

# **EXHIBIT 1**

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**SANDY JUDD, and TARA HERIVEL,**

**Complainants,**

**v.**

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

**Respondents.**

**Docket No. UT-042022**

**AT&T'S REPLY TO  
COMPLAINANTS' RESPONSE TO T-NETIX'S MOTION TO STRIKE**

AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), by its attorneys, respectfully submits this three-page reply to Complainants' Response to T-Netix's Motion to Strike and/or Exclude Exhibit A to Complainants' Response to Bench Request No. 7. Because the Motion to Strike, the exhibit sought to be stricken, and Complainants' response to the Motion all implicate and affect AT&T's interests, AT&T respectfully requests the opportunity to be heard on the matter by way of this brief reply.

AT&T wishes to emphasize only two points: First, Complainants put the cart before the horse by attempting to pursue a claim of a purported "putative class member" prior to any consideration of or ruling on class certification by the Superior Court. Second, Complainants misconstrue Bench Request No. 7 and the Commission's limited reopening of the record.

**I. COMPLAINANTS SHOULD NOT BE PERMITTED TO INTRODUCE PHONE BILLS OF ALLEGED PUTATIVE CLASS MEMBERS.**

Complainants concede both that Columbia Legal Services ("CLS") is not a party to this limited primary jurisdiction proceeding, and that "[t]he addition of parties . . . is an issue that is outside of the referral to the Commission." However, Complainants attempt to justify their

submission of excerpts of phone bills from CLS in response to Bench Request No. 7 by arguing that “Columbia is a putative class member in the Superior Court action, who has a significant stake in this litigation.” That argument is fundamentally flawed because there has not been class discovery or other class proceedings in the Superior Court, and it is for that very reason that the Commission previously ordered that the scope of discovery in this proceeding is limited to “the two Complainants’ claims.” Order No. 14 at ¶ 17. In that Order, the Commission rejected the very same argument that Complainants now put forward — *i.e.*, that the scope of this proceeding should be expanded beyond the named Complainants to also cover potential class members — reasoning that “Complainants have not advanced a compelling legal argument that would support the Commission’s ruling on the issue of class certification, effectively removing class certification from the jurisdiction of the Superior Court.” *Id.* That Order remains in place and Complainants still have not presented a compelling reason to reconsider it.

Not only would Complainants’ effort disrupt the law of the case, but the end sought is of such dubious probative value (compared to the impact on fundamental fairness) as to make the entire effort improper. First, the premise that CLS is, or would be, a putative class member — assuming this Commission were to entertain the question — is a matter to be tested, not merely taken as a given based on the Complainant’s averments. Until the matter is tested and settled, CLS is a random non-party with its own billing information, nothing more, and the connection to matters of relevance concerning the Complainants here is hardly shown. Second, it appears from the face of the proffered evidence that CLS would not even make the cut as a class member under the applicable tests. Based on the phone bill excerpts, CLS appears to have purchased “UniPlan Service”® and “MEGACOM® Plus” service, which may have been provided pursuant to a contract or a contract tariff, *unlike the tariffed service that Complainants were eligible to*

*have received.* If so, its claims and operating experience are not necessarily representative of other consumers. *See In re PacificCorp*, No. UE 981627, 1999 WL 1295972 at \*10 (WUTC October 14, 1999) (“Special contract customers are not similarly situated to general ratepayers.”) Thus, there is no basis – without turning these proceedings into a collateral class certification hearing in order to establish a suitable evidentiary foundation for the bills – for permitting Complainants to toss in the bill excerpts at this juncture.

## **II. COMPLAINANTS MISCONSTRUE THE COMMISSION’S LIMITED REOPENING OF THE RECORD.**

Complainants argue that the Commission broadly reopened the record in this proceeding, and that, by introducing new phone bill excerpts from a nonparty, Complainants are simply complying with the Commission’s request. But the Commission did not generally reopen the record; it did so only to facilitate the recent bench requests. And the bench requests were similarly limited. Although Complainants ignore this limitation, Bench Request No. 7 sought information for “the calls at issue in this proceeding” and “a copy of a sample bill” for those same “calls at issue in this proceeding.” Phone bill excerpts from CLS, which is not a party to this proceeding, do not fall within the Commission’s limited reopening of the record and its limited request in Bench Request No. 7. By arguing otherwise, Complainants mistakenly suggest that the Commission has now reversed its prior Order limiting the scope of discovery in this proceeding to “the two Complainants’ claims.” Order No. 14 at ¶ 17. The Commission has not reversed that Order, and Complainants again “have not advanced a compelling legal argument” for doing so. *Id.* In short, Complainants seek to circumvent the limitations that the Commission has placed on this proceeding, but as the Commission has recognized, those limitations are jurisdictionally required.

\* \* \*

Complainants' arguments against T-Netix's Motion to Strike are misplaced. The Commission should grant that Motion and strike or, at the very least, disregard the phone bill excerpts of a nonparty that Complainants have attempted to interject into this proceeding.

Dated: November 10, 2010

**SUBMITTED BY:**

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

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**CERTIFICATE OF SERVICE**

Pursuant to WAC 480-07-150, I hereby certify that I have this day, November 10, 2010, served this document upon all parties of record by e-mail and Federal Express overnight delivery at the e-mail addresses and mailing addresses listed below:

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Pursuant to WAC 480-07-145, I further certify that I have this day, November 10, 2010, filed MS Word and PDF versions of this document by e-mail, and twelve copies of this document by Federal Express, with the WUTC at the e-mail address and mailing address listed below:

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Pursuant to the Prehearing Conference Order 08 and Bench Request Nos. 5 & 6, I further certify that I have this day, November 10, 2010, provided a courtesy copy of this document, in MS Word, to ALJ Friedlander by e-mail at the following e-mail address: mfriedla@utc.wa.gov.

Dated: November 10, 2010

/s/ Charles H.R. Peters  
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