

ATTACHMENT A

6 – T-NETIX, INC. MOTION FOR LEAVE TO REPLY TO COMPLAINANTS'
RESPONSE TO AT&T AND T-NETIX (BENCH REQUESTS 7 THROUGH 10)

1078265/1/AAB/102728-000

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BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL,

Complainants,

v.

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

Respondents.

Docket No. UT-042022

**T-NETIX, INC. REPLY TO
COMPLAINANTS' RESPONSE TO
AT&T AND T-NETIX (BENCH
REQUESTS 7 THROUGH 10)**

Respondent T-Netix, Inc. ("T-Netix"), pursuant to WAC 480-07-825 and through counsel, responds to Complainants' Response to Responses by AT&T and T-Netix to Bench Requests 7, 8, 9, and 10 ("Complainants' Response"). This Reply is focused on two items in Complainants' Response that omit crucial record evidence refuting the very assertions Complainants attempt, again, to make. These are: (1) the time period in which Ms. Judd received calls from Clallam Bay occurred while PTI, a local exchange carrier ("LEC") exempted from WAC 480-120-141, served that facility, (2) Ms. Herivel testified to three different time periods in which she allegedly received an interLATA call that may have been subject to WAC 480-120-141, and T-Netix twice found no call detail record ("CDR") evidencing that any such call occurred. The record in this case has demonstrated and continues to demonstrate that Complainants received no call that was subject to the requirements of WAC 480-120-141.

REPLY TO COMPLAINANTS' RESPONSE

1. Calls from the Clallam Bay correctional facility to Sandra Judd

1. Complainants' Response attacks T-Netix for not including Clallam Bay in the list of facilities from which Ms. Judd received collect inmate telephone calls. Complainants' Response ¶¶ 12-15. Their indignation is unnecessary. In the Motion for Summary Determination (filed April 21, 2005) that was produced with T-Netix's Response to Bench Requests Nos. 7 Through 9 (filed Oct. 20, 2010), T-Netix stated that one of the telephone numbers appearing on Ms. Judd's telephone bill belonged to Clallam Bay. T-Netix noted

The calls listed on Ms. Judd's phone bill occurred in July 1996, while PTI was the local and intraLATA carrier. Given that Ms. Judd did not identify Clallam Bay in her responses to discovery, it is not clear whether she seeks relief for the calls she received from that facility.

Motion for Summary Determination at 8 n.2.

2. The discovery response on which T-Netix relied in making this statement was provided by Ms. Judd on April 4, 2005, and did not include Clallam Bay as a facility from which she received inmate collect calls. That response was attached as Exhibit 9 to the Motion. *See Exhibit 1* hereto. It is telling that Complainants fail to acknowledge or attach this document. Instead, Complainants attached Ms. Judd's responses to a second set of discovery, provided in 2008, which states that "She remembers receiving calls from Monroe Correctional Complex, Clallam Bay, and McNeil Island Correctional Center." Complainants' Response Exh. F.

3. No time period for the calls from Clallam Bay are provided in that response. *Id.* Ms. Judd states generally that calls came from her husband, Paul Wright, between 1992 and 2000. In her deposition, Ms. Judd could not be more specific as to Clallam Bay calls than that they occurred between 1996 and 2000. Complainants' Response Exh. F (Judd Dep. at 103:21-104:4) ("I said that I believe I probably did, but I can't recall specifics."). In any event, it is clear

that Ms. Judd added Clallam Bay to the list after T-Netix informed her, via its Motion, that she received calls from that facility in July 1996.

4. In any event, Clallam Bay has no significance. As Complainants note, “[i]n 1997, however, AT&T’s contract with the Department of Corrections was amended to delete PTI as a subcontractor/LEC, and substitute T-Netix in its place.” Complainants’ Response ¶ 13. They append the relevant document. *Id.* Exh. K (Amendment No. 3 to Agreement Between State of Washington Department of Corrections and AT&T Corporation). That document was signed in February 1997.

5. Ms. Judd’s phone bills contain only two calls from Clallam Bay, on July 16 and July 17, 1996. This document was produced with T-Netix’s Responses as SJ 000022 (from Complainants’ first production of documents) and TNXWA 41975 (from Complainants’ supplemental production). Thus, any change in service that occurred was months after Ms. Judd received the two Clallam Bay calls. Prior to that amendment, it is undisputed in this case that PTI was the LEC for that facility, and that PTI was not subject to WAC 480-120-141.

6. PTI became CenturyTel by the time Complainants filed the underlying Complaint on August 1, 2000. Century Tel was dismissed, along with US West and GTE, by the King County Superior Court, and, as the Commission is aware, those dismissals were upheld by the Supreme Court of Washington. *Judd v. AT&T*, 116 Wash. App. 761, 66 P.3d 1102 (Ct. App. 2003), *aff’d* 152 Wn.2d 195, 95 P.3d 337 (2004). As such, the two Clallam Bay calls from July 1996 were not subject to WAC 480-120-141, and Complainants cannot complain of any injury arising from these calls.

7. Finally, Complainants’ attempt to characterize the testimony of Alice Clements as an admission by T-Netix that it acted as a LEC are unavailing. Complainants’ Response ¶ 14 & Exh. H (excerpt from Alice Clements deposition). Counsel for AT&T, Chip Peters, showed Ms. Clements a document and asked whether it meant that T-Netix acted as LEC at Clallam Bay.

The pertinent exchange in the excerpt is:

Mr. Peters: That you acted as local exchange carrier?

Ms. Clements: I don't know what that means.

Mr. Peters: OK, because it's a --- the terminology "local"

Ms Clements: Yeah.

Mr. Peters: --- "exchange carrier," may have some regul --- specific regulatory?

Ms. Clements: Yea, I don't ...

Nothing in that excerpt shows that Ms. Clements testified that T-Netix was the LEC at Clallam Bay at any time.

8. For all these reasons, T-Netix's omission, which was unintentional, of Clallam Bay from its Responses was not material, let alone nefarious. The Clallam Bay calls do not save Complainants' case. Those two calls were exempt from WAC 480-120-141 just as were all the US West/Qwest and GTE calls that Ms. Judd received.

2. The alleged interLATA call to Tara Herivel from Airway Heights.

9. Complainants continue to allege that Ms. Herivel received a call from Airway Heights despite conceding that they do not and never will have any document evidencing such a call. Complainants' Response ¶ 6. The evolving nature of this allegation is instructive.

10. A call from Airway Heights placed to any of the three telephone numbers at which Ms. Herivel received inmate calls would be an interLATA call. As such, it would not be included in the exemptions and waivers from WAC 480-120-141 that US West/Qwest, PTI/Century Tel, and GTE had obtained for local and intraLATA calls. Unless an interLATA call occurred, Complainants have no injury of which to complain, assuming that the interLATA call somehow failed to comply with WAC 480-120-141.

11. Ms. Herivel signed a sworn Declaration on May 11, 2005, stating that she received a call from Airway Heights. Declaration of Tara Herivel in Support of Complainants'

Response to AT&T's Response Joining T-Netix's Motion for Summary Determination ¶ 2 (May 11, 2005) (**Exhibit 2** hereto). She further testified

Based on my conversations with the inmate, I published an article in the Free Press, issue January-February, 1999, which leads me to believe that the inmate-initiated telephone call occurred **sometime between October and December 1998**, while I was working on the article.

Herivel Dec. ¶ 4 (emphasis added). Ms. Herivel appended the article to her Declaration but it shows no date. Complainants' Response Exh. A.

12. In response to this first Declaration, T-Netix researched its database of call detail records ("CDRs"), which store information about every completed call that is placed from a site at which its equipment is operational, to find a call from Airway Heights to any of Ms. Herivel's three telephone numbers. There was no record of any call from Airway Heights to Ms. Herivel for the period October 1, 1998 through December 31, 1998. Nancy Lee, who was then the Senior Vice President for Billing Services for T-Netix, signed a sworn affidavit that the company found no record of this call. Supplemental Affidavit of Nancy Lee in Support of T-Netix Inc.'s Motion for Summary Determination ¶¶ 2-3 (June 27, 2005) (**Exhibit 3** hereto).

13. Ms. Herivel then changed the time period in which the alleged call from Airway Heights took place. In a declaration dated August 9, 2005, that was filed not here but at the King County Superior Court in response to T-Netix's subsequent Motion for Summary Judgment, Ms. Herivel stated that

Based on the date of these notes and my recollection of when I resided at the apartment where I received Mr. Minniken's phone call, **my best estimate of when I received the telephone call is somewhere between June and December 1998.**

Declaration of Tara Herivel in Support of Plaintiffs' Response to T-Netix's Motion for Summary Judgment ¶ 6 (Aug. 9, 2005) (emphasis added) (**Exhibit 4** hereto).

14. In response, for its reply papers supporting its Motion for Summary Judgment, T-Netix went back to its CDR database and researched this new time period to find the Airway Heights call. There was no call. Declaration of Nancy Lee in Support of T-Netix Inc.'s Reply in Support of Summary Judgment ¶¶ 3-4 (**Exhibit 5** hereto).

15. The inmate who purportedly called Ms. Judd from Airway Heights, Don Miniken, also got involved. He signed a Declaration for the King County Superior Court stating that "I do not recall when I made this call, but it must have been **subsequent to the August 26, 1997 order and before Ms. Herivel's article was published.**" Declaration of Don Miniken in Support of Plaintiff's Response to T-Netix's Motion for Summary Judgment ¶ 2 (Aug. 9, 2005) (Complainants' Response Exh. B) (emphasis added). Thus, a third and much longer time period was supplied as proof of the purported interLATA call.

16. The time period of this alleged interLATA call has changed three times, from a three-month time span to a six-month time span to a 16-month time span. Only one call from Airway Heights is alleged to have occurred. Ms. Herivel will never have a document evidencing such a call. These facts should be considered by the Commission as it reviews the responses to its Bench Requests.

DATED this 3rd day of November 2010.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of November 2010, served via e-filing a true and correct copy of the foregoing, with the WUTC Records Center. The original, along with the correct number of copies (5), of the foregoing document will be delivered to the WUTC, via the method(s) noted below, properly addressed as follows:

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On Behalf Of AT&T Communications

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