

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD, and TARA HERIVEL,

Complainants,

v.

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

Respondents.

Docket No. UT-042022

AT&T'S RESPONSES TO OCTOBER 6, 2010 BENCH REQUESTS

AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), by its attorneys, respectfully submits the following preliminary statement and responses to the bench requests served by the Washington Utilities and Transportation Commission (the "Commission") on October 6, 2010.

PRELIMINARY STATEMENT

Although AT&T is uncertain of the reason underlying the Commission's interest in the requested information, as a preliminary matter, AT&T respectfully submits that the bench requests appear to suggest some deviation from the Commission's own regulation. The relevant Commission regulation expressly defines an Operator Service Provider ("OSP") as the entity "providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators." WAC §480-120-021. As a result, the parties have litigated, and the ALJ initially attempted to decide, the threshold question of who is the OSP based on that definition — namely, by determining which entity provided the "connection" for the prison collect calls received by the Complainants at issue in this proceeding.

The October 6, 2010 bench requests appear to stray from that definition by probing into matters such as billing, tariffs, and cost recovery rationales that have no clear relationship to which entity provided the “connection” at issue. Moreover, any issue of potential damages remains with the Superior Court. Accordingly, AT&T respectfully objects to the bench requests to the extent that they are addressed to matters other than identifying which party actually connected the prison collect calls received by the Complainants at issue in this proceeding to local or long distance providers, and while AT&T responds to the bench requests below, each response incorporates and is subject to this objection. AT&T respectfully suggests that deviating from the express OSP definition raises concerns regarding due process, fundamental fairness, prior notice, improper jurisdiction, and other constitutional and legal issues.

BENCH REQUEST NO. 7 (to all parties):

Please identify each type of charge for, associated with, arising from, or otherwise related to the collect calls at issue in this proceeding that AT&T, T-Netix, or any other company billed, or had billed on its behalf, to end user customers who accepted those collect calls. For each such charge, please provide the following information:

- a. The company that billed or was identified as billing the charge on the customer bill;
- b. The name of the charge as reflected on the customer bill;
- c. A description of when and how that charge applied;
- d. The sections or pages of the tariff, price list, contract, or other publicly available governing document (collectively “Tariff”) in which the rates, terms, and conditions associated with the charge were set forth; and
- e. A description of the costs the charge was designed to recover.

Please provide a copy of a sample bill sent to an end user customer that includes these charges and a copy of the Tariff sections or pages identified in response to subpart d above.

AT&T’S RESPONSE TO BENCH REQUEST NO. 7:

The phone bills for the prison collect calls received by the Complainants at issue in this proceeding show that the Local Exchange Companies (“LECs”) US West and GTE billed for

those calls.¹ T-Netix conducted an analysis of those phone bills earlier in this proceeding, and determined that all of the prison collect calls were intra-LATA calls that US West and GTE (and with respect to one call possibly another LEC, PTI) carried.²

The phone bills reflect charges by the LECs to the Complainants for the amounts due for each prison collect call. For example, Complainant Judd's April 8, 1996 US West phone bill³ shows that US West charged her \$9.05 for a 55.7 minute prison collect call she received in Seattle, Washington from the Monroe prison facility on February 26, 1996 at 6:13 p.m. This call is categorized on the bill as a US West Communications Long Distance Call. The other charges reflected on the bill for such Long Distance Calls are a federal tax at 3%, a sales tax at 8.2%, and a city tax at 6.382%. As another example, Complainant Judd's November 7, 1999 GTE phone bill⁴ shows that GTE charged her \$0.95 for a 4.2 minute prison collect call she received from the Monroe prison facility on September 20, 1999 at 5:42 p.m. This call is categorized on the bill as a GTE Regional Call and an Operator Assisted Call. The other charges reflected on the bill for such Regional Calls are a federal excise tax at 3.00% and a State and Local Sales Tax.

¹ Complainant Judd also has some phone bills from T-Net, which appears to be a separate company that offers or offered calling plans for individuals who wanted to receive calls from prison inmates. Complainant Judd apparently had a calling plan with T-Net for a period of time.

² Copies of T-Netix's motion for summary determination and the affidavit supporting that motion, which present and support the phone bill analysis on pages 7 – 10 of the motion, are attached hereto as Exhibit 1. AT&T understands that T-Netix is submitting to the Commission all of the phone bills produced by the Complainants in this proceeding. In order to avoid unnecessary duplication, AT&T has selected and is submitting only two sample bills from that larger production of phone bills.

³ A copy of this phone bill was produced by the Complainants in this proceeding, Bates numbered P002 – P007, and is attached hereto as Exhibit 2.

⁴ A copy of this phone bill was produced by the Complainants in this proceeding, Bates numbered P151 – P158, and is attached hereto as Exhibit 3.

AT&T only possesses these phone bills because Complainants produced them in this proceeding. No phone bills produced in this proceeding reflect AT&T inter-LATA service, or any other AT&T prison collect service for that matter. The other information requested in this Bench Request No. 7 is not within AT&T's possession or knowledge. Although AT&T presumes that the LECs had tariffs on file and publicly available at the time the Complainants received the calls at issue, AT&T would have to speculate as to which of the LEC's particular tariffs applies. Similarly, AT&T has no knowledge of which of the LECs' costs, if any, the charges that the LECs billed were designed to recover.

BENCH REQUEST NO. 8 (to AT&T and T-Netix):

Did AT&T's or T-Netix's Washington price list for local exchange services that was on file with the Commission during the time period at issue in this proceeding include rates, terms, and conditions for any of the charges identified in response to Bench Request No. 7? If so, please identify the applicable price list provisions and provide a copy of the relevant pages from that price list.

AT&T'S RESPONSE TO BENCH REQUEST NO. 8:

As noted in response to Bench Request No. 7, the charges identified on the phone bills for prison collect calls received by the Complainants at issue in this proceeding are the LECs' charges reflected on the LECs' bills. As a result, any price lists associated with those charges would be the LECs' price lists. Although AT&T presumes that the LECs had price lists on file and publicly available at the time the Complainants received phone bills from the LECs for the prison collect calls received by the Complainants at issue in this proceeding, AT&T would have to speculate as to which particular LEC price list applies.

BENCH REQUEST NO. 9 (to AT&T and T-Netix):

Please provide the prices, rates, charges, or other compensation that AT&T paid T-Netix for the equipment and/or services that T-Netix provided under the contract(s) between the companies that are part of the record in this docket. Please describe the nature (e.g., recurring and/or nonrecurring, flat fee, commission or percentage of sales or revenues, etc.) and form(s) that compensation took (e.g., lump sum payment, installment payments, per transaction fees, etc.).

AT&T'S RESPONSE TO BENCH REQUEST NO. 9:

As explained in AT&T's Petition for Administrative Review, pending before the Commission, AT&T is not, and never was, the owner of T-Netix's P-III Premise platform, and therefore did not pay anything to purchase that platform from T-Netix.

In 1998, T-Netix agreed to assume local service in a limited geographic region of Washington from PTI. In consideration for this service, T-Netix proposed that AT&T reimburse T-Netix for certain costs and to pay it \$.10 per processed call. This service, however, is distinct from the call screening and connection service that T-Netix provided throughout Washington with its P-III Premise platform.

[REDACTED]

AT&T does not currently possess any records that reflect how it compensated T-Netix for the call screening and connection service that T-Netix provided at Washington correctional

⁵ A copy of AT&T's correspondence is attached hereto as Exhibit 4.

institutions prior to 2001, other than the August 25, 2000 letter. That information was not the subject of any discovery in this proceeding. In 2001, AT&T and T-Netix agreed to modify all of their pricing arrangements in effect at that time (other than certain specified site administration agreements and equipment purchases not applicable here). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] AT&T paid T-Netix nothing to connect to the LECs the local and intra-LATA prison collect calls received by the Complainants at issue in this proceeding.

BENCH REQUEST NO. 10 (to AT&T):

Please describe how AT&T recovered the amounts it paid to T-Netix identified in response to Bench Request No. 9 from end user customers, in particular those customers who accepted the collect calls at issue in this proceeding. If AT&T did not recover those amounts from end user customers, please explain how and from whom AT&T recovered those costs.

AT&T'S RESPONSE TO BENCH REQUEST NO. 10:

In regard to the specific prison collect calls that Complainants received and that are at issue in this proceeding, the Complainants were billed by the LECs for charges of the LECs. As a result, with respect to those calls, AT&T did not bill the Complainants for any charges and did not recover any amounts from the Complainants in connection with those calls. Moreover, as a general matter, AT&T's rates in Washington are not subject to rate of return regulation. Therefore, there is no attempt to recover any specific costs through any particular customer charges and AT&T does not allocate or match specific costs to specific revenue streams.

Dated: October 20, 2010

SUBMITTED BY:

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

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CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I hereby certify that I have this day, October 20, 2010, served this document upon all parties of record by e-mail and Federal Express overnight delivery at the e-mail addresses and mailing addresses listed below:

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Pursuant to WAC 480-07-145, I further certify that I have this day, October 20, 2010, filed MS Word and PDF versions of this document by e-mail, and twelve copies of this document by Federal Express, with the WUTC at the e-mail address and mailing address listed below:

Mr. David W. Danner
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Pursuant to the Prehearing Conference Order 08 and Bench Request Nos. 5 & 6, I further certify that I have this day, October 20, 2010, provided a courtesy copy of this document, in MS Word, to ALJ Friedlander by e-mail at the following e-mail address: mfriedla@utc.wa.gov.

Dated: October 20, 2010

/s/ Charles H.R. Peters

Charles H.R. Peters