

ATTACHMENT A

[Service Date: November 9, 2010]

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 IN SUPPORT
OF MOTION TO STRIKE AND/OR
EXCLUDE EXHIBIT A TO
COMPLAINANTS' RESPONSE TO
BENCH REQUEST NO. 7**

Respondent T-Netix, Inc. ("T-Netix"), pursuant to WAC 480-07-825 and through counsel, files this Reply in Support of Motion to Strike and/or Exclude Exhibit A to Complainants' Response to Bench Request No. 7 filed October 27, 2010 ("Motion to Strike"). T-Netix wishes to address two items in Complainants' Response to the Motion to Strike, filed November 3, 2010, that appear to misstate aspects of this litigation. First, T-Netix in no way asserted that Complainants engaged in discovery misconduct with regard to Exhibit A, the telephone bills purportedly received by Columbia Legal Services, which, according to Complainants, reflect charges for collect calls received from inmates. Secondly, the notion that calls to Columbia Legal Services can properly be considered in this case is belied by the fact that the underlying civil action has not certified any class, and to speak of a non-party as a relevant "putative class member" contravenes the Commission's decision not to expand the parties or

1 - T-NETIX, INC. REPLY IN SUPPORT OF MOTION TO STRIKE
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ATER WYNNE LLP
LAWYERS
601 UNION STREET, SUITE 1501
SEATTLE, WA 98101-3981
(206) 623-4711

claims in this proceeding beyond those in the civil case.

DISCUSSION

1. T-Netix Has Not Asserted That the Columbia Legal Services Telephone Bills Reveal “Discovery Abuse”.

1. Complainants’ Response states that “T-Netix argues that Complainants have engaged in abusive discovery” and employs the term, in quotes, “Discovery Abuse” in the heading to Section C. of that pleading. Complainants’ Response at 6 & 14. T-Netix feels constrained to assure both Complainants and the Commission that it has not lodged any such allegation. Rather, T-Netix has moved to exclude the purported Columbia Legal Services telephone bills on the ground that Complainants are seeking to expand the scope of this primary jurisdiction referral in a manner that the Commission already has refused to do. Motion to Strike 6-9. T-Netix also noted that this proceeding underwent two phases of discovery, and yet these documents never were produced. Id. 11. As such, T-Netix argued, Complainants cannot satisfy the standard of WAC 480-07-830 which permits reopening a record to admit evidence that “is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause.” Id. 3 (quoting WAC 480-07-830).

2. Never did T-Netix use the word “abuse” or “abusive” in the Motion to Strike, nor has it asserted that Complainants violated the standards applicable to the discovery process with regard to Exhibit A. Such allegations are serious and T-Netix would not make them lightly. Certainly no such allegations were included in the Motion to Strike.

2. Even If Complainants Consider Columbia Legal Services a “Putative Class Member”, Exhibit A Remains Outside the Scope of This Primary Jurisdiction Referral.

3. Complainants oppose the Motion to Strike on the ground that Columbia Legal Services “as a putative class member, may be included as an additional class representative in the

Superior Court.” Complainants’ Response 11. As such, Complainants assert (id. 3-4) , the purported Columbia Legal Services telephone bills are responsive to Bench Request No. 7 which sought documents evidencing any “charge for, associated with, arising from, or otherwise related to the collect calls at issue in this proceeding that AT&T, T-Netix, or any other company billed, or had billed on its behalf, to end user customers who accepted those collect calls.”

4. Complainants conflate the term “class member” and “class representative” in their Response, but, that aside, they fail to acknowledge that their previous attempt in 2005 to introduce evidence of non-parties was rejected. Motion to Strike 6-9 (quoting Docket No. UT-042022, 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, Order No. 5 35-36, 55 (July 18, 2005)). There being no class in the underlying civil action, no purported “class member” or new “class representative” can be heard in this proceeding. For though the Commission may have sought new evidence in this proceeding by issuing the Bench Requests, those requests were limited to “calls at issue in this proceeding.” According to Order No. 5 in this case, those calls may include only those received by the remaining Complainants, Ms. Judd and Ms. Herivel.

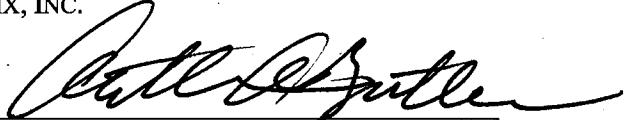
5. Exhibit A is an attempt by Complainants to add new parties and new evidence in this case, because, as T-Netix explained, the calls for which Complainants and T-Netix have documentation were not subject to WAC 480-120-141. Motion to Strike 11. This attempt should be rejected in keeping with Order No. 5 and other settled precedent from the Commission. Id. 1-2 (quoting In re Joint Application of Puget Holdings LLC & Puget Sound Energy, Inc. For an Order Authorizing Proposed Transaction, No. U-072375, Granting Motions to Strike, Order No. 6, 2008 WL 4844060 (Nov. 5, 2008); AT&T v. Verizon, No. UT-020406, Fifth Supplemental Order 35, 2003 WL 24127683 (Feb. 2003)).

CONCLUSION

6. For the reasons stated in the Motion to Strike and herein, the Commission should strike, exclude, and refuse to consider Exhibit A to Complainants' Response to Bench Request No. 7 filed October 20, 2010

DATED this 9th day of November, 2010.

T-NETIX, INC.

By: 

Arthur A. Butler, WSBA # 04678
ATER WYNNE LLP
601 Union Street, Suite 1501
Seattle, WA 98101-3981
(206) 623-4711
(206) 467-8406 (fax)

Stephanie A. Joyce
ARENT FOX LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 857-6081
(202) 857-6395 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th 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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Washington Utilities and Transportation	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Commission	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
1300 S Evergreen Park Drive SW	<input type="checkbox"/>	Facsimile (360) 586-1150
Olympia, WA 98504-7250	<input checked="" type="checkbox"/>	Email (records@wutc.wa.gov)

I hereby certify that I have this 9th day of November 2010, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T Communications

Letty S.D. Friesen	<input type="checkbox"/>	Hand Delivered
AT&T Communications	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Law Department	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
Suite B 1201	<input type="checkbox"/>	Facsimile
2535 East 40th Avenue	<input checked="" type="checkbox"/>	Email (lsfriesen@att.com)
Denver CO 80205		

Confidentiality Status: Highly Confidential

On Behalf Of AT&T Communications:

Charles H.R. Peters	<input type="checkbox"/>	Hand Delivered
Schiff Hardin LLP	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
233 South Wacker Drive	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
6600 Sears Tower	<input type="checkbox"/>	Facsimile (312) 258-5600
Chicago IL 60606	<input checked="" type="checkbox"/>	Email (cpeters@schiffhardin.com)

Confidentiality Status: Highly Confidential

On Behalf Of AT&T Communications:

David C. Scott	<input type="checkbox"/>	Hand Delivered
Schiff Hardin LLP	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
233 South Wacker Drive	<input type="checkbox"/>	Overnight Mail (UPS)
6600 Sears Tower	<input type="checkbox"/>	Facsimile (312) 258-5600
Chicago IL 60606	<input checked="" type="checkbox"/>	Email (dscott@schiffhardin.com)

Confidentiality Status: Highly Confidential

On Behalf Of AT&T Communications:

Doug Snodgrass
Schiff Hardin LLP
233 South Wacker Drive
6600 Sears Tower
Chicago IL 60606

Confidentiality Status: Public

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (312) 258-5600
 Email (DSnodgrass@schiffhardin.com)

On Behalf Of Complainants :

Chris R. Youtz
Sirianni Youtz Meier & Spoonemore
Suite 1100
719 Second Avenue
Seattle WA 98104

Confidentiality Status: Highly Confidential

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (206) 223-0246
 Email (cyoutz@syllaw.com)

On Behalf Of Complainants :

Richard E. Spoonemore
Sirianni Youtz Meier & Spoonemore
Suite 1100
719 Second Avenue
Seattle WA 98104

Confidentiality Status: Highly Confidential

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (206) 223-0246
 Email (rspoonemore@syllaw.com)

Courtesy copy to:

Marguerite Friedlander
Washington Utilities and Transportation
Commission
1300 S Evergreen Park Drive SW
PO Box 47250
Olympia WA 98504-7250

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (360) 586-8203
 Email (Word version)
 (mfriedla@utc.wa.gov)

