

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

SECOND DECLARATION
OF CHRIS R. YOUTZ

Chris R. Youtz declares, under penalty of perjury and in accordance with the laws of the State of Washington, that:

1. I am one of the attorneys for Complainants in this matter. I base this declaration on my personal knowledge and am competent to testify.
2. Attached as *Exhibit A* is a true and correct copy of the Declaration of Tara Herivel in Support of Plaintiffs' Response to T-Netix's Motion for Summary Judgment, dated August 9, 2005.
3. Attached as *Exhibit B* is a true and correct copy of the Declaration of Don Miniken in Support of Plaintiffs' Response to T-Netix's Motion for Summary Judgment, dated August 9, 2005.
4. Attached as *Exhibit C* is a true and correct copy of Order No. 05, Order Denying T-Netix's Motions for Summary Determination and to Stay Discovery;

Denying Complainants' Conditional Motion; Denying, in part, T-Netix's Motion to Strike; Granting AT&T's Motion for Leave to File Response, dated July 18, 2005.

5. Attached as *Exhibit D* is a true and correct copy of Order No. 06, Order Accepting Petition for Interlocutory Review; Denying, in part, and Granting, in part, T-Netix's Petition for Interlocutory Review, dated August 18, 2005.

6. Attached as *Exhibit E* is a true and correct copy of the unpublished opinion dated December 18, 2006, in *Judd v. AT&T*, 136 Wn. App. 1022.

7. Attached as *Exhibit F* is a true and correct copy of the Responses to T-Netix, Inc.'s Second Set of Data Requests to Tara Herivel; excerpts from the transcript of the deposition of Tara Herivel taken on June 3, 2009; and the Responses to T-Netix, Inc.'s Second Set of Data Requests to Sandra Judd.

8. Attached as *Exhibit G* is a true and correct copy of T-Netix's Responses to Second Data Requests.

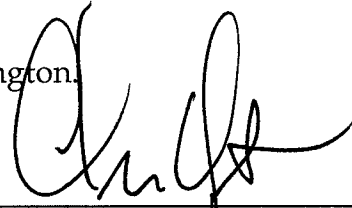
9. Attached as *Exhibit H* is a true and correct copy of excerpts from the transcript of the deposition of Alice J. Clements taken on April 23, 2009.

10. Attached as *Exhibit I* is a true and correct copy of excerpts from the transcript of the deposition of Frances Mary Gutierrez taken on April 22, 2009.

11. Attached as *Exhibit J* is a true and correct copy of Complainants' Amended Second Data Requests to AT&T, dated October 15, 2008.

12. Attached as *Exhibit K* is a true and correct copy of the Amendment No. 3 to Agreement Between State of Washington Department of Corrections and AT&T Corporation, signed in February 1997.

DATED: October 27, 2010, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Chris R. Youtz", written in a cursive style.

Chris R. Youtz

Exhibit A

HON. JEFFREY RAMSDELL
Noted for Hearing: August 26, 2005, at 10:00 a.m.
With Oral Argument

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

Plaintiffs,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY; GTE
NORTHWEST INC.; CENTURYTEL
TELEPHONE UTILITIES, INC.; NORTH-
WEST TELECOMMUNICATIONS, INC.,
d/b/a PTI COMMUNICATIONS, INC.; U.S.
WEST COMMUNICATIONS, INC.; T-NETIX,
INC.,

Defendants.

NO. 00-2-17565-5 SEA

DECLARATION OF TARA HERIVEL
IN SUPPORT OF PLAINTIFFS'
RESPONSE TO T-NETIX'S MOTION
FOR SUMMARY JUDGMENT

I, TARA HERIVEL, hereby declare that:

1. I am personally familiar with the facts set forth in this declaration.

If called to testify about any of these matters, I could and would competently testify
thereto.

2. Sometime after August 26, 1997 and before January 1999, I
received at least one inmate-initiated telephone call from Airway Heights Corrections

1 Center, near Spokane, Washington. That call was from inmate Don Miniken. I
2 received the call in my apartment in Seattle, Washington.

3 3. I have been unable to find a copy of my telephone bill for that time
4 period, and I have been told that Qwest/US West does not provide copies for bills that
5 far in the past.

6 4. Mr. Miniken and I discussed, among other things, a lawsuit that he
7 brought entitled *Miniken v. Walter*. That lawsuit resulted in an order dated August 26,
8 1997, which was subsequently published in the Federal Supplement. See *Miniken v.*
9 *Walter*, 978 F. Supp. 1356 (E.D. Wash. 1997). We discussed this decision in our
10 telephone conversation.

11 5. I subsequently published an article in the Washington Free Press,
12 in their January-February 1999 issue. A copy of the article is attached to this
13 declaration. I quoted Mr. Miniken several times in the article, and those quotes were
14 taken from my telephone conversation with him.

15 6. In a declaration that I had filed in the WUTC phase of this case
16 dated May 11, 2005, I stated that the fact that I had published an article in January-
17 February 1999 led me to believe that the inmate-initiated telephone call from Mr.
18 Miniken occurred sometime between October and December 1998. I was recently able
19 to locate some notes I took for this same article in July 1998. Based on the date of these
20 notes and my recollection of when I resided at the apartment where I received Mr.
21 Miniken's phone call, my best estimate of when I received the telephone call is
22 somewhere between June and December 1998.

23 7. I do not recall hearing any rate disclosure information before I
24 accepted the inmate-initiated telephone call from Mr. Miniken.

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I declare under penalty of perjury and in accordance with the laws of the State of Washington that the foregoing is true and correct.

Signed this 9th day of August, 2005, at Seattle, Washington.


TARA HERIVEL

CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on August 15, 2005, I served a copy of the foregoing document on counsel of record as indicated below:

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DATED: August 15, 2005, at Seattle, Washington.

Handwritten signature of Tara Herivel

The War of Speech

Censorship spreads through Washington's prisons

by Tara Herivel, Free Press contributor

If there's one ideal Americans rally behind with gusto, it's freedom of speech. From left to right, Americans are loath to infringe on the right to holler, scribble, or purchase this or that inflammatory speech. We strut our free speech stuff during Banned Book Week, create endless television mini-series lambasting McCarthyism, and generally feel pretty good about separating truth from muck in the marketplace of ideas. There's always a lurking exception. American prisoners represent that exception to expansion of First Amendment rights for all.

Without public hoopla or discussion, the Washington Department of Corrections (DOC) has cooked up a draconian new policy whose purpose is to "limit inmate access to the public." Beginning in January, inmates will no longer be able to communicate with other inmates, purchase stamps, or receive publications that are not paid for out of their own inmate trust accounts. (Prisoners' trust funds usually consist of the pay prisoners receive for labor for the prison industry, which amounts to change per hour after various administrative costs are extracted.) Prisoners will also be banned from sending photocopies, unless the correspondence meets the narrow definition of legal mail.

Under the new policy, prisoners are able to receive a small number of pre-paid envelopes per week, with severe restrictions on types of legal correspondence they may send. According to David Fathi of Colombia Legal Services, essential legal filings will be banned, such as an inmate's legal response to a

motion to dismiss. The inability to send vital filings could toss an indigent inmate's suit right out of court.

Other provisions of the policy disallow a bizarre variety of types and content of incoming mail: from gang symbols to stickers, to padded, laminated or musical greeting cards larger than 8" x 10", virtually no mail is left unmolested by the policy. Though provisions like these aren't new, they're still bizarre.

Publications which are viewed as a "threat to peneological objectives" are bannable, as are cash and personal checks sent to inmates, which will be returned to the sender at the inmate's expense. Telephone books will be removed from most prisoners' access, phone use limited to 20 minutes at a time. When an inmate places an outgoing call, the person receiving the call will first hear this recorded message: "Working together for safe communities," followed by notification that he or she should disconnect immediately if the call is unexpected.

Free enterprise, yes; free speech, no

Never one to miss an enterprising opportunity, the private company Greater Seattle Printing has contracted to sell the pre-stamped, pre-paid envelopes prisoners must now purchase out of their trust funds to send correspondence, at a rate of 41.5 cents per envelope. Because Washington State directs it to its coffers 35 percent of all incoming money to prisoners, the price of each envelope will effectively total 64 cents -- a formidable mark-up for strapped-for-cash inmates.

When asked to explain the policy's purpose, DOC staff mumble this mantra: limit inmate access, reduce prison staff workload, limit access, reduce workload, limit, reduce . . . As to specifics of the incantation, prison staff are hesitant to elaborate. Associate Superintendent Dennis Thaut of the Washington State Reformatory at Monroe maintains that the prison mailroom's workload is tremendous, the problem of excess mail ongoing. Security is the central issue purportedly behind the ban on inmate to inmate correspondence. Thaut expressed concern that "intelligence" regarding violent orchestrations may be sent between prisoners. When asked whether

inmate to inmate correspondence has created a great problem, Associate Superintendent Thaut said, "It's not the volume. If there's one major incident, that's enough." Thaut could not recall a specific example of such a major incident, and admitted that "any time you see changes like this you can track it back to some kind of abuse, though [the effects of the policy] are more far-reaching than just the abusers."

The DOC follows the lead of nearly a dozen other states in severely restricting inmates' communication. Policies are constructed with little or no outside review, enacted, and then litigated against. With a long history of censorship, the DOC expects litigation against the new policy, and will get it. Often, such litigation is instigated by the prisoners themselves, sometimes with success.

In 1996, the Washington legislature considered broadening censorship in prisons by limiting prisoners' access to certain publications. Though the legislation ultimately did not pass, the DOC began to censor a wide variety of materials, including radical political literature and sexually explicit materials.

Paul Wright is an inmate at the Washington State Reformatory at Monroe and co-editor of the prisoner civil liberties magazine Prison Legal News (PLN). Wright stopped receiving MIM Notes, a small Maoist newspaper that he and four or five other prisoners in the state subscribed to. Wright believes MIM was targeted for disposal because, as a radical communist publication, it advocates revolution via the violent overthrow of the government. And, MIM calls prison officials pigs. Next came censorship of alternative papers like The Stranger, censored because of its "sexually explicit" phone sex ads buried in the back pages of the paper. Other materials dumped in the DOC's waste basket included a copy of Feminism, Censorship and Pornography (perhaps because of the randy innuendo invoked by the word "pornography"). Under the bulk mail ban, PLN was also restricted. Prisoners across the state and country stopped receiving their subscriptions to magazines like PLN, as sister prisons joined Censor Fever.

The censorship was not limited to publications alone. Institutions like Airway Heights Correction

Center in Spokane began rifling through prisoners' mail. Don Miniken, a prisoner at Airway Heights, filed suit against the DOC when his PLN subscription disappeared. Then Miniken's legal correspondence began arriving opened. "A mistake," claimed prison staff when questioned. Miniken contacted the ACLU, whose publication from their Prison Project was also scrapped by prison staff.

Miniken has represented himself *pro se* for numerous censorship suits against the DOC, which has not escaped the watchful eye of Airway Heights' staff. After he filed his suit against Airway Heights for junking his PLN subscription, Miniken began receiving bogus written reprimands, he was transferred from unit to unit, and his privileges were severely restricted.

When asked what gain is made by censoring these materials, Don Miniken summed it up as social control. "The DOC has been trying to get at PLN for years. And what people don't realize is that litigation like this, for prisoners' civil liberties, is helping Joe Blow on the street. Soon as they take away our rights, it impacts people on the outside."

Searching for sex in all the wrong places

Meanwhile, back at the Washington State Reformatory in Monroe and the Washington State Penitentiary in Walla Walla, low-level prison employees were going through publications page-by-page, scouring them for sexually explicit material as a basis to censor the publications. One may pause to consider the dedication of the prison staff, forced by state policy to spend countless hours rooting doggedly through such materials. One may also wonder whether such time spent indeed reduces prison staff workload -- one of the primary objectives of the new policy going into effect this month. Associate Superintendent Dennis Thaut agreed that the new policy may in fact increase prison staff's workload.

The DOC extended its censorship activities by banning all bulk mail and sexually explicit materials. Bulk mail, a term no longer used by the post office but employed by the DOC, effectively means all materials sent by third class, or, all non-profit

political literature. Sexually explicit material is defined even more ambiguously as publications exhibiting any sexual act that "appears forceful or threatening, where one of the partners is dominating a submissive partner," any act of penetration, or depiction of "excretory bodily functions."

Mickey Gendler is a Seattle-based ACLU cooperating attorney now representing Miniken in the suit against the Airway Heights bulk mail ban. Gendler also is co-counsel with Seattle attorney Joe Brigham, representing a small group of prisoners (including Paul Wright) in a suit against the DOC for its censorship of political and sexually explicit literature. Gendler described the DOC's policy restricting sexually explicit materials: "You get Playboy, where some guy's writing fantasy stuff like, 'I slid it in,' and that means penetration, so it gets censored. The definition also prohibits any depiction of an excretory bodily function. So, if I had a baseball book, and it said, 'The pitcher spat on the ground before throwing strike one,' it would violate the sexually explicit definition. And, if one part of the [publication] is bannable, the whole publication is thrown out." Paul Wright's copy of *Great American Plays of the Twentieth Century* was banned under the policy, but, as he says, "Perhaps Eugene O'Neill is a bit much."

Alternative magazines, questionable plays, and sex-like publications are not the only publications currently banned by the DOC. Subscriptions bought by Mom for Time magazine are censored under the current policy. The DOC has reaffirmed its prohibition of publications that are not purchased by the prisoners out of their trust funds with the upcoming policy.

The DOC insists it was trying to cut down on "junk mail" with the bulk mail ban. This argument did not impress Judge Quackenbush of Spokane, who recently struck the bulk mail ban down as unconstitutionally vague. Other prisoners are filing similar suits across the state and country based on the same issues; there seems a chance yet to extend the First Amendment's free speech protections to Washington prisoners.

As the new policy creeps into effect, a small group

of diligent inmate activists and even smaller group of ethical attorneys position themselves for battle. David Fathi expresses "mystification" that the Washington DOC labors so earnestly to alienate prisoners. After all, most inmates will return to the outside.

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HOME

Exhibit B

HON. JEFFREY RAMSDELL
Noted for Hearing: August 26, 2005, at 10:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

Plaintiffs,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY; GTE
NORTHWEST INC.; CENTURYTEL
TELEPHONE UTILITIES, INC.; NORTH-
WEST TELECOMMUNICATIONS, INC.,
d/b/a PTI COMMUNICATIONS, INC.; U.S.
WEST COMMUNICATIONS, INC.; T-NETIX,
INC.,

Defendants.

NO. 00-2-17565-5 SEA

DECLARATION OF DON MINIKEN
IN SUPPORT OF PLAINTIFFS'
RESPONSE TO T-NETIX'S MOTION
FOR SUMMARY JUDGMENT

I, DON MINIKEN, hereby declare that:

1. I am personally familiar with the facts set forth in this declaration.

If called to testify about any of these matters, I could and would competently testify thereto.

2. To the best of my recollection, I was an inmate at the Airway Heights correctional facility near Spokane, Washington from approximately 1995 to 1999. While I was there, I recall making a telephone call to Tara Herivel. We spoke

1 about a case in which I had served as the plaintiff, *Miniken v. Walter*. Specifically, we
2 discussed a summary judgment order dated August 26, 1997, that was published in the
3 Federal Supplement. See *Miniken v. Walter*, 978 F. Supp. 1356 (E.D. Wash. 1997). Ms.
4 Herivel was interviewing me for an article that she was writing on first amendment
5 issues. I do not recall when I made this call, but it must have been subsequent to the
6 August 26, 1997 order and before Ms. Herivel's article was published.

7 I declare under penalty of perjury and in accordance with the laws of the
8 State of Washington that the foregoing is true and correct.

9 Signed this 9th day of August, 2005, at Seattle, Washington.

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12 DON MINIKEN

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on August 15, 2005, I served a copy of the foregoing document on counsel of record as indicated below:

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DATED: August 15, 2005, at Seattle, Washington.

Sirianni Youtz

SIRIANNI YOUTZ

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Exhibit C

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

SANDRA JUDD AND TARA)	
HERIVEL,	)	DOCKET NO. UT-042022
)	
Complainants,	)	ORDER NO. 05
)	
v.	)	ORDER DENYING T-NETIX'S
	)	MOTIONS FOR SUMMARY
	)	DETERMINATION AND TO
AT&T COMMUNICATIONS OF	)	STAY DISCOVERY; DENYING
THE PACIFIC NORTHWEST, INC.,	)	COMPLAINANTS'
AND T-NETIX, INC.,	)	CONDITIONAL MOTION;
	)	DENYING, IN PART, T-NETIX'S
Respondents.	)	MOTION TO STRIKE;
	)	GRANTING AT&T'S MOTION
	)	FOR LEAVE TO FILE RESPONSE
.....)	

1 **SYNOPSIS.** *Consistent with the oral decision issued following oral argument, this Order denies T-Netix's motion for summary determination. The Commission may not dismiss the proceeding for lack of standing. The Superior Court has primary jurisdiction over this proceeding. The Order also denies T-Netix's Motion to Stay Discovery, denies Complainants' Conditional Motion, grants in part T-Netix's Motion to Strike, and grants AT&T's Motion for Leave to File a Response to the Supplemental Declaration of Kenneth L. Wilson.*

2 **NATURE OF PROCEEDING.** Docket No. UT-042022 is a complaint filed by recipients of inmate-initiated calls against AT&T Communications of the Pacific Northwest, Inc. (AT&T), and T-Netix, Inc. (T-Netix), alleging that AT&T and T-Netix failed to disclose rates for the calls, violating the Commission's rules governing disclosure. The complaint was filed with the Commission after the King County Superior Court referred the matter to the Commission under the



doctrine of primary jurisdiction to allow the Commission to complete an adjudication into certain issues of fact and law.

3 **PROCEDURAL HISTORY.** The complaint initiating this proceeding was filed with the Commission on November 17, 2004. On December 15, 2005, AT&T filed a Motion for Summary Determination, and on December 16, 2004, AT&T filed a response to the formal complaint.

4 During a prehearing conference held on February 16, 2005, before Administrative Law Judge Ann E. Rendahl, the parties agreed to a procedural schedule in the proceeding, including a schedule for discovery. The Commission adopted the schedule in Order No. 01 in this proceeding, a prehearing conference order.

5 On March 18, 2005, the Commission entered Order No. 02 in this proceeding, a protective order.

6 On April 21, 2005, T-Netix filed with the Commission a Motion for Summary Determination and a Motion to Stay Discovery.

7 Pursuant to the Commission's April 25, 2005, notice, AT&T and Complainants on May 6, 2005, filed responses to T-Netix's motions. AT&T joined in T-Netix's motions, and Complainants filed a number of declarations supporting their response, as well as a Conditional Motion to Postpone Consideration of T-Netix's Motion for Summary Determination Until Complainants Have Been Permitted Additional Discovery.

8 On May 10, 2005, T-Netix filed its Reply in Support of its Motions for Summary Determination and to Stay Discovery, a response to the Complainant's conditional motion, an affidavit in support of the Motion for Stay of Discovery, a Motion to Strike, and a declaration in support of the Motion to Strike.

- 9 Following a teleconference call held on May 10, 2005, the Administrative Law Judge learned of T-Netix's filing with the Commission and requested T-Netix's counsel to coordinate responsive pleading deadlines with counsel for Complainants.
- 10 The Administrative Law Judge issued a notice on May 11, 2005, establishing a schedule allowing parties to file additional responsive pleadings to address T-Netix' motion to strike, and scheduling oral argument on T-Netix's motions for June 7, 2005.
- 11 Pursuant to the May 11, 2005, notice, Complainants filed with the Commission on May 16, 2005, a response to T-Netix's Motion to Strike, with a supporting declaration, and a Reply to AT&T's response joining in T-Netix's motions, with supporting declarations.¹ On May 20, 2005, T-Netix filed a reply in support of its Motion to Strike, and AT&T filed a surreply in support of its response joining in T-Netix's motions.
- 12 On May 31, 2005, Complainants filed a Highly Confidential Motion for Leave to File Supplemental Declaration of Kenneth L. Wilson Dated May 27, 2005, and the Highly Confidential Supplemental Declaration of Kenneth L. Wilson in support of Complainants' response to T-Netix's motion for summary determination and Complainant's reply to AT&T's Response.
- 13 Also on May 31, 2005, T-Netix submitted by electronic mail an Emergency (1) Opposition to Complainants' Motion to File Supplemental Wilson Declaration and (2) Motion to Strike or, in the Alternative, for Right of Reply and Continuance of June 7 hearing.

¹ The May 11, 2005, notice provided for parties to submit electronic copies of the pleadings with the Commission by 5:00 pm on May 13, 2005, with paper copies to be filed on May 16. Complainants submitted electronic copies to all parties and the Commission at 7:51 and 7:54 p.m. on May 13.

- 14 On June 1, 2005, Complainants filed a Response to T-Netix's Emergency Motion and Motion to Strike.
- 15 In Order No. 04, entered on June 2, 2005, the Administrative Law Judge granted the Complainants' Motion for Leave to File a Supplemental Declaration, and denied T-Netix's Motion to Strike, allowing T-Netix and AT&T to file responses to the supplemental declaration. The Order also granted the Complainant's Motion to Continue the June 7, 2005, oral argument.
- 16 On June 6, 2005, the Commission issued a Notice rescheduling the oral argument until June 28, 2005.
- 17 On June 13, 2005, T-Netix filed with the Commission a Highly Confidential Affidavit of Alan Schott in Support of T-Netix, Inc.'s Motion for Summary Determination. On June 15, 2005, AT&T filed a Highly Confidential Motion for Leave to File Its Response to the Supplemental Declaration of Kenneth L. Wilson, as well as a Declaration of John D. Schell, Jr.
- 18 On June 20, 2005, Complainants filed a Highly Confidential Response to AT&T's Motion.
- 19 On June 24, 2005, T-Netix filed with the Commission a Highly Confidential Supplemental Affidavit of Alan Schott in Support of T-Netix, Inc.'s Motion for Summary Determination. On June 27, 2005, T-Netix filed a Supplemental Affidavit of Nancy Lee in Support of T-Netix, Inc.'s Motion for Summary Determination.
- 20 On June 28, 2005, the parties presented oral argument on the pending motions before Administrative Law Judge Rendahl. Following oral argument, the Administrative Law Judge issued an oral ruling denying T-Netix's Motions for

Summary Determination and to Stay Discovery, denying Complainant's conditional motion, granting, in part, T-Netix's Motion to Strike, and granting AT&T's Motion for Leave to File a Response to the Supplemental Declaration of Kenneth L. Wilson.

- 21 **APPEARANCES.** Jonathan P. Meier, Sirianni Youtz Meier & Spoonemore, Seattle, Washington, represents Sandra Judd and Tara Herivel, Complainants. Letty Friesen, AT&T Law Department, Austin, Texas, and Charles H.R. Peters and David C. Scott, Schiff Hardin, LLP, Chicago, Illinois, represent AT&T. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, and Glenn B. Manishin and Stephanie Joyce, Kelley Drye & Warren LLP, Washington, D.C., represent T-Netix.

MEMORANDUM

- 22 **A. T-Netix's Motion for Summary Determination.** T-Netix moves to dismiss the proceeding asserting that Complainants lack standing to pursue their claims before this Commission.² T-Netix asserts that documents recently produced in discovery show that Complainants suffered no "cognizable harm."³ T-Netix asserts that all of the calls for which Complainants seek relief were carried by two local exchange carriers, US West, and GTE, and that both carriers were granted waivers from the Commission's rule.⁴ T-Netix asserts that T-Netix did not carry any of the calls and that Complainants suffered no harm.⁵
- 23 T-Netix asserts that persons bringing a complaint before the Commission must demonstrate standing by showing injury in fact, *i.e.*, financial or other injury, and must have an interest within the "zone of interest" that the Commission's

² T-Netix's Motion for Summary Determination, ¶ 2.

³ *Id.*; see also Exhibits 9-11 to T-Netix's Motion for Summary Determination.

⁴ *Id.*, ¶¶ 9-12.

⁵ *Id.*, ¶¶ 2, 14, 16-21.

statutes or rules are designed to protect.⁶ Relying on the exhibits to its motion and several affidavits, T-Netix asserts that Complainants have suffered no injury in fact as none of the calls involved T-Netix and that none of the calls identified on Complainants' phone bills were subject to rate disclosure.⁷ T-Netix asserts that Complainants are not within the "zone of interest," as the local exchange companies, US West and GTE, did not owe Complainants a duty to disclose the rates for inmate-initiated local and intraLATA calls due to exemptions from the rule.⁸ T-Netix asserts that it has met the standards for granting a motion for summary determination: The material facts are not in dispute and the Complainants have not demonstrated standing to pursue a claim before the Commission.⁹

- 24 T-Netix acknowledges that this matter has been referred to the Commission by the King County Superior Court under the doctrine of primary jurisdiction to determine whether T-Netix has violated the Commission's regulations.¹⁰ T-Netix asserts, however, that the Commission need not reach that question if the Complainants lack standing.¹¹ T-Netix agrees with Complainants that the Commission has only "derivative" jurisdiction under the Superior Court's primary jurisdiction referral.¹² T-Netix asserts, however, that if the Superior Court would not have jurisdiction due to lack of standing, the Commission does not have jurisdiction to resolve the questions referred, and must dismiss the proceeding.¹³ T-Netix asserts that the Commission has no further duty to assist

⁶ *Id.*, ¶ 13, citing *Stevens v. Rosario Utils.*, WUTC Docket No. UW-011320, Third Supplemental Order at 19 (July 12, 2002); *Save a Valuable Environment (SAVE) v. City of Bothell*, 89 Wn.2d 862, 576 P.2d 401, 403-404 (1978).

⁷ *Id.*, ¶¶ 14-21; see also Exhibits 4 and 11 to T-Netix's Motion; June 13, 2005, Affidavit of Alan Schott; June 24, 2005, Supplemental Affidavit of Alan Schott; June 27, 2005, Supplemental Affidavit of Nancy Lee.

⁸ T-Netix's Summary Determination Motion, ¶¶ 22-23.

⁹ *Id.*, ¶¶ 3, 14-23.

¹⁰ *Id.*, ¶ 24.

¹¹ *Id.*, ¶ 28.

¹² T-Netix's May 11, 2005, Reply, ¶ 11.

¹³ T-Netix's Summary Determination Motion, ¶¶ 29-30; T-Netix's May 11, 2005, Reply, ¶ 11.

the Superior Court and must dismiss the proceeding.¹⁴ T-Netix further asserts that continuing with the referral would be a waste of resources, and that disposing of the issue of standing would resolve the entire controversy.¹⁵

25 AT&T joins in T-Netix's Motion for Summary Determination, asserting that the information T-Netix presents also demonstrates that Complainants have no standing to pursue a claim against AT&T.¹⁶

26 Complainants dispute T-Netix's arguments that (1) T-Netix was not involved in any of the calls, and (2) the Commission may dismiss for lack of standing a matter referred under the doctrine of primary jurisdiction.¹⁷ Complainants object to AT&T's "joinder," asserting that the pleading goes beyond the issues raised and seeks affirmative ruling for AT&T.¹⁸ Complainants object that AT&T's joinder attempts to accelerate its own motion for summary determination and limit discovery the Commission ordered on AT&T's motion.¹⁹

27 Addressing the factual issues raised by T-Netix and AT&T, Complainants assert that the issue of whether a telephone call is subject to the rate disclosure requirements in WAC 480-120-141 does not depend on the carrier that "carried" the call, but upon who provided a "connection," *i.e.*, operator services.²⁰ Complainants assert that T-Netix is an operator service provider (OSP) and that the key question is whether T-Netix provided operator services on the phone calls in question, not whether an exempt carrier was involved with the phone

¹⁴ T-Netix's Summary Determination Motion, ¶ 30.

¹⁵ T-Netix's May 11, 2005, Reply, ¶¶ 5, 13.

¹⁶ AT&T Response Joining in T-Netix's Motions for Summary Determination and to Stay Discovery, ¶¶ 2, 6, 8, 12.

¹⁷ Complainants' Response to T-Netix Motion for Summary Determination, ¶¶ 1-4.

¹⁸ Complainants' Reply to AT&T's Response, ¶ 1.

¹⁹ *Id.*

²⁰ Complainants' Response, ¶¶ 1, 20-21, 23-26; *see also* Complainants' Reply to AT&T's Response, ¶¶ 12, 19-21.

calls in question.²¹ Complainants submit two declarations of Kenneth L. Wilson in support of its Response to T-Netix's motion.²² Complainants assert that material facts remain in dispute, additional discovery is warranted, and the Commission should not dismiss the proceeding.²³ Complainants further assert that AT&T and T-Netix are liable under the statute governing operator services providers asserting that the statute focuses on companies operating as or contracting with an alternate operator services company.²⁴

28 Complainants assert that the Commission may not dismiss the case for lack of standing. Complainants assert that the King County Superior Court did not relinquish jurisdiction over the proceeding when it referred to the Commission the question of whether T-Netix violated the Commission's rules.²⁵ Complainants assert that the Court referred only specific issues to the Commission due to the Commission's expertise concerning operator services companies, but retained jurisdiction to make the final decision in the proceeding.²⁶

29 Complainants assert that an agency's role in a primary jurisdiction referral is strictly limited to the questions referred to the agency, and that primary jurisdiction does not invoke the independent jurisdiction of the agency.²⁷ Complainants assert that the Commission has statutory authority to resolve the issue of whether T-Netix violated the Commission's rules.²⁸ Complainants assert

²¹ Complainants' Response, ¶¶ 1-2, 6-7, 17-20.

²² May 2, 2005, Declaration of Kenneth L. Wilson in Support of Complainants' Response; May 27, 2004, Supplemental Declaration of Kenneth L. Wilson.

²³ Complainants' Response, ¶¶ 21-26; *see also* Complainants' Reply to AT&T's Response, ¶¶ 4, 7-11.

²⁴ Complainants' Reply to AT&T's Response, ¶ 17.

²⁵ Complainants' Response, ¶ 27.

²⁶ *Id.*, ¶ 28, quoting *Jaramillo v. Morris*, 50 Wn. App. 822, 828, 750 P.2d 1301 (1988).

²⁷ *Id.*, citing *Dioxin/Organochlorine Center v. Department of Ecology*, 119 Wn.2d 761, 837 P.2d 1007 (1992); *International Ass'n of Heat & Frost Insulators and Asbestos Workers v. United Contractors Ass'n, Inc.*, 483 F.2d 384, 401 (3d Cir. 1973).

²⁸ *Id.*, ¶ 33.

that the issue of standing is within the Superior Court's primary jurisdiction over the proceeding, an issue the court reserved for itself.²⁹ The Complainants assert that the Superior Court can address the issue of standing after the Commission resolves the questions in the referral.³⁰

30 Finally, Complainants assert that if there is a problem with standing, the Commission should allow them to amend their complaint to include additional class representatives.³¹ Complainants offer the declarations of Suzanne Elliott and Maureen Janega in support of this request.³²

31 In reply, T-Netix moves to strike the declarations of Ms. Elliott and Ms. Janega as outside of the scope of the proceeding and as prejudicial to T-Netix.³³ The motion is discussed further below in Section II. C. T-Netix asserts that the Commission does not have jurisdiction to permit joinder in a primary jurisdiction referral.³⁴ T-Netix asserts the Commission cannot decide issues outside of the scope of the referral and requests the Commission deny Complainants' request for leave to amend to include new complainants.³⁵

32 ***Discussion and Decision.*** Under WAC 480-07-380(2), the Commission's rules governing motions for summary determination, the Commission will consider the standards applicable to motions for summary judgment made under the civil rules. Under CR 56, a party may move for summary determination if the pleadings, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law. Summary judgment is properly entered if there is

²⁹ *Id.*, ¶ 29.

³⁰ *Id.*, ¶ 35.

³¹ Complainants' Reply to AT&T's Response, ¶¶ 36, 39.

³² *Id.*, ¶¶ 38-39.

³³ T-Netix's Reply, ¶ 8.

³⁴ *Id.*, ¶ 15.

³⁵ *Id.*, ¶¶ 16-19.

no genuine issue as to any material fact, that reasonable persons could reach only one conclusion, and that the moving party is entitled to judgment as a matter of law.³⁶ 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.³⁷

33 After considering the numerous pleadings and affidavits presented by the parties and making all reasonable inferences from the facts in the light most favorable to the nonmoving party, T-Netix' motion for summary determination is denied. There is a genuine issue of material fact in dispute and T-Netix is not entitled to judgment as a matter of law.

34 The issue in this proceeding is whether T-Netix and AT&T provided service as operator service companies on the calls at issue in this proceeding. While T-Netix asserts that only US West and GTE carried the calls in question, Complainant's affidavits and pleadings raise questions as to the role of T-Netix and AT&T in connecting the calls between the correctional institutions and the Complainants. The parties' dueling and numerous affidavits identify several issues of fact concerning AT&T and T-Netix's network and their involvement in the calls in question.

35 Even if there were no genuine issue of material fact in dispute, as T-Netix asserts, T-Netix is not entitled to judgment as a matter of law. The law at issue here is not the law governing standing, but the doctrine of primary jurisdiction. Under the doctrine of primary jurisdiction, if a court finds that an issue raised in a dispute before the court is within the primary jurisdiction of an agency, the court will defer a decision in the action until the agency has addressed the particular issue within its primary jurisdiction, but retains jurisdiction over the dispute

³⁶ *Tanner Electric Coop. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 668 (1996).

³⁷ *Id.*

itself and all other issues in dispute.³⁸ The doctrine of primary jurisdiction “does not necessarily allocate power between courts and agencies, for it governs only the question whether court or agency will initially decide a particular issue, not the question whether court or agency will finally decide the issue’.”³⁹ Thus, where a court refers issues to an agency under the doctrine of primary jurisdiction, the referral does not invoke the agency’s jurisdiction over all issues in dispute, only those issues referred to the agency.

36 In this proceeding, King County Superior Court Judge Learned referred to the Commission under the primary jurisdiction doctrine the issues of (1) “whether or not [AT&T is] considered by the agency to be an OSP under the contracts at issue herein and if so if the regulations have been violated,” and (2) “to determine if T-Netix has violated WUTC regulations.”⁴⁰ Judge Learned stayed resolution of Complainants’ Consumer Protection Act claims and any award of monetary damages pending the Commission’s action on the issues.⁴¹

37 The issue of Complainants’ standing to bring a complaint before the Commission is not within the issues referred to the Commission for consideration: Judge Learned reserved jurisdiction to resolve all other issues in the dispute. As this matter is on referral from the Superior Court and not a complaint filed initially with the Commission, the Commission does not have jurisdiction to decide the issue of standing. While resolving the issue of standing may avoid a waste of resources, as T-Netix asserts, it would be inappropriate for the Commission not to address the questions referred by the Superior Court.

³⁸ 2 R. Pierce, *Administrative Law Treatise*, § 14.1.

³⁹ *In re Real Estate Brokerage Antitrust Litigation*, 95 Wn.2d 297, 301-302, 622 P.2d 1185 (1980), quoting 3 K. Davis, *Administrative Law*, § 19.01 (1958).

⁴⁰ *Judd, et al. v. AT&T, et al.*, King County Superior Court Case No. 00-2-17565-5 SEA, Order Granting AT&T Corp.’s Motion to Dismiss, 2 (Aug. 28, 2000); *Judd, et al. v. AT&T, et al.*, King County Superior Court Case No. 00-2-17565-5 SEA, Order Denying in Part Defendant T-Netix, Inc.’s Motion to Dismiss First Amended Complaint – Class Action and Granting in Part and Referring to WUTC, 2 (Nov. 9, 2000).

⁴¹ *Id.*

38 For the same reasons this Order denies T-Netix's Motion for Summary Determination, the Order rejects Complainant's request to amend its complaint to include Ms. Elliott and Ms. Janega as complainants. The Commission's jurisdiction in this proceeding is limited to the issues referred by the Superior Court. The Superior Court retained jurisdiction over all other issues, including amending the complaint.

39 **B. T-Netix's Motion to Stay Discovery, and Complainants' Conditional Motion.** T-Netix filed a motion to stay discovery in the proceeding pending the resolution of its motion for summary determination. Because a motion for summary determination does not automatically stay the procedural schedule of a case, T-Netix requests the Commission enter an order staying discovery.⁴² T-Netix asserts that an order staying discovery is warranted as discovery is burdensome and may lead to disclosure of "highly-sensitive commercial and security information" where there is the possibility the case may be dismissed.⁴³ T-Netix also asserts that there is no deadline for resolving the proceeding.⁴⁴

40 AT&T asserts that it should not be required to disclose confidential information in discovery where there may be no basis for Complainants' claims.⁴⁵

41 Complainants oppose T-Netix's motion to stay discovery asserting that AT&T and T-Netix have already refused to continue discovery until T-Netix's motion is resolved.⁴⁶ Complainant's object to T-Netix and AT&T's refusal to participate in further discovery and asserts that T-Netix has obstructed Complainants' efforts to obtain information.⁴⁷ Complainants identify specific responses by T-Netix and

⁴² T-Netix's Motion to Stay Discovery, ¶ 3.

⁴³ *Id.*, ¶ 4.

⁴⁴ *Id.*

⁴⁵ AT&T's Response, ¶ 14; AT&T's Surreply, ¶ 15.

⁴⁶ Complainants' Response, ¶ 1; Complainants' Reply to AT&T's Response, ¶ 28.

⁴⁷ Complainants' Response, ¶¶ 3, 5-9.

AT&T as examples of the parties' refusal to respond to discovery.⁴⁸ Complainants request that the Commission not condone T-Netix and AT&T's conduct in staying discovery contrary to WAC 480-07-380(d).⁴⁹

- 42 Complainants further requests through a Conditional Motion that the Commission postpone consideration of T-Netix's motion for summary determination until T-Netix responds to discovery requests.⁵⁰ Complainants also request the right to discovery on issues raised in T-Netix's motion for summary determination.⁵¹
- 43 In reply, T-Netix denies that it has failed to cooperate in discovery.⁵² T-Netix asserts that any objections to T-Netix's responses to data requests and conduct in discovery should be raised in a motion to compel rather than in a response to its motion to stay discovery.⁵³ T-Netix will treat the portion of Complainant's Response as an invitation to meet and confer and will address Complainants' counsel's concerns.⁵⁴
- 44 T-Netix opposes Complainants' request for additional discovery to respond to the motion for summary determination.⁵⁵ T-Netix asserts that the facts supporting the motion are indisputable and that the Commission does not need additional information to decide the issue.⁵⁶ T-Netix objects to allowing new discovery to substantiate the claims in Ms. Elliott and Ms. Janega's declarations.⁵⁷

⁴⁸ *Id.*, ¶¶ 5-11.

⁴⁹ *Id.*, ¶ 14.

⁵⁰ *Id.*, ¶ 17.

⁵¹ *Id.*, ¶ 18.

⁵² T-Netix's Reply, ¶ 2.

⁵³ *Id.*, ¶ 7.

⁵⁴ *Id.*

⁵⁵ *Id.*, ¶¶ 8-13.

⁵⁶ *Id.*, ¶¶ 8, 11.

⁵⁷ *Id.*, ¶ 13.

45 *Discussion and Decision.* The Commission's procedural rules, specifically WAC 480-07-380(2)(d), provide that filing a motion for summary determination does not stay the procedural schedule in a case. T-Netix filed a motion to stay discovery, seeking to stay discovery until the Commission resolved the pending motion for summary determination. T-Netix's motion is denied. The numerous pleadings and affidavits in this matter indicate that there is a continuing need for discovery to resolve issues of material fact in the proceeding. Complainants' conditional motion is likewise denied. The parties must continue discovery to allow the Commission to address the issues referred by the King County Superior Court.

46 A matter of concern, however, is T-Netix and AT&T's actions in ceasing discussions with Complainants over outstanding data requests and refusing to provide answers to pending data requests until the Commission resolved the pending motions. Filing a motion to stay discovery does not allow the parties to stay discovery. T-Netix and AT&T did not wait for the Commission to resolve either motion before staying discovery on their own. Such conduct is not acceptable. The Commission expects the parties to follow the procedural rules in Chapter 480-07 WAC and will not tolerate such flagrant violations. The parties must meaningfully respond to Complainants' discovery requests. If T-Netix and AT&T are correct that they are not OSPs and had no role in the inmate-initiated calls in question, then they should be willing to disclose in discovery all relevant information in the proceeding.

47 **C. T-Netix's Motion to Strike.** T-Netix filed a motion to strike Complainants' responsive pleadings in their entirety, or in the alternative, paragraphs 1 through 9 of the response and the declarations of Ms. Elliott and Ms. Janega.⁵⁸ T-Netix asserts that Complainants did not timely file their response, serving the pleading on all parties and submitting it to the Commission at 7:51 p.m. on May 6, 2005,

⁵⁸ T-Netix's Motion to Strike, ¶¶ 1-15.

instead of the 5:00 p.m. filing deadline.⁵⁹ T-Netix asserts that Complainants did not seek an extension of time and that the Commission should not condone this disregard of Commission procedures.⁶⁰

- 48 Should the Commission not strike the Complainants' responsive pleadings in their entirety, T-Netix requests the Commission strike a part of the Complainant's response as "irrelevant and prejudicial."⁶¹ T-Netix objects to paragraphs 1 through 9 of Complainants' response concerning T-Netix's conduct in discovery.⁶² T-Netix asserts that Complainants' response does not address whether discovery should be stayed, but seeks merely to impugn T-Netix's counsel and raises issues that should be addressed in a motion to compel.
- 49 T-Netix also requests that the Commission strike the declarations of Ms. Elliott and Ms. Janega.⁶³ T-Netix asserts that the declarations raise new allegations and new complainants, matters that are outside of the scope of the Superior Court's primary jurisdiction referral.⁶⁴ T-Netix further asserts that the new declarations are prejudicial as irrelevant to T-Netix' motion and because the time to propound discovery has ended.⁶⁵
- 50 Complainants concede that they electronically submitted their responsive filing late on May 6, 2005, but assert that they timely filed their paper copy on Monday, May 9, 2005.⁶⁶ Complainants assert that counsel underestimated the time to comply with the confidentiality provisions of the protective order, and asserts that it will not happen again.⁶⁷ Complainants assert that the sanction T-Netix

⁵⁹ *Id.*, ¶ 2.

⁶⁰ *Id.*, ¶ 3.

⁶¹ *Id.*, ¶ 4.

⁶² *Id.*, ¶¶ 5-7.

⁶³ *Id.*, ¶ 8.

⁶⁴ *Id.*, ¶¶ 9-11.

⁶⁵ *Id.*, ¶¶ 12-14.

⁶⁶ Complainants' Response to T-Netix's Motion to Strike, ¶¶ 1-2.

⁶⁷ *Id.*, ¶ 1.

requests is too harsh, as the parties received both electronic and paper copies and had the opportunity to reply.⁶⁸

51 Complainants assert that issues raised in paragraphs 1 through 9 of their response, *i.e.*, whether T-Netix has engaged in a good-faith effort to resolve discovery disputes and respond to discovery and whether a party may halt discovery upon filing a motion for summary determination, are not irrelevant or prejudicial.⁶⁹ Complainants also assert that the two declarations should not be stricken, asserting that T-Netix will not be prejudiced if a new schedule in the proceeding allows additional discovery.⁷⁰ Complainants assert that T-Netix's objections address the Commission's authority to amend the complaint in this proceeding.⁷¹

52 **Discussion and Decision.** T-Netix's motion to strike Complainants' responsive pleading in its entirety is denied. T-Netix's requested sanction for late filing is too harsh, as T-Netix had ample opportunity to reply to the pleading. The Commission does not condone late filing of materials. Where the opposing party has not been prejudiced by the late filing, it is not appropriate to reject the pleading. Complainants' are on notice, however, that parties must submit all electronic submissions to the Commission by 5:00 p.m. of the date set for electronic submission, and send an electronic copy to the Administrative Law Judge. Any other late submissions will be dealt with appropriately.

53 T-Netix's alternative request to strike paragraphs 1 through 9 of the pleading is also denied. While some of the issues Complainants raise are appropriate for a motion to compel, Complainants are justified in complaining about discovery efforts in the proceeding in the context of responding to motions for summary

⁶⁸ *Id.*, ¶ 3.

⁶⁹ *Id.*, ¶¶ 4-6.

⁷⁰ *Id.*, ¶¶ 9-10.

⁷¹ *Id.*, ¶¶ 8-12.

determination and to stay discovery. Parties may not unilaterally halt discovery while motions for summary determination are pending, even if a motion to stay discovery is also pending.

54 The Commission expects parties to meaningfully respond to discovery requests. Should discovery disputes arise in this proceeding, the party seeking information should work directly with the responding party to address the dispute first, but should bring disputes to the Commission's attention promptly if the dispute is not resolved.

55 Finally, T-Netix's request to strike the declarations of Ms. Elliott and Ms. Janega is granted. Complainants included these declarations to support their request to amend the pleadings before the Commission. This Order rejects Complainants' request as outside of the scope of the Superior Court's primary jurisdiction referral to the Commission. The declarations are unnecessary to this proceeding and are stricken.

56 **D. AT&T's Motion for Leave to File Response.** In Order No. 04, the Administrative Law Judge allowed T-Netix to file a response to Complainants' Highly Confidential Supplemental Declaration of Kenneth L. Wilson. On June 16, 2005, AT&T requested leave to file a response to Mr. Wilson's supplemental declaration, attaching the Declaration of John D. Schell, Jr.

57 Complainants do not object to AT&T's motion, asserting that the statements in Mr. Schell's declaration support the need for additional discovery in the proceeding.⁷²

58 **Discussion and Decision.** Consistent with the decision during oral argument, AT&T's motion is granted. Complainants do not object to the motion. Order No. 04 allowed T-Netix, AT&T's co-defendant, the opportunity to file a response to

Mr. Wilson's supplemental declaration. AT&T should be given the same opportunity.

FINDINGS OF FACT

- 59 (1) Complainants Sandra Judd and Tara Herivel received inmate-initiated calls and allege in a complaint filed in King County Superior Court that they did not receive the rate disclosures for those calls required by the Commission's rules.
- 60 (2) T-Netix, Inc., and AT&T of the Pacific Northwest, Inc., are classified as competitive telecommunications companies under RCW 80.36.310-330.
- 61 (3) King County Superior Court Judge Learned ordered several issues to be considered by the Washington Utilities and Transportation Commission through a primary jurisdiction referral.
- 62 (4) T-Netix filed a motion for summary determination and motion to stay discovery asserting that the Complainants lack standing to bring their complaint before the Commission.
- 63 (5) The parties filed numerous pleadings, attaching exhibits, affidavits, and declarations, to address the matters raised in T-Netix's motions.
- 64 (6) The Commission held oral argument on T-Netix's motions, as well as Complainants' conditional motion and AT&T's motion for leave to file a response to a supplemental declaration of Mr. Wilson.

⁷² Complainants' Response to AT&T's Motion, ¶¶ 1-9.

- 65 (7) The declarations of Ms. Elliott and Ms. Janega, attached to Complainants' Response, include new allegations to support a request to amend the pleadings.
- 66 (8) Complainants electronically submitted their responsive pleading to the Commission nearly three hours after the 5:00 p.m. deadline for electronic submission, but filed paper copies with the Commission in a timely manner.

CONCLUSIONS OF LAW

- 67 (1) Summary judgment is properly entered if there is no genuine issue as to any material fact, that reasonable persons could reach only one conclusion, and that the moving party is entitled to judgment as a matter of law. *Tanner Electric Coop. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 668 (1996). 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. *Id.*
- 68 (2) Complainant's affidavits and pleadings raise questions of material fact as to the role of T-Netix and AT&T in connecting the calls in question between correctional institutions and the Complainants and identify several issues of material fact concerning AT&T's and T-Netix's networks and the carriers' involvement in the calls in question.
- 69 (3) The law at issue in T-Netix's motion for summary determination is the law governing the doctrine of primary jurisdiction, not the law governing standing.

- 70 (4) Where a court refers specific issues to an agency under the doctrine of primary jurisdiction, the court retains jurisdiction over all other issues in the proceeding and will defer a decision until the agency addresses the particular issues within its jurisdiction. *See 2 R. Pierce, Administrative Law Treatise, § 14.1.*
- 71 (5) T-Netix is not entitled to judgment as a matter of law, as the Commission does not have primary jurisdiction in this matter to address issues of standing, but is limited to applying its statutory authority to determine whether AT&T is an operator services provider under the Commission's rules and whether AT&T and T-Netix violated the Commission's rules governing operator services companies.
- 72 (6) The Commission does not have jurisdiction in this primary jurisdiction referral to determine whether the Complainants may amend their pleadings.
- 73 (7) Filing a motion for summary determination does not stay the procedural schedule in a proceeding, nor may a party unilaterally stay discovery after filing a motion for summary determination, even after filing a motion to stay discovery. *See WAC 480-07-380(2).*
- 74 (8) It is not appropriate to reject or strike a pleading for late filing if the opposing party has not been prejudiced by the late filing.
- 75 (9) The declarations of Ms. Elliott and Ms. Janega address matters outside of the scope of the Superior Court's primary jurisdiction referral.
- 76 (10) AT&T, as a co-defendant of T-Netix, should have the opportunity to file a response to the supplemental declaration of Mr. Wilson.

ORDER

THE COMMISSION ORDERS:

- 77 (1) T-Netix, Inc.'s, Motion for Summary Determination is denied.
- 78 (2) T-Netix, Inc.'s, Motion to Stay Discovery is denied.
- 79 (3) Complainants' Conditional Motion to Postpone Consideration of T-Netix, Inc.'s Motion for Summary Determination is denied.
- 80 (4) T-Netix, Inc.'s Motion to Strike the Declarations of Ms. Elliott and Ms. Janega is granted, while T-Netix's Motion to Strike the Complainants' Responsive Pleading in its entirety, or in the alternative paragraphs 1 through 9, is denied.
- 81 (5) The Motion of AT&T Communications of the Pacific Northwest, Inc., for Leave to Filed its Response to the Supplemental Declaration of Kenneth L. Wilson is granted.
- 82 **NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**

Dated at Olympia, Washington, and effective this 18th day of July, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

Exhibit D

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

SANDRA JUDD AND TARA	)	DOCKET NO. UT-042022
HERIVEL,)	
	)	ORDER NO. 06
Complainants,)	
	)	ORDER ACCEPTING PETITION
v.	)	FOR INTERLOCUTORY
	)	REVIEW; DENYING, IN PART,
AT&T COMMUNICATIONS OF	)	AND GRANTING, IN PART,
THE PACIFIC NORTHWEST, INC.,	)	T-NETIX'S PETITION FOR
AND T-NETIX, INC.,	)	INTERLOCUTORY REVIEW
)	
Respondents.)	
.....)	

- 1 **SYNOPSIS.** *The Commission accepts T-Netix's request for interlocutory review of Order No. 05. The Commission denies T-Netix's petition for interlocutory review of decisions in Order No. 05 concerning the nature of Commission authority in a primary jurisdiction referral and whether the Order erred in not resolving the issue of Complainants' standing. The King County Superior Court has referred discrete issues of fact and law for Commission consideration and retains primary jurisdiction over the proceeding. The King County Superior Court, not this Commission, must decide the issue of Complainants' standing.*

- 2 *The Commission interprets T-Netix's motion to stay the procedural schedule as a petition for interlocutory review of the decision in Order No. 05 to deny a stay. The Commission grants T-Netix's petition for interlocutory review on this issue and stays the procedural schedule in this matter while the King County Superior Court considers the issue of the Complainants' standing.*

- 3 **NATURE OF PROCEEDING.** Docket No. UT-042022 concerns a complaint filed in King County Superior Court by recipients of inmate-initiated calls against AT&T Communications of the Pacific Northwest, Inc. (AT&T), and T-Netix, Inc. (T-Netix), alleging that AT&T and T-Netix failed to disclose rates for the calls,

violating the Commission's rules governing disclosure. The matter was filed with the Commission after the King County Superior Court referred certain issues of fact and law to the Commission under the doctrine of primary jurisdiction.

- 4 **PROCEDURAL HISTORY.** The Complainants initiated this proceeding on November 17, 2004, requesting the Commission resolve the issues referred by the King County Superior Court. On December 15, 2005, AT&T filed a Motion for Summary Determination, and on December 16, 2004, AT&T filed a response to the formal complaint.
- 5 In Order No. 01 in this proceeding, entered on February 22, 2005, the Commission adopted a procedural schedule to address AT&T's motion, including a schedule for discovery. On March 18, 2005, the Commission entered Order No. 02, a protective order governing both confidential and highly confidential information.
- 6 On April 21, 2005, T-Netix filed with the Commission a Motion for Summary Determination and a Motion to Stay Discovery, requesting the Commission dismiss the Complainants' claims against T-Netix for lack of standing. AT&T joined in T-Netix's motions.
- 7 After the parties filed numerous responsive pleadings, additional motions, affidavits and declarations, Administrative Law Judge Ann E. Rendahl heard oral argument on June 28, 2005, on T-Netix's motions and other motions pending in the proceeding. Following oral argument, Judge Rendahl issued an oral ruling denying T-Netix's motions. On July 18, 2005, Judge Rendahl entered Order No. 05, denying T-Netix's motions.
- 8 On July 27, 2005, T-Netix filed with the King County Superior Court a Motion to Lift the Stay of Proceedings to allow the court to address certain issues of fact and law, and a Motion for Summary Judgment concerning the issue of Complainants' standing. Judge Ramsdell of the King County Superior Court entered an Order Lifting Stay on August 16, 2005, and will hear argument on the Motion for Summary Determination on August 26, 2005.

- 9 On July 28, 2005, T-Netix filed a Petition for Administrative Review and Motion for Stay, seeking interlocutory review of Order No. 05 and requesting the Commission stay further proceedings in the docket, including discovery, until the Commission resolves T-Netix's petition.
- 10 On July 28, 2005, T-Netix also filed with the Commission a Motion for Summary Determination.
- 11 During a scheduling conference held on July 29, 2005, the parties agreed to a revised procedural schedule, including a schedule allowing for additional discovery on AT&T's motion for summary determination, and discovery on T-Netix's motion for summary determination.
- 12 On August 15, 2005, Complainants filed with the Commission a response to T-Netix's petition and motion.
- 13 **APPEARANCES.** Jonathan P. Meier, Sirianni Youtz Meier & Spoonemore, Seattle, Washington, represents Sandra Judd and Tara Herivel (Complainants). Letty Friesen, AT&T Law Department, Austin, Texas, and Charles H. R. Peters and David C. Scott, Schiff Hardin, LLP, Chicago, Illinois, represent AT&T. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, and Glenn B. Manishin and Stephanie Joyce, Kelley Drye & Warren LLP, Washington, D.C., represent T-Netix.

MEMORANDUM

- 14 **A. T-Netix's Petition for Interlocutory Review.** T-Netix seeks review of Judge Rendahl's decision in Order No. 05 denying T-Netix's motion for summary determination. Specifically, T-Netix objects to conclusions of law in Order No. 05 finding that the Commission lacks independent jurisdiction to address issues of standing when reviewing issues referred by a court under the primary jurisdiction doctrine. T-Netix requests the Commission vacate Order No. 05 and direct Judge Rendahl to address the merits of T-Netix's motion for summary determination.

- 15 T-Netix seeks interlocutory review pursuant to WAC 480-07-810(2)(c) asserting that review is necessary “to avoid the substantial effort and expense of continuing to adjudicate a claim for which Complainants have no standing.” *T-Netix’s Petition*, ¶ 3. T-Netix also asserts that review is necessary to address a fundamental question regarding the Commission’s authority. *Id.*
- 16 T-Netix asserts that persons must have standing before bringing a complaint before the Commission. T-Netix relies on two Commission decisions addressing standing, *Stevens v. Rosario Utils.*, WUTC Docket No. UW-011320, Third Supplemental Order (July 12, 2002), and *United & Informed Citizen Advocates Network v. US West*, WUTC Docket No. UT-960659, Second Supplemental Order (Sept. 17, 1997). T-Netix asserts that “the Commission has no obligation to review complaints of those to whom no remedy is owed.” *T-Netix Petition*, ¶ 24. T-Netix objects to Conclusions of Law No. 3, 5 and 6, of Order No. 05, which address the nature of Commission authority in a primary jurisdiction referral. T-Netix asserts that the Commission should not treat cases initiated by primary jurisdiction referral differently than other types of complaints.
- 17 T-Netix also objects to Conclusion of Law No. 2, which finds that the Complainants’ affidavits and pleadings raise questions of material fact about the role of T-Netix and AT&T in connecting the calls in question. T-Netix asserts that Judge Rendahl erred in not addressing or deciding the issue of standing. *Id.*, ¶¶ 26-28. T-Netix further asserts that Judge Rendahl erred in finding material issues of fact on the role of T-Netix and AT&T, a core issue on the merits, rather than addressing or deciding the issue of Complainants’ standing. *Id.*, ¶¶ 29-31. T-Netix requests the Commission direct Judge Rendahl to consider the substantive issues in T-Netix’s motion for summary determination. *Id.*, ¶ 32.
- 18 Complainants request the Commission deny interlocutory review, asserting that it would be wasteful for the Commission to address on appeal an issue that T-Netix has also raised in King County Superior Court. *Complainants’ Response*, ¶ 29. Complainants assert that T-Netix invites the possibility of inconsistent results by asking the Commission and Superior Court to decide the same issue. *Id.*, ¶ 25.

- 19 Complainants assert that Judge Rendahl correctly decided the extent of the Commission's jurisdiction in a primary jurisdiction referral, *i.e.*, a primary jurisdiction referral does not invoke the independent jurisdiction of an agency. *Id.*, ¶¶ 30-35, 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).
- 20 Although Complainants assert that the Commission need not consider the merits of the standing issue to deny T-Netix's petition, the Complainants assert they have presented facts demonstrating standing to pursue their claims. *Id.*, ¶¶ 36-49. Complainants also dispute T-Netix's claim that Judge Rendahl did not reach the standing issue. Complainants assert that Judge Rendahl held that questions of material fact exist with respect to the role of T-Netix and AT&T in connecting inmate calls that Complainants received. *Id.*, ¶¶ 3, 14-16.
- 21 **Discussion and Decision.** The Commission retains discretion whether to accept interlocutory review of its decisions. *See WAC 480-07-810(2)*. Pursuant to WAC 480-07-810(2), the Commission may accept review of interlocutory orders if it finds that:
- (a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;
 - (b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or
 - (c) A review could save the commission and the parties substantial effort or expense or some other factor is present that outweighs the costs in time and delay of exercising review.

We find interlocutory review appropriate under WAC 480-07-810(2)(c) and accept interlocutory review of Order No. 05. The extent of the Commission's jurisdiction under a primary jurisdiction referral is an issue of first impression before the Commission. Resolving the issue outweighs the costs in time and

delay and will provide additional information to the Superior Court as it addresses the issues the parties have raised in that forum. Further, the parties and the Commission may save substantial effort or expense if discovery is rendered unnecessary by a decision on Complainants' standing.

- 22 As to the merits of T-Netix's petition for interlocutory review, we deny T-Netix petition for review of conclusions of law relating to the nature of Commission jurisdiction in a primary jurisdiction referral, and whether Order No. 05 erred in not resolving the issue of Complainants' standing.
- 23 This proceeding was originally filed with the King County Superior Court, not the Commission. King County Superior Court Judge Learned referred several discrete issues of fact and law to the Commission under the doctrine of primary jurisdiction, given the Commission's expertise in regulating Operator Service Providers, or OSPs. The Superior Court retained jurisdiction over the remainder of the proceeding.
- 24 The doctrine of primary jurisdiction arises when a court determines an issue in dispute before the court is within the special competence of an administrative body, and the integrity of a regulatory scheme requires that the court refer the issue to the administrative agency administering the scheme. *See In re Real Estate Brokerage Antitrust Litigation*, 95 Wn.2d 297, 301-302, 622 P.2d 1185 (1980); *see also United Contractors Ass'n*, 483 F.2d at 400. A court will stay the proceedings before it and refer the issue to the agency, while retaining jurisdiction over the dispute itself and all other issues in dispute. *See* 2 R. Pierce, *Administrative Law Treatise*, § 14.1.
- 25 A primary jurisdiction referral does not invoke the agency's independent jurisdiction: The agency's jurisdiction is derivative of the court's. *United Contractors Ass'n*, 483 F.2d at 401. The doctrine of primary jurisdiction "'does not necessarily allocate power between courts and agencies, for it governs only the question whether court or agency will initially decide a particular issue, not the question whether court or agency will finally decide the issue.'" *In re Real Estate Brokerage Antitrust Litigation*, 95 Wn.2d at 301-302, *quoting* 3 K. Davis, *Administrative Law*, § 19.01 (1958). Thus, an agency does not have authority to

enter a binding or final order against the parties in a primary jurisdiction referral. *United Contractors Ass'n*, 483 F.2d at 401.

- 26 The primary jurisdiction referral from the King County Superior Court does not invoke the independent jurisdiction of the Commission. While the Commission may have statutory authority to decide the issues referred by the court, the Commission lacks independent jurisdiction to determine other issues retained by the court, including the issue of Complainants' standing. Whether Complainants have standing to bring the complaint should be addressed by the Superior Court, the court with jurisdiction to decide the issue. Before the Commission and the parties expend further resources in this matter, it is appropriate for the court to decide the standing issue.
- 27 We uphold Conclusions of Law No. 3, 5 and 6 in Order No. 05 concerning the issue of the nature of Commission authority in a primary jurisdiction referral. Because we find the Superior Court, not this Commission, must decide the issue of standing, we also find that Order No. 05 did not err in failing to resolve the issue of Complainants' standing.
- 28 **B. T-Netix's Motion to Stay Proceedings.** T-Netix joins with its petition for interlocutory review a motion to stay further proceedings in this docket. T-Netix asserts that the Commission may suspend the procedural schedule for good cause under WAC 480-07-385. *T-Netix Petition*, ¶ 41. T-Netix asserts that an order staying further proceedings is warranted as discovery is burdensome and may lead to disclosure of "highly-sensitive commercial and security information." *Id.*, ¶ 42. T-Netix asserts that the disclosure and dissemination of confidential information "carries risks," even though the Commission has entered a protective order in the proceeding. *Id.* T-Netix asserts that there is no deadline for resolving matters in this proceeding, and that no party will be prejudiced by holding discovery in abeyance while the Commission considers the petition. *Id.* T-Netix asserts that "there is no good reason ... to continue to engage in burdensome, expensive and potentially risky discovery" while the Commission considers the petition. *Id.*

29 Complainants oppose the request to stay all proceedings pending review of
T-Netix's petition, asserting that a stay would shut down pending discovery and
prejudice Complainants. *Complainants' Response*, ¶ 52.

30 **Discussion and Decision.** T-Netix fashioned its request for a stay of the
proceeding as a motion joined with its petition for interlocutory review. We
interpret T-Netix's pleading as a petition for interlocutory review of the decision
in paragraphs 45 and 78 of Order No. 05 denying T-Netix's Motion to Stay
Discovery. We grant T-Netix's petition for interlocutory review on the issue of
the stay of discovery and stay further proceedings in this docket until the King
County Superior Court resolves the standing issue.

31 We agree with T-Netix and AT&T that it would be burdensome, expensive, and a
waste of the parties' and Commission's resources to continue with discovery and
other procedural deadlines in this docket until the issue of standing is resolved.
The July 29, 2005, revised procedural schedule is stayed pending the King
County Superior Court's decision on Complainants' standing.

32 No party will be prejudiced by staying these proceedings until the court decides
the standing issue. It appears the standing issue may be decided relatively soon
and there is no pressing need to continue with the procedural schedule in this
docket. This matter was pending for over four years before it was referred to the
Commission.

FINDINGS OF FACT

33 (1) Complainants Sandra Judd and Tara Herivel received inmate-initiated
collect calls and allege in a complaint filed in King County Superior Court
that they did not receive the rate disclosures for those calls required by the
Commission's rules.

34 (2) T-Netix, Inc., and AT&T of the Pacific Northwest, Inc., are classified as
competitive telecommunications companies under RCW 80.36.310-330.

- 35 (3) King County Superior Court Judge Learned ordered several issues of fact and law to be considered by the Washington Utilities and Transportation Commission through a primary jurisdiction referral.
- 36 (4) Order No. 05 entered in this proceeding on July 18, 2005, denied T-Netix's motions for summary determination and to stay discovery.
- 37 (5) On July 27, 2005, T-Netix filed with the King County Superior Court a Motion to Lift Stay and Motion for Summary Judgment on the issue of Complainants' standing. Judge Ramsdell entered an Order Lifting Stay on August 16, 2005, and will hear argument on the Motion for Summary Determination on August 26, 2005.
- 38 (6) On July 28, 2005, T-Netix filed with the Commission a Petition for Administrative Review and Motion to Stay Further Proceedings.
- 39 (7) On July 29, 2005, the Commission issued a notice of revised procedural schedule in the proceeding.
- 40 (8) On August 15, 2005, Complainants filed with the Commission a response to T-Netix's petition and motion.

CONCLUSIONS OF LAW

- 41 (1) The Commission retains discretion whether to allow interlocutory review of its decisions. *See WAC 480-07-810(2)*.
- 42 (2) Interlocutory review is appropriate under WAC 480-07-810(2)(c) to determine the extent of the Commission's jurisdiction under a primary jurisdiction referral, an issue of first impression before the Commission. Granting interlocutory review to reconsider the issue of a stay of discovery may also save the parties and the Commission substantial effort and expense.
- 43 (3) Where a court refers specific issues to an administrative agency under the doctrine of primary jurisdiction, the court will stay the proceedings before

it and refer the issue to the agency, while retaining jurisdiction over the dispute itself and all other issues in dispute. See 2 R. Pierce, *Administrative Law Treatise*, § 14.1.

- 44 (4) A primary jurisdiction referral does not invoke an agency's independent jurisdiction: The agency's jurisdiction is derivative of that of the court in which the matter is pending. *United Contractors Ass'n*, 483 F.2d 384, 401.
- 45 (6) The Commission lacks independent jurisdiction to determine whether the Complainants' have standing to bring their complaint: The King County Superior Court has jurisdiction and should decide that issue.
- 46 (7) Order No. 05 correctly states the law governing agency jurisdiction and authority in a primary jurisdiction referral.
- 47 (8) Order No. 05 did not err in failing to resolve the issues of Complainant's standing.
- 48 (9) Given the Complainants' claim has been pending for more than four years and the King County Superior Court has scheduled argument on the issue of Complainants' standing, no party will be prejudiced if the proceedings in this docket are stayed pending the court's decision on standing.

ORDER

THE COMMISSION ORDERS:

- 49 (1) T-Netix, Inc.'s, Petition for Interlocutory Review of Order No. 05 is accepted.
- 50 (2) T-Netix, Inc.'s Petition for Interlocutory Review of Conclusions of Law No. 2, 3, 5, and 6 of Order No. 05 is denied.

- 51 (3) T-Netix, Inc.'s, petition for interlocutory review of the decision in paragraphs 45 and 78 of Order No. 05, denying T-Netix, Inc.'s Motion for Stay, is granted. The procedural schedule in this docket is stayed pending the King County Superior Court decision on T-Netix, Inc.'s Motion for Summary Judgment.

Dated at Olympia, Washington, and effective this 18th day of August, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

Exhibit E

136 Wash.App. 1022

NOTE: UNPUBLISHED OPINION, SEE RCWA 2.06.040

Court of Appeals of Washington,
Division 1.

Sandy JUDD and Tara Herivel, for themselves, and on behalf of all similarly situated persons, Appellants,
and

Zuraya Wright, Plaintiff,
v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY and T-Netix, Inc., Respondents,
and

GTE Northwest Inc.; Centurytel Telephone Utilities, Inc.; Northwest Telecommunications,
Inc., d/b/a PTI Communications, Inc.; U.S. West Communications, Inc., Defendants.

No. 57015-3-I. Dec. 18, 2006.

Opinion

UNPUBLISHED OPINION

AGID, J.

*1 Appellants Sandy Judd and Tara Herivel sued American Telephone and Telegraph Company (AT & T) and T-Netix claiming they received inmate-initiated collect phone calls from Washington prisons that lacked the audible rate disclosures required by the Washington Utilities and Transportation Commission (WUTC) in violation of the Washington Consumer Protection Act (CPA), chapter 19.86 RCW. The trial court granted the phone companies' summary judgment motion, finding that Judd and Herivel lacked standing because they could not show injury attributable to either phone company. We hold that appellants presented evidence raising material issues of fact that could not be resolved on summary judgment and reverse and remand to the trial court.

FACTS

Between August 1, 1996, and August 1, 2000, appellants Sandy Judd and Tara Herivel both received telephone calls from former inmates at four Washington State prisons. Neither Judd nor Herivel heard rate information before choosing to accept these inmate-initiated collect calls. When they received these calls, respondent AT & T had a contract with the Washington Department of Corrections (DOC) to provide telephone service to state prisons. AT & T subcontracted with other companies, including respondent T-Netix, to provide certain services in connection with these calls.

I. Regulatory Framework

After the break-up of the Bell System in the 1980s, the Legislature enacted statutes to protect consumers of collect telephone calls. RCW 80.36.520 directs the WUTC to make rules that:

require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

A violation of these WUTC disclosure rules is a violation of the CPA, resulting in presumed damages equal to the cost of the service provided plus two hundred dollars.¹

1 RCW 80.36.530.

In 1991, the WUTC required all alternate operator service companies (AOSCs) to disclose their rates for collect calls.² Local exchange companies (LECs), which provide only local and intraLATA³ long distance (local long distance) service but not interLATA or out-of-state long distance, were excluded from the definition of an AOSC.⁴ In 1999, the WUTC changed the rules to require all operator service providers (OSPs)⁵ to verbally disclose the rates for inmate-initiated collect calls.⁶ Although the new rules applied to LECs as well, the WUTC granted time-limited waivers exempting many LECs from the disclosure requirement. Consequently, from 1996 to 2000, the relevant time period in this case, most calls for which LECs served as OSPs were exempt from the WUTC disclosure requirements.

2 Former WAC 480-120-141(5)(a)(iv) (1991).

3 LATA stands for local access and transport area. IntraLATA calls are long distance calls within one LATA. InterLATA calls are long distance calls between LATAs. WAC 480-120-021 (2006).

4 Former WAC 480-120-021 (1991).

5 The term OSP replaced AOSC. Former WAC 480-120-021 (1999).

6 Former WAC 480-120-141(2)(b) (1999).

II. Procedural History

In 2000, appellants filed this lawsuit as a putative class action in King County Superior Court against five telephone companies, alleging that the failure to disclose rates on inmate-initiated collect calls violated the CPA. The trial court dismissed three of those companies (Qwest, Verizon, and CenturyTel) because they were LECs exempt from the disclosure requirements. This court and the Washington Supreme Court affirmed.⁷

7 *Judd v. Am. Tel. & Tel. Co.*, 116 Wn.App. 761, 66 P.3d 1102 (2003), *aff'd*, 152 Wn.2d 195, 95 P.3d 337 (2004).

*2 AT & T and T-Netix also moved to dismiss, but the trial court denied their motions and referred two questions to the WUTC for determination under the doctrine of primary jurisdiction: (1) whether AT & T and T-Netix were OSPs, and (2) whether they had violated WUTC regulations requiring OSPs to disclose rates for collect calls. The court stayed further proceedings pending determination by the agency and retained jurisdiction over matters outside of the referral.

Respondents moved for summary determination in the WUTC, arguing that appellants lacked standing. The Administrative Law Judge (ALJ) denied the motions. She determined that there were issues of fact precluding summary determination and ruled that she lacked jurisdiction to decide the standing issue because it was beyond the superior court's narrow referral. AT & T and T-Netix filed an interlocutory appeal in the WUTC and moved for summary judgment in the superior court, asking the court to lift the stay. The WUTC affirmed the ALJ on the jurisdiction ground.

The superior court granted T-Netix's summary judgment motion. It later clarified that its ruling applied to AT & T as well and rescinded its primary jurisdiction referral to the WUTC. Judd and Herivel appeal, seeking remand to the superior court with directions to remand the case to the WUTC to determine whether respondents were OSPs and whether they violated the WUTC's regulations.

DISCUSSION

We review a summary judgment order de novo, making the same inquiry as the trial court and considering all facts and reasonable inferences from those facts in the light most favorable to the nonmoving party.⁸ Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.⁹

⁸ *Suquamish Indian Tribe v. Kitsap County*, 92 Wn.App. 816, 827, 965 P.2d 636 (1998) (citing *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994)).

⁹ CR 56(c); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261, 138 P.3d 943 (2006).

To survive summary judgment, appellants must present sufficient evidence of injury to raise material issues of fact about standing.¹⁰ To show injury, they must show that they received an inmate-initiated call without an audible pre-connect rate disclosure in violation of former WAC 480-120-141 and that either AT & T or T-Netix is liable for the violation.¹¹ Appellants argue they can do this in two ways: (1) by presenting sufficient evidence that they received a call in violation of the WUTC disclosure rule for which AT & T or T-Netix was the OSP or (2) by showing that AT & T or T-Netix could be liable for contracting with non-disclosing OSPs, even if they were not OSPs themselves.

¹⁰ *Suquamish Indian Tribe*, 92 Wn.App. at 832 (reversing summary judgment because plaintiffs demonstrated an issue of material fact about whether they would be injured by defendants proposed actions).

¹¹ RCW 80.36.530; *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785, 719 P.2d 531 (1986).

I. Call in Violation of WUTC Disclosure Rule for Which AT & T or T-Netix was the OSP

We hold that Judd and Herivel have presented one disputed issue of material fact and one mixed question of fact and law which survive summary judgment. The factual issue is whether Herivel received an interLATA phone call without rate disclosure in violation of WUTC rules for which either AT & T or T-Netix was the OSP. The mixed question is whether T-Netix or AT & T is liable under the CPA for functioning as an OSP for any of the phone calls Herivel and Judd received. These issues can be resolved on summary judgment only if “reasonable minds can reach but one conclusion on them.”¹²

¹² *Allen v. State*, 118 Wn.2d 753, 760, 826 P.2d 200 (1992).

A. InterLATA Call

*3 Herivel, a Seattle attorney, claims she received an interLATA phone call from Don Miniken while he was incarcerated at Airway Heights Correction Center, sometime between August 26, 1997 and January 1999. Neither side disputes that a phone call from the Spokane area to Seattle is an interLATA phone call and thus was not exempt from the WUTC disclosure requirements. Because the LECs did not carry interLATA calls, either AT & T or T-Netix must have been the OSP. The only issue on summary judgment is whether Herivel presented sufficient evidence that the call occurred. Respondents assert her only evidence is an allegation in the pleadings that is insufficient as a matter of law.

T-Netix relies on *Retail Store Employees Local 631 v. Totem Sales, Inc.*, in which we affirmed summary judgment where the plaintiff admitted that there were “ ‘no facts before the court except the allegations in the pleadings, and the contract between the parties.’ ”¹³ 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, 1997,¹⁴ 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.

13 20 Wn.App. 278, 281, 579 P.2d 1019 (1978).

14 See *Miniken v. Walter*, 978 F.Supp. 1356 (E.D.Wash.1997).

AT & T relies on *Allen v. Washington* for its holding that “factual questions may be decided as a matter of summary judgment if reasonable minds can reach but one conclusion on them.”¹⁵ Respondents argue that because Herivel has been unable to produce a record of the phone call from Miniken, the court should not believe her testimony. In her declaration, Nancy Lee, T-Netix's Director of Billing Services, states that she could not find a record of any call from Airway Heights to Herivel between June 1, 1998 and December 31, 1998. But this evidence falls short of proving the call did not take place both because the search does not cover the entire relevant time period and, even if it did, it presumes T-Netix's recordkeeping is infallible.

15 118 Wn.2d 753, 760, 826 P.2d 200 (1992).

This is a classic factual dispute, with each side producing some evidence to support its position. We cannot weigh evidence or testimonial credibility.¹⁶ And we must view the evidence presented in the light most favorable to appellants as the nonmoving party.¹⁷ Because respondents' evidence leaves 10 months unaccounted for and Herivel's affidavits contain more than mere allegations, we hold that reasonable minds could differ about whether the call happened. Herivel has presented a disputed issue of material fact which cannot be resolved on summary judgment.

16 *No Ka Oi Corp. v. Nat'l 60 Minute Time, Inc.*, 71 Wn.App. 844, 854 n.11, 863 P.2d 79 (1993), *review denied*, 124 Wn.2d 1002 (1994).

17 *Suquamish Indian Tribe*, 92 Wn.App. at 827.

B. OSP Status

Both AT & T and T-Netix assert that they were not the OSPs for any of the calls Judd and Herivel received. Both argue that LECs were the OSPs for the intraLATA calls, and each claims the other would have been the OSP for the one alleged interLATA call. In response, appellants contend that their expert's testimony raises issues of material fact about whether respondents functioned as OSPs.

*4 Both parties' arguments are highly technical and fact-based and thus not properly resolved on summary judgment. The original trial court judge, acknowledging these factual issues required expertise to resolve, referred them to the WUTC under the primary jurisdiction doctrine.¹⁸ Significantly, the ALJ denied summary determination because she found:

18 See *Vogt v. Seattle-First Nat'l Bank*, 117 Wn.2d 541, 554, 817 P.2d 1364 (1991) (explaining that agencies should be allowed to make initial determinations under the primary jurisdiction doctrine when an issue is highly technical, requiring expertise to resolve).

Complainant's affidavits and pleadings raise questions as to the role of T-Netix and AT & T in connecting the calls between the correctional institutions and the Complainants. The parties' dueling and numerous affidavits identify several issues of fact concerning AT & T and T-Netix's network and their involvement in the calls in question.

The summary determination motion before the WUTC and the later summary judgment motion before the superior court both suffer from the same circular reasoning. Each appears to have been brought essentially to avoid discovery on the issue of whether T-Netix and AT & T are OSPs. But, for summary judgment to be appropriate, a court must decide, without the benefit of that discovery, that AT & T and T-Netix were not OSPs as a matter of law.

The superior court was troubled by this and mentioned its concern at the hearing on the summary judgment motion:

I guess part of my being perplexed is, I have got a person who purportedly has expertise in this rather esoteric area [the ALJ], who tells me that with regard to this particular motion that is now pending before me she sees material issues of fact.

....

... [S]houldn't I defer to the expertise of this individual to say, well, if you think there are material issues of fact, and God knows you understand this esoterica far better than I do, I'm sure, shouldn't I defer t that?

The superior court's order granting summary judgment does not disclose why it chose not to be persuaded by the expertise of the ALJ. But it must have determined that reasonable minds could only conclude that AT & T and T-Netix were not the OSPs for any of the calls appellants received, despite appellants' expert's declaration to the contrary. But both this court and the trial court must consider all facts and reasonable inferences from those facts in the light most favorable to the nonmoving party.¹⁹ The trial court erred in granting summary judgment because to do so it had to ignore both appellant's expert's testimony that AT & T and T-Netix could have been the OSPs for the calls in question and the ALJ's determination that this issue could not be decided as a matter of law.

¹⁹ *Suquamish Indian Tribe*, 92 Wn.App. at 827.

II. "Contracting with" Liability Under RCW 80.36.520

Appellants assert that they can establish standing under RCW 80.36.520 for violations of the CPA not only against OSPs who violate the WUTC regulations but also against parties who contract with OSPs that violate the rules. They base this argument on the mandatory language of RCW 80.36.520 requiring the WUTC to promulgate rules that "require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company [OSP], assure appropriate disclosure."

*5 AT & T and T-Netix, relying on the Supreme Court's holding in *Judd I*,²⁰ argue that because the regulation, former WAC 480-120-141, does not include a "contracting with" clause, we cannot imply one. In *Judd I*, the court held that "in order for there to be a failure to disclose that is actionable under the CPA, the failure must violate the rules adopted by the WUTC."

²¹ It went on to explain that challenges to an agency's regulation must be brought under the Administrative Procedure Act, chapter 34.05 RCW, by making the agency a party to the proceeding.²² Because this appeal is not the proper proceeding for appellants to challenge the validity of the agency's decision to exclude "contracting with" liability from the regulations, we decline to address the issue.

²⁰ For clarity, we refer to *Judd*, 152 Wn.2d 195 as *Judd I*.

²¹ 152 Wn.2d at 204 (quoting *Judd*, 116 Wn.App. at 770).

²² *Id.* at 205.

We reverse and remand this case to the superior court with directions to reinstate the primary jurisdiction referral to the WUTC to determine the issues originally before it: (1) whether AT & T or T-Netix were OSPs and (2) whether they violated the WUTC disclosure regulations.

WE CONCUR: Agid, J., Baker, J., and Coleman, J.

Parallel Citations

2006 WL 3720425 (Wash.App. Div. 1)

Exhibit F

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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

**RESPONSES TO
T-NETIX, INC.'S SECOND SET OF
DATA REQUESTS TO TARA
HERIVEL**

I. GENERAL OBJECTIONS

The complainants object to these Requests to the extent that they call for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or because the requests call for the mental impressions, legal theories, or litigation strategy of counsel. Complaints further object to providing information or documents that have already been provided to respondents in response to previous discovery requests.

All answers below were prepared by Chris Youtz, counsel for the complainants, using information provided by discovery obtained to date and information provided by the complainants.

1 **T-NETIX DATA REQUEST NO. 5:**

2 For each prison, jail or other correctional facility in Washington State
3 identified in response to Data Request No. 5 (above), state whether you or
4 Complainant Judd received a call from such prison, jail or other correctional
5 facility and, if so, how many calls you and Complainant Herivel received from
6 each such prison, jail or other correctional facility in Washington State during the
7 time period applicable to the Amended Complaint.
8

9 RESPONSE: Ms. Herivel began receiving long-distance collect telephone
10 calls from Paul Wright in the autumn of 1997, and continued to receive and pay
11 for telephone calls from Mr. Wright about once a week. She also received calls
12 from other Washington prisoners during 1997-200 in connection with other articles
13 that she wrote. Ms. Herivel remembers receiving calls from the Washington State
14 Reformatory and Airway Heights correctional facilities. She cannot remember
15 how many calls she received from each prison. She may have received calls from
16 other facilities. Ms. Judd received numerous telephone calls from Paul Wright,
17 who she was once married to, from 1992 through 2000. She remembers receiving
18 calls from Monroe Correctional Complex, Clallam Bay, and McNeil Island
19 Corrections Center. She may have received calls from other facilities. She cannot
20 remember how many calls she received from each prison.
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BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL,)
)
 Complainants,)
)
 vs.) Case No.
) UT-042022
)
 AT&T COMMUNICATIONS OF THE PACIFIC)
 NORTHWEST, INC., and T-NETIX, INC.,)
)
 Respondents.)

DEPOSITION OF
TARA HERIVEL

Taken in behalf of the Respondents

* * *

June 3, 2009

1331 NW Lovejoy, Suite 900

Portland, Oregon

Ashley L. Johnson
Court Reporter

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APPEARANCES:

For the Complainants:	MR. RICHARD E. SPOONEMORE Attorney at Law 1100 Millennium Tower 719 Second Avenue Seattle, Washington 98104
For the Respondent, T-Netix:	MR. JOSEPH S. FERRETTI Attorney at Law 505 9th Street NW Suite 1000 Washington, DC 20004
	MR. ARTHUR A. BUTLER Attorney at Law 601 Union Street Suite 1501 Seattle, Washington 98101
For the Respondent, AT&T:	MR. DAVID C. SCOTT Attorney at Law 6600 Sears Tower Chicago, Illinois 60606
Also Present:	(None)

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Mr. Scott	71 - 114
Mr. Ferretti	115 - 116

EXHIBITS

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---------------------------------	----

1 in --

2 A. What do you mean?

3 Q. -- that article published? Well, what you
4 had to do.

5 A. I wrote the article, I sent it to the
6 publisher.

7 Q. What was the time frame on that?

8 A. It was probably within a couple -- a few
9 months. I pitched the piece, they liked it, I wrote
10 it, they published it. It was a fairly short period
11 of time.

12 Q. Did you ever receive any calls from Clallam
13 Bay?

14 (A discussion was held off the record.)

15 MR. SCOTT: Clallam Bay, C-L-A-L-L-A-M Bay.

16 THE WITNESS: Yes.

17 Q. (By Mr. Scott) You did. When?

18 A. I don't remember.

19 Q. Who did you receive them from?

20 A. I had multiple contacts there.

21 Q. Can you list them for me?

22 A. I don't think I can tell you all of them.

23 Q. As many as you remember.

24 A. Paul Wright was at Clallam Bay for a period
25 of time.

1 you remembered exactly what it said?

2 A. I remembered better. If you want an exact
3 quote, I'd like to refer to my declaration. Otherwise
4 it's just generally like I told --

5 Q. You said -- I think you were asked if you
6 received calls from Washington institutions other than
7 these DOC facilities. Do you remember that?

8 A. Yes.

9 Q. And you said -- I think you said not many, if
10 any, and it was unlikely.

11 A. Right.

12 Q. Why was it unlikely?

13 A. Because I just don't remember getting calls
14 from jails or certainly any -- or any detention
15 facilities. The calls I recall came from State
16 prisons.

17 Q. You've testified, still focusing on that '96
18 to 2000 time period, that you received calls from
19 McNeil and Monroe, Airway Heights from Miniken, right?

20 A. Uh-huh.

21 Q. You said Clallam Bay. Are you sure you
22 received calls from Clallam Bay --

23 A. I think I answered that.

24 Q. -- from '96 to 2000?

25 A. I think I answered that.

1 Q. Was it a -- it was a yes? I'm not sure on
2 the time period. That's all I want to know.

3 A. I said that I believe I probably did, but I
4 can't recall specifics.

5 Q. Besides those prisons, any other Washington
6 DOC facilities that you --

7 A. I probably did receive calls from other
8 facilities, but I can't recall any other specifics.

9 Q. Is that because there were just so many of
10 them?

11 A. I just can't recall.

12 Q. Why did you -- what about the -- so you got
13 phone calls from prisoners in '96 to 2000 and you
14 remember what the recording said, but you don't
15 remember anything else about the phone calls; is that
16 right?

17 A. I don't understand your question.

18 Q. Well, you testified that you received calls
19 from people, you don't know who they were, you don't
20 know where they were from, other than those Paul
21 Wright calls and Miniken call, but you seem like you
22 have a pretty clear memory of the recordings that were
23 played. I'm just wondering why that is.

24 A. I can't answer that.

25 Q. You don't know why?

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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

**RESPONSES TO
T-NETIX, INC.'S SECOND SET OF
DATA REQUESTS TO SANDRA
JUDD**

I. GENERAL OBJECTIONS

The complainants object to these Requests to the extent that they call for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or because the requests call for the mental impressions, legal theories, or litigation strategy of counsel. Complaints further object to providing information or documents that have already been provided to respondents in response to previous discovery requests.

All answers below were prepared by Chris Youtz, counsel for the complainants, using information provided by discovery obtained to date and information provided by the complainants.

1 **T-NETIX DATA REQUEST NO. 5:**

2 For each prison, jail or other correctional facility in Washington State
3 identified in response to Data Request No. 5 (above), state whether you or
4 Complainant Herivel received a call from such prison, jail or other correctional
5 facility and, if so, how many calls you and Complainant Herivel received from
6 each such prison, jail or other correctional facility in Washington State during the
7 time period applicable to the Amended Complaint.
8

9 RESPONSE: Ms. Herivel began receiving long-distance collect telephone
10 calls from Paul Wright in the autumn of 1997, and continued to receive and pay
11 for telephone calls from Mr. Wright about once a week. She also received calls
12 from other Washington prisoners during 1997-200 in connection with other articles
13 that she wrote. Ms. Herivel remembers receiving calls from the Washington State
14 Reformatory and Airway Heights correctional facilities. She cannot remember
15 how many calls she received from each prison. She may have received calls from
16 other facilities. Ms. Judd received numerous telephone calls from Paul Wright,
17 who she was once married to, from 1992 through 2000. She remembers receiving
18 calls from Monroe Correctional Complex, Clallam Bay, and McNeil Island
19 Corrections Center. She may have received calls from other facilities. She cannot
20 remember how many calls she received from each prison.
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Exhibit G

**WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSES TO SECOND DATA REQUESTS**

Docket No.: UT-042022
Response Date: November 17, 2008
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Joseph Ferretti

Complainants' Amended Second Data Request No. 1: Please identify each T-NETIX INSTITUTION and with regard to each, identify when T-NETIX began providing equipment or services at the T-NETIX INSTITUTION, whether T-NETIX continues to provide equipment or services to the T-NETIX INSTITUTION, and if it no longer provides equipment or services, when T-NETIX stopped providing equipment or services at the T-NETIX INSTITUTION.

T-Netix's Response to Amended Second Data Request No. 1:

T-Netix objects to this Request on the ground that the term "T-NETIX INSTITUTION" improperly refers to all Washington Department of Corrections facilities rather than the three institutions identified by Complainants as originating the inmate collect calls at issue in this proceeding. Therefore, the Request is overly broad, unduly burdensome and expensive, oppressive, and not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, T-Netix responds that it has never provided equipment or services "to" any T-NETIX INSTITUTION. T-Netix provided equipment and/or services to AT&T at the following institutions during the following time frames: McNeil Island Corrections, March 27, 1995 through May 10, 2007; Airway Heights Correctional Center, November 8, 1994 through September 11, 2002; Monroe Correctional Complex, September 28, 1995 through November 12, 2006.

T-Netix's First Supplemental Response to Amended Second Data Request No. 1:

Complainants have now identified a fourth institution as originating the inmate collect calls at issue in this proceeding. As a result, T-Netix withdraws its objection to this Request as to that institution.

Subject to and without waiving any objection stated herein, T-Netix states that it provided equipment and/or services to AT&T at Clallam Bay Corrections Center from March 21, 1996 through September 19, 2006.

Exhibit H

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BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL, *
*
Plaintiffs, *
*
VS. * DOCKET NO.
* UT-042022
AT&T COMMUNICATIONS OF THE *
PACIFIC NORTHWEST, INC., and *
T-NETIX, INC., *
*
Defendants. *

ORAL DEPOSITION OF
ALICE J. CLEMENTS
APRIL 23, 2009

ANSWERS AND DEPOSITION of ALICE J. CLEMENTS, a
witness produced on behalf of the Plaintiffs, taken in
the above styled and numbered cause on the 23rd day of
April, 2009, from 9:01 a.m. to 5:55 p.m., before Rachel
D. Chavez, a Certified Shorthand Reporter in and for the
State of Texas, taken in the offices of Bennett Weston &
Lajone, P.C., 1750 Valley View Lane, Suite 120, in the
City of Dallas, County of Dallas, State of Texas, in
accordance with the Washington Utilities and
Transportation Commission.

1 Q. (BY MR. PETERS) Have you had a chance to
2 review Exhibit 47?

3 A. Yes, to the best of my ability.

4 Q. Okay. And it appears to be an e-mail that you
5 sent to Brenda Champion, Laurie Fox, Lisa Hunter, Marcus
6 McCleery, Tony Naumann. Do you see that?

7 A. Yes, it was a forward. Right.

8 Q. And who -- who -- who was that collection of
9 people that you sent this to? Were those people who
10 reported to you?

11 A. I would -- I would guess -- I mean, I think
12 that at this time if I was e-mailing those five people,
13 I was -- these are people that were regional managers in
14 the Bell Atlantic south area, so I was probably the ASD
15 of this Bell Atlantic south area.

16 Q. ASD --

17 A. Area service director.

18 Q. And who would -- what positions would these
19 people have?

20 A. They would be the -- like regional managers.

21 Q. Okay. Who is Rhonda Brinkoeter?

22 A. She did the implementation scheduling, kind of
23 the, you know, logistics kind of person, I think.

24 Q. There's an attachment to your e-mail that
25 you're sending onto everybody, and I realize that

1 because of the way it's been produced, it's chopped up,
2 but can you tell us at all from looking through it what
3 this is?

4 A. Well, it -- it -- it looks to be a schedule of
5 some type. And it looks like the sites are listed with
6 dates.

7 Q. The -- if it helps you, the e-mail -- well,
8 your e-mail says, "We owe Rhonda a lot of updates to the
9 premise and Host 52 schedules." Does that help you
10 identify what's attached?

11 A. Well, that's what I wrote there, yes. So this
12 must be the premise and Host 52 schedules. I don't
13 recall this at all.

14 Q. All right. Let's then, if we could, just --
15 maybe I could -- if you could turn to the page that has
16 production number 35363 on it.

17 A. Okay.

18 Q. There's -- appear to be some column headings on
19 this page. Do you see those? "State, LEC, ILC, IXC."

20 A. Okay.

21 Q. What do you understand the column headed "LEC"
22 to be referring to?

23 A. The local exchange carriers is what I would
24 expect that to be.

25 Q. Okay. And would the -- the carrier who's

1 identified next to each facility under "facility name"
2 be the carrier for that particular facility?

3 A. Probably.

4 Q. Any reason to doubt that?

5 A. Unless the information is wrong.

6 Q. Okay. And then "ILC," what's that column stand
7 for?

8 A. I would guess I -- I would guess it's the
9 intraLATA carrier, but I would never -- that wouldn't be
10 any term I would ever use.

11 Q. All right. What about "IXC," does that stand
12 for interexchange carrier?

13 A. Yes.

14 Q. And if you'd look towards the middle of the
15 page under the "facility name" there's "WA DOC Clallam
16 Bay." Do you see that?

17 A. I'm sorry. Where are you looking?

18 Q. I'm looking at the middle -- it's roughly the
19 middle of the page. The -- there's -- see, there's
20 groupings by facility name?

21 A. Oh, yes, I found it.

22 Q. Okay. The fourth grouping, the second name,
23 the facility is Clallam Bay.

24 A. Yes.

25 Q. It lists the LE- -- the local exchange carrier

1 as TNX. Do you have any understanding as to what that's
2 referring to?

3 A. That would more than likely be returning to
4 T-Netix.

5 Q. Okay. What do you understand that to mean?

6 A. That would mean that -- that we billed the
7 local traffic.

8 Q. That you served as the local exchange carrier?

9 A. I don't know what that means.

10 Q. Okay. Because it's a -- because the
11 terminology, "local" --

12 A. Yeah.

13 Q. -- "exchange carrier," may have some regul- --
14 specific regulatory?

15 A. Yeah. I don't...

16 Q. Do you know what change update was necessary
17 here?

18 MR. YOUTZ: Objection, form.

19 MR. PETERS: Yeah, that was -- let me
20 rephrase that because it was bad.

21 Q. (BY MR. PETERS) Do you know what change was
22 being implemented?

23 A. At this specific site? I'm sorry. I don't
24 know --

25 Q. I'll start with the specific site.

Exhibit I

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BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL, *
*
Plaintiffs, *
*
VS. *
*
AT&T COMMUNICATIONS OF THE *
PACIFIC NORTHWEST, INC., and *
T-NETIX, INC., *
*
Defendants. *

DOCKET NO.
UT-042022

ORAL DEPOSITION OF
FRANCES MARY GUTIERREZ
APRIL 22, 2009

ANSWERS AND DEPOSITION of FRANCES MARY GUTIERREZ,
a witness produced on behalf of the Plaintiffs, taken in
the above styled and numbered cause on the 22nd day of
April, 2009, from 9:04 a.m. to 12:28 p.m., before Rachel
D. Chavez, a Certified Shorthand Reporter in and for the
State of Texas, taken in the offices of Bennett Weston &
Lajone, P.C., 1750 Valley View Lane, Suite 120, in the
City of Dallas, County of Dallas, State of Texas, in
accordance with the Washington Utilities and
Transportation Commission.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

Mr. Chris R. Youtz
SIRIANNI YOUTZ MEIER & SPOONEMORE
1100 Millennium Tower
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FOR THE DEFENDANT AT&T COMMUNICATIONS OF THE
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Mr. Charles H.R. Peters
SCHIFF HARDIN
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Chicago, Illinois 60606
(312) 258-5683

FOR THE DEFENDANT T-NETIX, INC.:

Mr. Joseph S. Ferretti
DUANE MORRIS, LLP
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Suite 1000
Washington, D.C. 20004-2166
(202) 776-7863

1 for the LEC?

2 A. Right. One could have been on-premise and one
3 could have been immediately outside the facility.

4 Q. Okay. For purposes of the Washington State
5 contract, did you understand that AT&T chose to use the
6 T-Netix platform for the calls that it would receive
7 from the prisons?

8 A. Yes.

9 Q. Okay. And do you know whether or not AT&T,
10 prior to the agreements being settled with the
11 Department of Corrections, requested the LECs to use the
12 T-Netix platform as well?

13 A. No, I don't know that.

14 Q. Now, is it your understanding that under the
15 contract between AT&T and the State of Washington, that
16 there were three -- initially three LECs involved, and
17 they were GTE, PTI, and U.S. West?

18 A. Yes.

19 Q. Okay. And that at some point PTI was replaced
20 as a LEC by T-Netix?

21 A. Yes.

22 Q. Did that -- did you have any involvement with
23 the particular contract that changed PTI as a
24 subcontractor to T-Netix?

25 A. I was aware of it, but I did not -- I was not

1 involved with that contract.

2 Q. So you didn't review any of the drafts of that
3 proposed amendment?

4 A. No, I didn't. I saw it after the fact.

5 Q. Okay. With respect to Clallam Bay where
6 T-Netix replaced PTI, who handled the intraLATA calls?

7 A. T-Netix.

8 Q. And they also handled the local call -- I'm
9 sorry, T-Netix also handled the local calls?

10 A. Yes.

11 Q. Did T-Netix handle interLATA calls? Intra,
12 i-n-t-r-a, LATA calls.

13 A. IntraLATA and local.

14 Q. Okay. And then AT&T --

15 MR. PETERS: I'm sorry to interrupt you,
16 you're talking about the period of time after T-Netix
17 replaced PTI?

18 MR. YOUTZ: That's -- that's correct. If
19 that --

20 A. Yes.

21 Q. (BY MR. YOUTZ) I hope that was clear. Okay.

22 And then AT&T handled the interLATA calls;
23 is that correct?

24 A. Yes.

25 Q. Okay. If you would, please, take a look at --

Exhibit J

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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' AMENDED
SECOND DATA REQUESTS TO
AT&T

TO: AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.

Pursuant to WAC 480-07-400, Complainants request that YOU provide responses to the following data requests to the undersigned by October 29, 2008, as required by the Order Establishing Discovery and Briefing Schedules (WUTC Order 09).

DEFINITIONS

As used herein, the following terms have the meaning set forth below:

1. The term "T-Netix" shall include T-Netix, Inc., T-Netix Telecommunications Services, Inc. and its attorneys, employees, servants, agents and representatives, and any person acting on its behalf for any purpose, as well as any subsidiaries or corporate predecessors to T-Netix or T-Netix Telecommunications Services, Inc., including without limitation Gateway Technologies, Inc. and Tele-Matic Corporation.

1 2. The terms "AT&T," "you," and "your" shall include AT&T Corp. and
2 AT&T Communications of the Pacific Northwest, Inc., or any other "AT&T" entity that
3 assumed contractual responsibilities under the contract with the Washington State
4 Department of Corrections (Exhibit 7 to AT&T's Motion for Summary Determination,
5 filed on or about December 15, 2004), or any amendments thereto, along with their
6 attorneys, employees, servants, agents and representatives, and any person acting on their
7 behalf for any purpose.

8 3. The term "Exhibit" refers to exhibits attached to AT&T's Motion for
9 Summary Determination, filed on or about December 15, 2004.

10 4. The term "inmate-initiated calls" means all intrastate, long-distance
11 telephone calls initiated by Washington state inmates from June 20, 1996 to the present,
12 using "Inmate Public Telephones" as that term is defined in Exhibit 7, page 2 to AT&T's
13 Motion for Summary Determination, filed on or about December 15, 2004.

14 5. The term "institution" or "institutions" means all Washington correctional
15 institutions covered by Exhibit 7, page 2 to AT&T's Motion for Summary Determination,
16 filed on or about December 15, 2004, and any amendments thereto.

17 6. The term "T-Netix institutions" means all Washington Department of
18 Corrections correctional institutions for which T-Netix (as that term is defined above) (a)
19 was contractually responsible for providing services or equipment in connection with
20 inmate-initiated calls; or (b) actually provided some type of service or equipment.

21 7. The term "contract" or "contracts" or "subcontract" or "subcontracts"
22 means all contractual agreements governing the provision of inmate-initiated calls,
23 including contracts with entities other than AT&T.
24
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26

1 8. The term “operator services” or “operator services provider” or “alternate
2 operator services company” is to be construed identically to the definitions of those terms
3 in WAC 480-120-021 (1991), WAC 480-120-021 (1999), and WAC 480-120-262
4 (2003).

5 9. The term “consumer” or “consumers” is to be construed identically to the
6 definition of “consumer” in WAC 480-120-021 (1991), WAC 480-120-021 (1999), and
7 WAC 480-120-262 (2003).

8 10. The term “CenturyTel” means CenturyTel of Washington, Inc., CenturyTel
9 Telephone Utilities, Inc., Northwest Telecommunications, Inc., or PTI Communications,
10 Inc.

11 11. The term “platform” means equipment used for inmate initiated calls at an
12 institution. The platform may include, but is not limited to, any or all of the following
13 components: (a) inmate phones; (b) switched access or special access trunking; (c) any
14 T-Netix equipment including, but not limited to, P-III; NS-1 or AS-1; (d) all software
15 contained in such equipment; (e) all adjunct equipment connected to such equipment; (f)
16 equipment provided by AT&T that supports T-Netix equipment (such as the 5ESS); (g)
17 any cabling, trunking or other special connection connecting pieces of the platform
18 together, and (h) any other telecommunications equipment used in providing services to an
19 institution.
20
21

22 12. The terms "document" or "documents" means any writing of any
23 description including without limitation paper, electronic, digital and other forms of
24 recording, email and other electronic documents that may reside on hard drives, servers or
25
26

1 other storage media of any description that are under the control of or within the power of
2 You to gain access.

3 13. The term "identify," when used with reference to a person, means to state
4 his or her full name, present or last known address, present or last known telephone
5 number, present or last known place of employment, position or business affiliation, his or
6 her position or business affiliation at the time in question, and a general description of the
7 business in which he or she is engaged.

8 14. The term "state the basis" for an allegation, contention, conclusion, position
9 or answer means: (a) identify and specify the sources therefore; (b) identify and specify all
10 facts on which you rely or intend to rely in support of the allegation, contention,
11 conclusion, position or answer; and (c) set forth and explain the nature and application to
12 the relevant facts of all pertinent legal theories upon which you rely for your knowledge,
13 information and/or belief that there are good grounds to support such allegation,
14 contention, conclusion, position or answer.

15 15. The term "carrier" means any provider of telecommunications services.
16

17 INSTRUCTIONS

18 A. When a word or term in a data request appears in all capital letters, the word
19 or term is to be construed pursuant to the definitions above.
20

21 B. "Each data response must state the date the response is produced, the name
22 of the person who prepared the response, and the name of any witness who is
23 knowledgeable about and can respond to questions concerning the response." WAC 480-
24 07-405(7)(c).

25 C. These data requests shall be deemed to be continuing. You are required to
26 "immediately supplement any response to a data request, record requisition, or bench

1 request upon learning that the prior response was incorrect or incomplete when made or
2 upon learning that a response, correct and complete when made, is no longer correct or
3 complete.” WAC 480-07-405(8).

4 D. If you find the “meaning or scope of a request to be unclear,” you “must
5 immediately initiate a clarification call” to complainant’s counsel. “Lack of clarity is not a
6 basis for objection to a data request unless the responding party has made a good faith
7 effort to obtain clarification.” WAC 480-07-405(5).

8 E. If you object to any part of a request, answer all parts of such requests to
9 which you do not object, and as to each part to which you do object, separately set forth
10 the specific basis for the objection.
11

12 DATA REQUESTS

13 1. Please state whether the Adjunct configuration (TNXWA 00224) was or is
14 being used in connection with INMATE-INITIATED CALLS and, if so, for which
INSTITUTIONS and during what time periods for each INSTITUTION.

15 2. If the Adjunct configuration was used in connection with INMATE-
16 INITIATED CALLS, please produce all DOCUMENTS that describe or relate to the
17 Adjunct type of configuration (*see* TNXWA 00224), including all DOCUMENTS that
18 show where the PLATFORM was located, how trunking was configured from the
19 INSTITUTION to the PLATFORM location, how trunking was configured from the
PLATFORM to the LEC or IXC switch, which AT&T 5ESS was used, where it was
located, and how trunking involving that switch was configured.

20 3. If the Adjunct configuration was used in connection with INMATE-
21 INITIATED CALLS, (a) was the trunking switched access, special access, private
line, or other and (b) were the trunks leased or owned?

22 4. Please produce all DOCUMENTS that describe or relate to the management
23 responsibilities of AT&T, T-NETIX and any other CARRIERS with regard to
24 OPERATOR SERVICES for INMATE-INITIATED CALLS. Please include all
25 DOCUMENTS identifying, describing, detailing, or relating to the entities or persons that
26 were responsible for (a) managing equipment or software, (b) installing equipment or
software, (c) upgrading equipment, (d) updating software, (e) maintaining or repairing
equipment or software, (f) developing the messages or text for use on calls, and (g)
recording messages for use on calls.

1 5. Please produce all DOCUMENTS in which AT&T uses the phrase
2 "operator service" or "operator services" or "alternate operator services" or "automated
operator" and that relate in any way to INMATE-INITIATED CALLS.

3 6. With regard to each INSTITUTION, and with regard to each call type
4 (local, intraLATA, interLATA), please identify the specific company or entity that served
5 as the OPERATOR SERVICE PROVIDER or ALTERNATIVE OPERATOR SERVICES
6 COMPANY for INMATE-INITIATED CALLS. If the entity serving as the OPERATOR
7 SERVICE PROVIDER or ALTERNATIVE OPERATOR SERVICES COMPANY has
8 changed during this time period, please indicate the beginning and ending dates for which
the particular company or entity served as the OPERATOR SERVICE PROVIDER or
ALTERNATIVE OPERATOR SERVICES COMPANY with regard to each
INSTITUTION.

9 7. If YOU "verbally advise[d]" CONSUMERS how to receive a rate quote
10 pursuant to WAC 480-120-141(2)(b) (1999) with respect to any INMATE-INITIATED
11 CALLS, whether by live operator, recorded or synthesized voice, or any other method,
12 please (a) identify when you began providing this service with respect to each
INSTITUTION, (b) describe what PLATFORM was used to provide the message and the
rate quote, and (c) identify each person currently or formerly employed by YOU who has
knowledge regarding these facts and describe that person's role.

13 8. If YOU did not "verbally advise" CONSUMERS how to receive a rate
14 quote pursuant to WAC 480-120-141(2)(b) (1999) with respect to any INMATE-
15 INITIATED CALLS, whether by live operator, recorded or synthesized voice, or any other
16 method, please (a) identify, by their corporate name, the entities that did so, if any, with
respect to each INSTITUTION, (b) the time periods that the messages/quotes were
provided by that entity, and (c) the PLATFORM used to provide the messages/quotes.

17 9. With respect to INMATE-INITIATED CALLS, did YOU disclose rates for
18 calls "immediately, upon request, and at no charge to the consumer"? If so, please (a)
19 identify when you began providing this service with respect to each INSTITUTION, (b)
20 describe what PLATFORM was used to provide the message and the rate quote, and (c)
identify each person currently or formerly employed by YOU who has knowledge
regarding these facts and describe that person's role.

21 10. If YOU did not disclose rates for a particular call "immediately, upon
22 request, and at no charge to the consumer" pursuant to WAC 480-120-141(5)(iii)(a) (1991)
23 with respect to INMATE-INITIATED CALLS, please (a) identify, by their corporate
24 name, the entities that did so, if any, with respect to each INSTITUTION, (b) the time
25 periods that the messages/quotes were provided by that entity, and (c) the PLATFORM
26 used to provide the messages/quotes.

27 11. With respect to INMATE-INITIATED CALLS, did YOU disclose rates
28 pursuant to WAC 480-120-262(3) (2003)? If so, please (a) identify when you began
29 providing this service with respect to each INSTITUTION, (b) describe what PLATFORM
30 was used to provide the message and the rate quote, and (c) identify each person currently

1 or formerly employed by YOU who has knowledge regarding these facts and describe that
2 person's role.

3 12. If YOU did not disclose rates pursuant to WAC 480-120-262(3) (2003) with
4 respect to INMATE-INITIATED CALLS, please (a) identify, by their corporate name, the
5 entities that did so, if any, with respect to each INSTITUTION, (b) the time periods that
6 the messages/quotes were provided by that entity, and (c) the PLATFORM used to provide
7 the messages/quotes.

8 13. Please produce all documents relating to any waivers from regulatory
9 requirements governing the provision of telephone calls made by inmates that AT&T has
10 sought from the WUTC or the FCC.

11 14. Please produce all CONTRACTS and SUBCONTRACTS which relate to
12 INMATE-INITIATED CALLS.

13 15. Please produce all documents that relate to the negotiation, interpretation,
14 implementation, or performance of any CONTRACTS or SUBCONTRACTS in which
15 AT&T is a party and which relate to INMATE-INITIATED CALLS.

16 16. Which entity, AT&T or T-NETIX, or both, is responsible for "platform
17 compliance" described in TNXWA 00785?

18 17. With respect to the scripts described at TNXWA 00786-87, did AT&T or T-
19 NETIX, or both, determine the final versions of the text that was actually used in
20 connection with INMATE-INITIATED CALLS from T-NETIX INSTITUTIONS?

21 18. Describe AT&T's role in creating, editing, requesting, reviewing,
22 approving, or any other actions or responsibilities it undertook with respect to the scripts
23 for providing rate quotes in connection with INMATE-INITIATED CALLS.

24 19. With respect to the scripts described at TNXWA 00786-87, or any other
25 scripts involving rate disclosure that were used in connection with INMATE-INITIATED
26 CALLS, please identify any entities that recorded the voice or created the voice synthesis
used for the scripts and provide the dates that these services were performed.

20 20. Please produce all DOCUMENTS relating to the "Project" referred to in
21 A000108-09, paragraph (b).

22 21. Did YOU provide intraLATA calling for INSTITUTIONS? If so, during
23 what time period did you provide this service and for what INSTITUTIONS?

24 22. If the "Project" referred to in A000108-09, paragraph (b), resulted in
25 changes to the T-NETIX PLATFORM at any T-NETIX INSTITUTIONS, please identify
26 those T-NETIX INSTITUTIONS and state when the "Project" was completed with respect
to each T-NETIX INSTITUTION.

1 23. Fully describe YOUR role in recording information about INMATE-
INITIATED CALLS and your role in billing for those calls.

2
3 24. Did any INMATE-INITIATED CALLS go to a TSPS controlled by YOU?
If so, describe the circumstances and dates when this occurred.

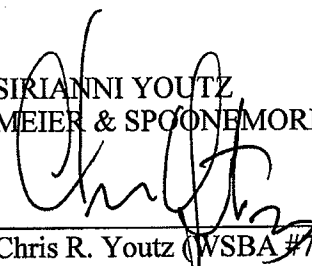
4 25. Please IDENTIFY YOUR employee or agent with the most knowledge
5 relating to rate disclosure announcements for INMATE-INITIATED CALLS.

6 26. Please IDENTIFY any former employees or agents of AT&T with
knowledge relating to rate disclosure announcements for INMATE-INITIATED CALLS.

7 27. Please IDENTIFY any employees or agents, or former employees or agents
8 of T-NETIX with knowledge relating to rate disclosure announcements for INMATE-
INITIATED CALLS.

9
10 DATED: October 15, 2008.

11
12 SIRIANNI YOUTZ
MEIER & SPOONEMORE

13
14
15 
Chris R. Youtz (WSBA #7786)
Attorneys for Complainants

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719 Second Avenue
Seattle, WA 98104
17 Tel.: (206) 223-0303
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19 Email: cyouitz@sylaw.com

CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on October 15, 2008, I served a copy of the foregoing document on all counsel of record in the manner shown and at the addresses listed below:

Letty S. D. Friesen [x] By Email
AT&T COMMUNICATIONS [x] By United States Mail
OF THE PACIFIC NORTHWEST
2535 E. 40th Avenue, Suite B1201
Denver, CO 80205
Attorneys for Respondent AT&T

Charles H.R. Peters [x] By Email
SCHIFF HARDIN LLP [x] By United States Mail
6600 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606
Attorneys for Respondent AT&T

Arthur A. Butler [x] By Email
ATER WYNNE LLP [x] By United States Mail
601 Union Street, Suite 1501
Seattle, WA 98101
Attorneys for Respondent T-NETIX, Inc.

Glenn B. Manishin [x] By Email
DUANE MORRIS LLP [x] By United States Mail
505 - 9th Street NW, Suite 1000
Washington, DC 20004
Attorneys for Respondent T-NETIX, Inc.

DATED: October 15, 2008, at Seattle, Washington.

[Handwritten signature]

Exhibit K

AMENDMENT NO. 3 TO AGREEMENT
BETWEEN
STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS
AND
AT&T CORPORATION

The AT&T Commission Agreement entered into as of March 16, 1992 ("Agreement"), between AT&T Communications, Inc. acting on behalf of the Interstate Division of AT&T Corp. (formerly American Telephone and Telegraph Company) and the AT&T Communications interexchange companies ("Contractor" or "AT&T") and State of Washington Department of Corrections ("Department") is amended, effective upon signing by both parties, as follows:

WHEREAS, Department and Contractor entered into an Agreement on March 16, 1992 for the Installation and Operation of an Inmate Telephone System at State Correctional Institutions and Work Facilities, bearing Contract No. CDOP2681 (the "Agreement");

WHEREAS, Department and Contractor entered into an Amendment No. 1 to the Agreement on November 30, 1994 for the purpose of modifying certain terms and conditions relating to Contractor's subcontractor GTE Northwest Incorporated (GTE);

WHEREAS, Department and Contractor entered into an Amendment No. 2 to the Agreement on August 15, 1995 for the purpose of providing for the addition of certain call control features for calls carried by Contractor and for an increase in commissions on calls carried by Contractor;

WHEREAS, the parties now wish to further amend the Agreement to change the expiration date of the Agreement, to increase the commissions, to delete Telephone Utilities of Washington, Inc. dba PTI Communications (PTI) as a subcontractor, and to include T-Netix Inc. as the station provider;

NOW, THEREFORE, Department and Contractor do mutually agree as follows:

1. Department and Contractor agree that the term of the Agreement is extended and will expire June 30, 1999.
2. Commencing on the 16th day of the month following the signing of this Amendment by Department, the monthly commission rate paid by Contractor under the Agreement shall increase to Forty-five percent (45%) on billed revenues from operator-assisted interLATA and international calls carried by Contractor from all locations. Also, Contractor shall pay Department a monthly commission rate of Forty-five percent (45%) on billed revenues from operator-assisted intraLATA calls from the following facilities only in PTI territory: Clallam Bay Corrections Center, Washington Correction Center for Women, Olympic Corrections Center, Pine Lodge Work Pre-Release, Coyote Ridge Corrections Center, and Larch Correctional Center.
3. Upon execution of this Amendment, U S WEST Communications, Inc. (USWC) shall pay to Department an increased monthly commission rate of Forty percent (40%) of billed revenues from operator-assisted local and intraLATA calls carried by USWC during the term of the Agreement.
4. Upon execution of this Amendment, GTE shall pay to Department an increased monthly commission rate of Thirty-five percent (35%) on all local and intraLATA GTE generated revenues for the term of the Agreement.
5. Upon execution of this Amendment, T-Netix, Inc. shall pay to Department a monthly commission rate of Twenty-seven percent (27%) on local calls only, for the term of the Agreement, from the facilities in PTI territory referred to in paragraph 2 above.
6. The Independent Contractor Agreement between AT&T and PTI entered into as of March 16, 1992, under which PTI agreed to act as subcontractor to Contractor for the provision of local service, inmate telephone equipment and monitoring and recording equipment to correctional facilities operated by the Department in PTI territory in the State of Washington, and in support of Contractor's obligations to the Department pursuant to the Agreement between the Department and AT&T for Installation and Operation of an Inmate Telephone System at State Correctional Institutions and Work Release Facilities, is hereby terminated in its entirety.
7. Any rate change will be effective beginning on the 16th day of the first calendar month of the renewal period.

8. In the event of an inconsistency between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail.

REVISED ATTACHMENT A: YES NO
REVISED ATTACHMENT B: YES NO

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

Gary Banning
Authorized Signature

Gary Banning
Typed or Printed Name

Contracts Administrator
Title

2/3/97
Date

360-753-5770
Contract Telephone Number

AT&T COMMUNICATIONS, INC.

Danna Bowen (for)
Authorized Signature

John Powell
Typed or Printed Name

Sales V/P
Title

2/14/97
Date

Contract # _____

Agent ID _____

Location # _____

Approved as to Form:

OFFICE OF THE ATTORNEY GENERAL
STATE OF WASHINGTON

Thomas F. Young
Authorized Signature

Thomas F. Young
Typed or Printed Name

Assistant Attorney General
Title

February 3, 1997
Date





Standard Delegation Of Authority

U874
(7-87)

Note: Part A is used by the principal to appoint an in-charge during his/her absence:

Part B is used by the supervisor of the absentee to appoint an in-charge person to act on behalf of the absent principal.

Responsibility Code 1AX200000

Expires 2/14/97

Part A

During my absence from 2/10/97 to 2/14/97 19 97 inclusive, Donna Bowen will be in charge of Consumer Sales Division and may exercise all authority delegated to me in the Schedule of Authorizations and appropriate Departmental Instructions.

Authority Delegated To:

Signature Donna Bowen

Name Donna Bowen

Title/Salary Grade SG-6 B Band

Social Security No. 14 48-9786

Responsibility Code 1AX 00010

Approved:

Signature [Signature]

Name John C. Powell

Title/Salary Grade E-Band

Social Security No. 205-34-2385

Date February 10, 1997

Part B

During the absence of _____ from _____ to _____ 19 _____ inclusive,

_____ will be in charge of _____

and may exercise the authority delegated to _____

in the Schedule of Authorizations and appropriate Departmental Instructions.

Authority Delegated To:

Signature _____

Name _____

Title/Salary Grade _____

Social Security No. _____

Responsibility Code _____

Approved:

Signature _____

Name _____

Title/Salary Grade _____

Social Security No. _____

Date _____