

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 REPLY TO
COMPLAINANTS' RESPONSE TO BENCH REQUEST NO. 7**

AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), by its attorneys, respectfully submits the following reply to Complainants' Response to Bench Request No. 7.

In Bench Request No. 7, the Commission requested information related to the billing for the collect calls at issue in this proceeding. In response, each of the parties submitted the bills for the prison collect calls that Complainants received, or samples of those bills. Either US West or GTE issued each of those bills and they reflect only those companies' charges for prison collect calls. *None* of those bills reflects charges by AT&T for prison collect calls. Recognizing this, Complainants now attempt to insert into this proceeding for the first time excerpts of phone bills that are not a part of this case. Complainants' response is improper and should be disregarded for at least three reasons. First, this is a primary jurisdiction referral from the Superior Court, not an original proceeding before the Commission. Complainants, in seeking to have the Commission consider charges other than those Complainants actually received and paid, are asking the Commission to exceed the jurisdictional boundaries that the Commission has already recognized. Second, recognizing its limited jurisdiction, the Commission previously entered an order restricting the scope of this proceeding and discovery to "the two Complainants'

claims,” expressly rejecting Complainants’ argument that the proceeding should cover non-parties as well. Complainants response now seeks to circumvent the Commission’s prior order and rely upon copies of a few pages from over 500 pages of bills, submitted without a supporting factual certification from a person with actual knowledge. These bills are outside the scope of this proceeding, were never produced in discovery, and no party, including AT&T, has had the opportunity to probe them. Third, Complainants’ response inaccurately and misleadingly purports to describe Complainants’ phone bills, which are the only relevant bills.

For these reasons, AT&T respectfully suggests that Complainants’ response to Bench Request No. 7 should be disregarded as discussed below.

I. COMPLAINANTS ASK THE COMMISSION TO EXCEED ITS AUTHORITY TO ACT IN THIS PRIMARY JURISDICTION REFERRAL.

This is not an original administrative action, but rather a primary jurisdiction referral from the King County Superior Court. As the Commission has previously recognized, its jurisdiction in this primary jurisdiction referral “is derivative of that of the court in which the matter is pending.” Docket UT-042022, Order No. 7, at ¶ 23 (Oct. 28, 2005) (Exhibit 1 hereto) (citing *International Ass’n of Heat & Frost Insulators and Asbestos Workers v. United Contractors Ass’n, Inc.*, 483 F.2d 384, 401 (3d Cir. 1973)). The Commission’s jurisdiction is further “limited to the issues referred by the Superior Court.” Docket UT-042022, Order No. 14, at ¶ 16 (Jan. 9, 2009) (Exhibit 2 hereto). Moreover, as the Commission previously recognized, no class has ever been certified in the underlying lawsuit or this proceeding. *Id.* The Superior Court stayed the issue of class status until after the resolution of threshold issues such as the specific primary jurisdiction questions presented here. *Id.* Accordingly, the Commission has previously ruled that the scope of this proceeding is limited to “the two Complainants’ claims.” *Id.* at ¶ 17.

Yet, in response to Bench Request No. 7, Complainants submitted excerpts of what their attorney declares are phone bills for January and February 2000 purportedly sent to an entity called Columbia Legal Services (“CLS”) in Seattle, Washington. CLS is not, and never has been, a party to this proceeding or the underlying lawsuit in the King County Superior Court. CLS has no claims in this proceeding or in the underlying lawsuit. Complainants have no claims that they can or may assert on behalf of CLS. As a result, any prison collect calls received by CLS, and any of its phone bills relating to such calls, are not at issue in, or relevant to, this primary jurisdiction referral proceeding. Consideration of any charges or entries reflected on those bills exceeds what the Commission previously recognized were limits on its jurisdiction.

Complainants have no standing to raise any charges reflected on CLS’s phone bills. Indeed, Complainants would lack standing in the Superior Court to raise any claims relating to CLS’s phone bills, and the Superior Court would have no jurisdiction to consider those claims prior to class certification. *Washington Educ. Assoc. v. Shelton Sch. Dist. No. 309*, 613 P.2d 769, 773-74 (Wash. 1980) (“The determination of standing is made independent of class certification; an individual named as a party in a class action cannot assert the action merely because the class has a claim if he himself does not.”); *see also Williams v. Boeing Co.*, 517 F.3d 1120, 1127 (9th Cir. 2008) (“At least one *named* plaintiff must satisfy the actual injury component of standing in order to seek relief on behalf of himself or the class.”) (emphasis in original). Because the Commission’s jurisdiction is derivative of the Superior Court’s jurisdiction based on the primary jurisdiction referral, and because the Superior Court would have no jurisdiction, the Commission

also has no jurisdiction to consider any claims by Complainants relating to CLS's phone bills. See *United Contractors*, 483 F.2d at 401.¹

In short, neither CLS nor its phone bills are a part of this proceeding. By submitting excerpts of CLS's phone bills, Complainants ask the Commission to exceed its limited jurisdiction in this proceeding. Accordingly, the excerpts of the CLS's phone bills submitted by Complainants in response to Bench Request No. 7 should be disregarded.

II. COMPLAINANTS SEEK TO CIRCUMVENT THE COMMISSION'S PRIOR ORDER LIMITING THE SCOPE OF DISCOVERY IN THIS PROCEEDING.

Recognizing the limited nature of this primary jurisdiction proceeding and the corresponding limits on its ability to act, the Commission previously ruled that the scope of discovery is limited to "the two Complainants' claims." Exhibit 2 at ¶ 17 (Order No. 14). In doing so, the Commission rejected Complainants' argument that the scope of this proceeding should be expanded beyond the named Complainants to also cover potential class members. *Id.* The Commission recognized that Complainants' argument implicated important jurisdictional limitations: "Complainants have not advanced a compelling legal argument that would support the Commission's ruling on the issue of class certification, effectively removing class certification from the jurisdiction of the Superior Court." *Id.* The CLS phone bill excerpts that Complainants submitted in response to Bench Request No. 7 are not a part of, and do not relate

¹ Likewise, the Complainants would lack standing to pursue any claims relating to CLS's phone bills in an original proceeding before the Commission because the Commission requires that a Complainant have a direct consumer relationship with a telecommunications company to establish standing. *United & Informed Citizen Advocates Network v. Pacific Northwest Bell Tel. Co. d/b/a U S West Commc'ns, Inc.*, WUTC Docket No. UT-960659, Third Supp. Order, at pp. 6-7 (Feb. 5, 1998) (holding that a party without a direct customer relationship lacks standing to complain). The Complainants have no direct relationship with AT&T regarding CLS's phone bills.

to, “the two Complainants’ claims.” As a result, those excerpts exceed the scope of this proceeding and discovery, as previously ordered by the Commission.

In addition, the few pages of the bills that Complainants now ask the Commission to consider — just four pages from two bills from more than nine years ago that together are over 500 pages long — were never produced before in this proceeding. As such, despite extensive discovery, AT&T has had no opportunity to probe these bills or the nature of CLS’s billing arrangement. This concern is not simply academic. The few pages of the bills that Complainants attached to their response indicate that CLS purchased both “UniPlan Service”® and “MEGACOM® Plus” service from AT&T. Taking that at face value, that could be significant because, depending upon the type of UniPlan services CLS bought, such service may have been provided pursuant to a contract or a contract tariff, which are not like the tariffed service Complainants were eligible to have received. AT&T, however, has had no opportunity to explore the nature of CLS’s service because this proceeding does not involve CLS and the Commission limited discovery accordingly. It would be fundamentally unfair to base any decision on matters that the Commission previously ruled are outside the scope of this proceeding. Nor should plaintiffs be allowed to use the CLS bills now to create a “side show.”

III. COMPLAINANTS’ SUBMISSION IS INACCURATE AND MISLEADING.

Finally, Complainants’ response to Bench Request No. 7 is inaccurate and misleading. First and foremost, Complainants’ limited discussion of their own phone bills — which are the only bills actually at issue in this proceeding — misleadingly states that Complainants’ bills “included charges for [the LECs] *as well as AT&T.*” The clear implication that Complainants intend to communicate is that their phone bills reflect charges from AT&T for the prison collect calls received by Complainants at issue in this proceeding. That is simply false. The sample bills attached to Complainants’ response as Exhibits B and C — just like all of Complainants

other bills — plainly show that the only charges from AT&T are *not for prison collect calls*, but for outgoing calls placed by the Complainant. Such outgoing calls are not prison collect calls and have nothing to do with this proceeding or the underlying lawsuit.

Further, despite his sworn declaration to the contrary, Complainants' attorney is not qualified to submit and attest to the accuracy of the CLS bill excerpts on actual and personal knowledge. Thus, Complainants' submission is also improper as an evidentiary matter.

Whether intentional or not, Complainants' misleading and unsupported assertions — regarding both their own phone bills which are actually at issue here and the CLS bill excerpts which plainly are not at issue and which Complainants have improperly attempted to insert into this proceeding — are simply an additional indication that they have no evidence to support their claims against AT&T.

Dated: October 27, 2010

SUBMITTED BY:

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

By: /s/ Charles H.R. Peters _____

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CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I hereby certify that I have this day, October 27, 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 27, 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:

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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 27, 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 27, 2010

/s/ Charles H.R. Peters

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