any of the parties were the OSP.

110 AT&T also raised the irrelevant issue of T-Netix's acquisition of Gateway, a certificated OSP. AT&T argued that one of T-Netix's witnesses, Nancy Lee, claimed that T-Netix was in direct competition with Gateway, an OSP, such that T-Netix must also be an OSP. This, alone, does not demonstrate that T-Netix was an OSP under the Commission's rules. While Ms. Lee may have argued that Gateway and T-Netix were competitors, Ms. Lee does not state that T-Netix provided operator services to the four institutions we are examining. For that matter, T-Netix's acquisition of Gateway's OSP certificate does not indicate, and none of the parties has alleged, that Gateway provided the operator services at the institutions in question. Likewise, AT&T's argument that Mr. Roth, a T-Netix employee, admitted that T-Netix was the OSP proves little except what one employee believes. Our OSP definition is clearly controlling law and does not rely on popular belief in classifying the OSP.

111 T-Netix's arguments against the reliance on Mr. Wilson's testimony and Mr. Roth's e-mail are procedurally inappropriate. Pursuant to WAC 480-07-375(2), these arguments should have been framed as motions to strike in a separate pleading apart from its Opposition. As T-Netix's arguments are procedurally deficient, they are rejected.

112 With regard to AT&T's contention that Complainants are collaterally estopped from asserting its theory of liability based on RCW 80.36.520, the Supreme Court of Washington has noted that there are four elements to the doctrine of collateral estoppel:

1) Identical issues;
2) A final judgment on the merits;
3) The party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and
4) Application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

113 Complainants clearly state in their Opposition that:

> The statute directing compliance with the rate disclosure rules established by the Commission requires that those disclosures be made "by any telecommunications company, operating as ***or contracting with*** an [OSP]. *RCW 80.36.520.* Here, to the extent that AT&T was not the OSP itself, it clearly contracted with T-Netix, who it states was the OSP.[248]

114 In its 2000 decision, the Superior Court determined that the rate disclosure statutes, RCW 80.36.510, .520, .524, and .530, and the Commission's rules do not create a separate cause of action under the WCPA for violations of the statutes.[249] Put another way, the claim against Respondents must stem from the Commission's rules, not from a statute, including one that directs the Commission, not the telecommunications providers, to impose disclosure regulations upon those "contracting with" an OSP.[250] We find that the issue Complainants raise in their Opposition is identical to the issue previously decided by the Superior Court.

115 As to the second prong of the collateral estoppel test, there must have been a final judgment on the merits of the issue. The Court of Appeals[251] and the Supreme

---

[248] Exhibit C-1C, ¶ 32. (Emphasis in original).

[249] *Judd v. AT&T*, 116 Wash.App. at 766.

[250] *Id.* and Exhibit C-1C, ¶ 37. This is of particular importance to Complainants since our regulations do not provide for liability of those "contracting with" an OSP.

[251] *See, Judd*, 116 Wash.App. at 763.

Court[252] affirmed the trial court's decision. Thus, the courts have already resolved the Complainants' issue.

116 Complainants were the party in both actions and there is no indication that applying collateral estoppel against the Complainants will work an injustice since they have already had at least three previous opportunities to make the same argument. AT&T has met its burden of proof, and we find that the Complainants are collaterally estopped from raising their argument regarding RCW 80.36.520.

117 In summary, we find that the nonmoving parties have presented no genuine issue of material fact. Further, AT&T, having purchased the P-III Premise software platform from T-Netix on June 4, 1997, the platform which connected the long-distance and local service providers to the call aggregators and provided the operator services to the four correctional facilities, was the OSP from June 4, 1997 on. We find that T-Netix provided service and training for the platform but did not hold title to it. In addition, we find that correctional facilities are included within the regulatory definition of call aggregators, and Complainants are collaterally estopped from relitigating their argument that RCW 80.36.520 imposes liability upon an entity that contracts with an OSP.

B. Was AT&T a LEC for Purposes of the Commission's OSP Definition, and Thus Exempt From the Rate Disclosure Requirement?

118 AT&T claims that it was a LEC from 1996 to the present and was therefore exempt from the OSP disclosure regulations.[253] AT&T argues that the comments to the 1991 rule clearly state the Commission's intention to focus on non-LECs.[254] According to AT&T, it was certified a LEC by the Commission from January 1997 to the present. Thus, AT&T claims that it cannot be held liable for compliance with the OSP disclosure regulations during this time period.[255]

---

[252] *See, Judd v. AT&T*, 152 Wash.2d at 204.

[253] Exhibit A-1HC, ¶ 19.

[254] *Id.*

[255] Exhibit A-1HC, ¶ 20, and Exhibit A-12, ¶ 12.

119 Complainants acknowledge that the Commission's rate disclosure rules exempted LECs from the definition of an OSP from 1991 to 1999, when the regulation was revised, and thus the rate quote requirements.[256] Yet, Complainants contend that AT&T was not acting as a LEC during the brief period of time when LECs were exempt from providing inmates with rate disclosures.[257] AT&T's own witness, Ms. Gutierrez, admitted that the company did not provide LEC services at any time under the DOC contract to any of the correctional facilities.[258] As such, Complainants argue that AT&T should not be allowed to now hide behind its LEC certificate to avoid responsibility as an OSP.[259]

120 Complainants maintain that AT&T refers to the LECs separate and apart from itself.[260] In neither its Response to T-Netix's Amended Motion nor its Reply does AT&T counter the Complainants' allegation that it was not functioning as a LEC in these circumstances and should not be permitted to claim the LEC exemption under the Commission's OSP definition.

121 ***Decision.*** We find that the LEC exemption within the OSP definition does not apply to AT&T, a carrier who holds certification as both an interexchange carrier[261] and a LEC,[262] since AT&T was not acting as a LEC in the matter before us. Furthermore, allowing the company to appropriate this exemption would produce an absurd result. When it filed its Amended Motion, AT&T included as an exhibit the Commission's order adopting revisions to WAC 480-120-021, which created the LEC exemption.[263]

---

[256] Exhibit C-1C, ¶ 4.

[257] *Id.* ¶ 40.

[258] *Id.* and Exhibit A-12, ¶ 12.

[259] *Id.*

[260] *See*, Exhibit A-22HC, ¶¶ 4 and 36, and Exhibit A-45HC, ¶¶ 13, 20, and 23.

[261] *See*, AT&T's Response to Bench Request No. 2, at 1.

[262] *Id.* at 2.

[263] *See*, Exhibit A-5.

In that order, the Commission stated that the reason for the LEC exemption was that, "[c]onsumers often expect that they are using their LEC when they use a pay phone; requirements that apply to non-LEC companies to inform the consumer that [they are] not the LEC is reasonable."[264] AT&T was not acting as a LEC in the correctional facilities in question and the consumers would, therefore, have no reason to believe that they were using AT&T's services absent disclosure.

122 The Supreme Court has stated on occasion that "statutes should receive a sensible construction to effect the legislative intent and, if possible, to avoid unjust and absurd consequences."[265] If we accepted AT&T's argument, interexchange carriers would be able to escape regulation under the OSP definition simply because they possess LEC certification, not because they were providing local services. This would circumvent the disclosure requirement and produce an absurd result. For this reason, as well as the company's failure to defend its argument in either its Response or Reply, we find that AT&T does not qualify for the LEC exemption under WAC 480-120-021 (1991).

C. Did AT&T and T-Netix establish a principal/agent relationship such that AT&T would be liable for any violation of Commission law that T-Netix may have committed?

123 AT&T has asserted that Complainants erroneously rely upon agency law to argue that AT&T is responsible for T-Netix's failure to comply with the disclosure regulations. According to AT&T, T-Netix was, at most, an independent contractor under the DOC contractual scheme.[266] As AT&T points out, "a principal is only liable for the acts of its agents, not its independent contractors."[267] AT&T notes that there are several

---

[264] *Id.* at 107.

[265] *State v. Vela*, 100 Wash.2d 636, 641, 673 P.2d 185 (1983) (citing to *Crown Zellerbach Corp. v. Department of Labor & Indus.*, 98 Wash.2d 102, 653 P.2d 626 (1982); *Whitehead v. Department of Social & Health Servs.*, 92 Wash.2d 265, 595 P.2d 926 (1979).

[266] Exhibit A-45HC., ¶ 24.

[267] *Id.* citing to *Getzendaner v. United Pac. Ins. Co.*, 52 Wash.2d 61, 67, 322 P.2d 1089 (1958) and *Gaines v. Pierce County*, 66 Wash.App. 715, 725, 834 P.2d 631 (1992).

factors that Washington courts examine in determining whether an agency relationship exists, including:

> 1) the extent of control the employer may exert over the details of the work;
> 2) whether or not the one employed is engaged in a distinct occupation or business;
> 3) whether the work is usually done under the direction of the employer or by a specialist;
> 4) whether the employer supplies the tools and the place of work for the employee; and
> 5) whether the parties believe they are creating an agency relationship.[268]

124 AT&T notes that T-Netix exerted control over its own work product, "working autonomously by any means, mode, or manner it found most suitable."[269] AT&T contends that T-Netix's own witness, Mr. Rae, acknowledged that T-Netix decided how frequently its own site administrators visited the correctional facilities and that he saw nothing to indicate that AT&T had input into that decision.[270]

125 AT&T asserts that T-Netix operates its own business apart from AT&T, that T-Netix performs specialized functions that AT&T cannot provide, that T-Netix controlled its proprietary platform, and that both believed that their business dealings were among two, independent contractors.[271] For this last assertion, AT&T relies on the 1991 contract between the two where T-Netix admitted that it was serving as an independent contractor.[272]

---

[268] *Id.* ¶ 25, quoting *Kroshus v. Koury*, 30 Wash.App. 258, 263-4, 633 P.2d 909 (1981) (citing RESTATEMENT (SECOND) OF AGENCY § 220(2) (1958)).

[269] *Id.* ¶ 27.

[270] *Id.* citing to Exhibit A-48HC, 131:4-133:18.

[271] *Id.* ¶ 29.

[272] *Id.* citing to Exhibit A-43, § 14.5.

126 AT&T also contends that consideration of Complainants' vicarious liability theory exceeds the scope of the Superior Court's referral.[273] The Commission was not directed to determine whether AT&T could be held liable for T-Netix's failure to provide rate quotes to consumers.[274] Further, AT&T notes that the Commission has already concluded that its authority in this matter is constrained and "does not invoke the independent jurisdiction of the agency."[275] According to AT&T, the principal behind the doctrine of primary jurisdiction is that the administrative agency is better able to address certain technical questions which touch upon the agency's expertise.[276] As AT&T notes, Complainants' theory of vicarious liability does not involve the Commission's technical expertise and is a legal question that the Superior Court is capable of addressing.[277]

127 Complainants assert that AT&T is still responsible for providing rate disclosures despite having contracted away the responsibility to T-Netix.[278] Pursuant to Amendment No. 2 to the DOC contract, it was AT&T's responsibility to install and operate the call control features through its subcontractor, Tele-Matic, which later became T-Netix.[279] AT&T, according to Complainants, is liable if its subcontractor fails to comply with the law.[280] Complainants argue that AT&T contractually agreed

[273] *Id.* ¶ 31.

[274] *Id.*

[275] *Id.* ¶ 32, quoting Complainants' assertion which the Commission agreed with in *Judd v. AT&T*, et. al., Order No. 5, Order Denying T-Netix's Motion for Summary Determination and to Stay Discovery, ¶ 29 (July 18, 2005).

[276] *Id.* ¶ 33, citing to *Tenore v. AT&T Wireless Servs.*, 136 Wash.2d at 345.

[277] *Id.*

[278] Exhibit C-1C, ¶ 20.

[279] *Id.* ¶ 10, citing to Exhibit A-8, Amendment No. 2.

[280] *Id.* ¶ 28 and Exhibit C-2HC, ¶ 21(j). Specifically, the call control features verified that the inmate was not attempting to call a prohibited telephone number and would inform the call recipient that the calling party was an inmate and play the inmate's name. *Exhibit C-2HC, ¶ 13.* The platform providing the call control features would also connect the audio talk path if the call recipient accepted the collect call. *Id.*

to provide telephone services that were in compliance with the law.[281] Complainants state that "[t]raditional agency law holds that a principal is not relieved of its obligations by hiring an agent to perform in its stead."[282] Then, in a perplexing move, Complainants assert that there is no need to apply agency law in establishing AT&T's responsibility to ensure that its subcontractor performed its obligation.[283]

128 ***Decision.*** We find that AT&T is correct. The question of whether an agency relationship existed is outside the scope of the questions referred to us by the Court. There is no specialized expertise necessary for making a determination of the existence of such a relationship. As a result, we decline to make a determination on this issue.

IV. CONCLUSIONS

129 Based on the foregoing, we find that the P-III Premise platform provided the connection between long-distance and local services and the correctional facilities. As the owner of this platform, AT&T provided the connection and was, therefore, the OSP for the correctional facilities. AT&T did not act as a LEC at any of the facilities at issue in this case and does not qualify for the LEC exemption to the OSP regulatory definition. We still have yet to hear evidence on whether AT&T, as the OSP, violated our disclosure regulations. Following the review period for this initial order, we will issue a prehearing conference notice to discuss the procedural schedule for that phase of the referral.

130 T-Netix, having sold the platform to AT&T and solely providing technical services and training for the platform, is not the OSP. Thus, we will not address whether T-Netix violated any of our OSP regulations at this time

---

[281] Exhibit C-1C, ¶ 33.

[282] *Id.* ¶ 32.

[283] *Id.*

FINDINGS OF FACT

131 (1) In 1992, AT&T Communications of the Pacific Northwest, Inc., entered into a contract with the State of Washington Department of Corrections to provide telecommunication services and equipment for various inmate correctional institutions and work release facilities.

132 (2) Due to the unique challenges involved in providing inmate telecommunications services, the original contract was amended in 1995 to require AT&T to arrange for the installation of call control features for intraLATA, interLATA, and international calls through its subcontractor, Tele-Matic Corporation.

133 (3) In 1995, the Commission recognized the acquisition of Tele-Matic Corporation by T-Netix, Inc.

134 (4) In 1997, T-Netix and AT&T contractually agreed that AT&T would purchase title to the P-III Premise software platform from T-Netix and that T-Netix would solely provide support and training for the platform.

135 (5) The platform provided call control services including: screening the dialed number against a list of prohibited telephone numbers; if the number is not prohibited, seizing a dedicated outbound trunk and outpulsing the destination number as a 1+ call; and if the recipient accepted the call, the platform would complete the audio path.

136 (6) AT&T was not acting as a local exchange company for any of the calls placed at the four correctional facilities.

137 (7) AT&T possessed the ability to direct T-Netix to modify the P-III platform.

138 (8) The parties have not provided sufficient evidence to support a decision as to whether AT&T violated the Commission's rules governing operator service providers.

CONCLUSIONS OF LAW

139 (1) Summary judgment is properly entered if there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *WAC 480-07-380(2). CR 56(c).*

140 (2) In resolving a motion for summary judgment, a court must consider all the facts submitted by the parties and make all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Activate, Inc., v. State, Dept. of Revenue, 150 Wash.App. 807, 812, 209 P.3d 524, 527 (2009) (citing Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wash.2d 16, 26, 109 P.3d 805 (2005).*

141 (3) With regard to AT&T's and T-Netix's Motions for Summary Determination, none of the nonmoving parties raised questions of material fact as to the role of Respondents in connecting the calls in question from the correctional institutions.

142 (4) Connection, based on an examination of the call schematics and the plain meaning of the regulation, occurs after the P-III Premise platform verifies that the call is valid and not prohibited, and when the platform passes the '0+' call to the local or long-distance service provider by outpulsing it as a '1+' call.

143 (5) The P-III Premise platform provided the connection between the intrastate or interstate long-distance or local services and the correctional facilities. *WAC 480-120-021(1991) and (1999).*

144 (6) AT&T, as the owner of the platform, was the operator service provider from June 4, 1997, the date of the execution of the General Agreement for the Procurement of Equipment, Software, Services, and Supplies Between T-Netix, Inc. and AT&T Corp.

145 (7) T-Netix was not the OSP for the correctional institutions involved in this case.

146 (8) AT&T does not qualify for the LEC exemption under WAC 480-120-021.

147 (9) Call aggregators, as defined by WAC 480-120-021, include correctional facilities.

148 (10) The Commission should schedule a prehearing conference to address the procedural steps to address the second question posed by the Superior Court.

ORDER

THE COMMISSION ORDERS:

149 (1) AT&T Communications of the Pacific Northwest, Inc.'s Amended Motion for Summary Determination, which requests that the Commission find that AT&T was not an operator service provider, is denied in part.

150 (2) T-Netix, Inc.'s Motion and Amended Motion for Summary Determination are granted.

Dated at Olympia, Washington, and effective April 21, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and nine (9) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250