

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDRA JUDD, et al.,

Complainants,

v.

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

Respondents.

DOCKET NO. UT-042022

COMPLAINANTS' RESPONSE TO
RESPONSES BY AT&T AND T-NETIX
TO BENCH REQUESTS 7, 8, 9, AND 10

A. Introduction

1. Complainants submit this response to the responses made by AT&T and T-Netix to Bench Requests 7, 8, 9, and 10.

B. Response to AT&T's "preliminary statement"

2. The Complainants generally agree that the name of the entity providing the bills is not necessarily the operator services provider ("OSP"). This issue was briefed extensively in the record before the administrative law judge. The OSP is the person responsible for providing the "connection" for the collect call including the provision of operator services. All parties agree with the administrative law judge's conclusion that the operator services applicable to the calls in this case were provided by the PIII Premise platform. It was through this platform that rate quotes should have been provided. The fact that charges for the collect calls may have appeared on a bill

prepared by GTE or some other entity, such as an independent bill provider, does not, by itself, identify the OSP.

C. Responses to bench requests number 7 and 8

3. The Commission is probably perplexed why the response to a simple request for a sample of a telephone bill and questions about the charges in that bill generated such a large volume of telephone bills and contentions regarding a telephone call made to Complainant Tara Herivel from an inmate at Airway Heights Correctional facility in Spokane. Both T-Netix and AT&T claim in their responses that Ms. Herivel did not make this call.¹ AT&T and T-Netix use their claim that the call never occurred to avoid providing much of the information requested by the Commission. T-Netix goes so far as to claim that Ms. Herivel "concedes she can produce no evidence of any such call." T-Netix response at 5. That statement is absolutely false.²

4. In the latter half of 1997 or 1998, plaintiff Tara Herivel received a collect phone call at her Seattle apartment, from Don Miniken, an inmate at the Airway Heights Corrections Center near Spokane. Second Declaration of Chris R. Youtz, Ex. A ("Second Youtz Dec."). They discussed a lawsuit brought by Mr. Miniken. *Id.* In particular, they discussed the published opinion in that case,

¹ The collection of bills attached to T-Netix' response (which T-Netix acknowledges does not encompass every bill or collect telephone call received by complainants) is apparently included to show that a lot of bills do not include calls to Airway Heights in Spokane.

² T-Netix cites no source for this alleged concession.

Miniken v. Walter, 978 F. Supp. 1356 (E.D. Wash. 1997). *Id.* Ms. Herivel subsequently published an article, based in part on her conversation with Mr. Miniken, in the January-February 1999 issue of the Washington Free Press. *Id.*; (a copy of the article is attached to Ms. Herivel's declaration). She quoted Mr. Miniken in the article; those quotes were taken from her telephone conversation with him. *Id.* No rate disclosure was provided for this call. *Id.*

5. Mr. Miniken corroborated Ms. Herivel. He remembered making a call, from the Airway Heights facility, to Ms. Herivel in Seattle. Second Youtz Dec., Ex. B. He remembered speaking to her about his lawsuit and, in particular, the summary judgment order that was published in the Federal Supplement. *Id.* He also recalled that Ms. Herivel's purpose in speaking with him was to interview him about the case for an article she was writing on First Amendment issues. *Id.*

6. Ms. Herivel no longer had her telephone bills for that period of time. She requested copies of those bills, which were no longer available. T-Netix then claimed that the call never happened because it did not locate the call in its records. It then brought a motion for summary determination claiming that there was no standing for the complainants to bring claims regarding interLATA collect telephone calls. (A copy of this motion was included in the responses submitted by T-Netix to the bench requests). This motion was denied by Judge Rendahl (Order No. 5, attached as Exhibit C to be Second Youtz Dec.). This order was appealed to the Commission, which ruled that standing was an issue to be decided by Superior Court, not the WUTC. (Order No. 6, attached as Exhibit D to be Second Youtz Dec.). Ultimately the

Washington Court of Appeals ruled that the Complainants provided sufficient evidence that the telephone call occurred:

But Herivel presents more than mere allegations in the pleadings. She provides her own and Miniken's declarations that he made the call sometime between August 26, 1997 and January 1999. Herivel was writing an article about Miniken's recent suit against the DOC. The summary judgment order in his suit was filed on August 26, 1997, and the Washington Free Press published her article in its January-February 1999 issue. Therefore, the reasonable inference is that the call occurred between August 1997 and January 1999.

Judd v. Am. Tel. & Tel. Co., 136 Wn. App. 1022 (Wash. Ct. App. 2006), *rev. denied.*, 162 Wn.2d 1002 (A copy of the decision is attached as Exhibit E to Second Youtz Dec.).

7. The Court of Appeals directed that the case be referred back to the WUTC to determine "(1) whether AT & T or T-Netix were OSPs and (2) whether they violated the WUTC disclosure regulations." *Id.*

8. Despite these clear rulings, T-Netix and AT&T again claim that this call did not occur and that they should not have to produce any information to the Commission pertaining to interLATA calls. The Commission should refuse to accept this excuse because 1) the Washington Court of Appeals ruled that there is sufficient evidence of interLATA phone calls at issue in this matter; and 2) the Commission previously determined that questions of standing to raise claims in this matter should be decided by the trial court, not the WUTC.

9. T-Netix then responded to items (b)-(e) of Bench Request 7 by stating that it can't produce the materials "because it was not the telephone company to carry the calls, nor did it brand, rate, or bill the calls." Essentially, T-Netix claims

that only an LEC would have this information. T-Netix uses this justification for also not providing any information in response to Bench Request Number 8.

10. Similarly, AT&T claims that this information resides solely with the LECs, which AT&T claims is not available to it.

11. Even if only the LEC had access to the information requested by the Commission -- and that's not true -- either T-Netix or AT&T should have this information because one of them served as the LEC for Clallam Bay from 1996 through the filing of this case.

12. T-Netix now claims that Complainants only received collect calls from the Washington State Reformatory in Monroe, Airway Heights Correctional Center, and the McNeil Island Detention Center. T-Netix response at 3. However, both Ms. Judd and Ms. Herivel received collect telephone calls from inmates at Clallam Bay. See Exhibit F to Second Youtz Dec., which contains both responses to data requests and deposition answers.³ Further, T-Netix in its responses to data requests acknowledged that Clallam Bay was one of the four facilities involved in this matter. Second Youtz Dec., Ex. G.

13. T-Netix and AT&T ignore Clallam Bay because their involvement with that facility does not fit well with their arguments in this case that they are not involved in handling local or intraLATA collect calls. Originally, PTI was the LEC for

³ The initial decision in this matter also identifies the four Washington state correctional facilities involved in this matter as the Washington State Reformatory, Airway Heights, McNeil Island Penitentiary, and Clallam Bay. Initial decision at 8-9, n.24.

Clallam Bay. In 1997, however, AT&T's contract with the Department of Corrections was amended to delete PTI as a subcontractor/LEC, and substitute T-Netix in its place. Amendment No. 3 to Agreement Between State of Washington Department Of Corrections and AT&T Corp. Second Youtz Dec., Ex. K. T-Netix claims that it is simply a "station provider" for Clallam Bay and that AT&T was responsible for the intra-LATA and local calls.

14. T-Netix' own documents, however, reflect that it recognized that it was the LEC for Clallam Bay. Deposition of Alice Clements at 198-291, Second Youtz Dec. Ex. H. One of AT&T's former managers also testified that T-Netix was responsible for "carrying the calls" from Clallam Bay, including intraLATA calls and local calls. Deposition of Francis Gutierrez at 81-82, Second Youtz Dec. Ex. I.

15. Further, T-Netix paid commissions to the Department of Corrections under the AT&T agreement with the DOC for revenue from local calls. That suggests T-Netix received income directly from inmate calls and should have a price list or summary showing the rates for those charges.

16. Similarly, in responding to bench requests 7 and 8, AT&T claims that "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." AT&T response at 4. As discussed above, however, Ms. Herivel received an intrastate, interLATA call from Airway Heights. As AT&T acknowledges, AT&T bills its charges for those calls and its rates apply. And, as AT&T pointed out in its response, it was attempting to get T-Netix to install automatic rate quoting and

presumably had information regarding the rates that it felt should be disclosed through the PIII Platform.

17. The responses from both AT&T and T-Netix to the these bench requests are inadequate.

D. Responses to bench request number 9

18. This request asked for information regarding AT&T's purchases of equipment or services from T-Netix. T-Netix responded by referring to a contract between it and AT&T dated June 4, 1997. It claims that AT&T paid for the PIII Premise platform under that agreement. AT&T's response, however, claims that it "did not pay anything to purchase that platform from T-Netix." AT&T also claims that it no longer has any records that "reflect how it compensated T-Netix for the call screening and connection service that T-Netix provided at Washington correctional institutions prior to 2001, other than [an August 25, 2000 letter regarding rate quotes, which is attached to AT&T's response]."⁴ After claiming that it no longer had any records regarding the "connection service" that T-Netix provided, AT&T concludes that it paid nothing to T-Netix to connect any intraLATA or local calls.

19. Amendment No. 2 to the contract signed by AT&T with the DOC required AT&T to procure equipment and services for handling the inmate calls by

⁴ AT&T incorrectly claims that this information was not the subject of any discovery in this proceeding. Complaints data requests, however, specifically ask for all agreements between AT&T and teen addicts pertaining to the calls at issue in this proceeding. See Second Youtz Dec., Ex. J, requests 4, 14, and 15.

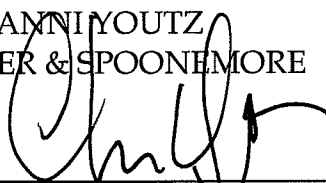
obtaining equipment and services from T-Netix. *See*, Initial Order, Finding of Fact 2 at 53. Presumably AT&T would have paid for the equipment and services it was required to procure under that amendment, and its response falls short of explaining why it cannot account for the money it paid for call screening and connection service that T-Netix provided at Washington correctional institutions prior to 2001.

E. Response to bench request number 10

20. Bench request number 10 was directed solely to AT&T. AT&T claims that it did not receive any money from the complainants in connection with calls at issue in this proceeding. At a minimum, however, AT&T received money for handling intrastate, interLATA calls, including the collect call from Airway Heights to Ms. Herivel. As shown by the bills from Columbia Legal Services submitted in our response to Bench Request Number 7, AT&T did bill and collect money from end users for collect calls originating from inmates at Airway Heights. Thus, AT&T's response to this request is also inadequate.

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