

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 RESPONSES TO NOVEMBER 30, 2010 BENCH REQUESTS

AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), by its attorneys, respectfully submits the following responses to the bench requests served by the Washington Utilities and Transportation Commission (the "Commission") on November 30, 2010. AT&T incorporates by reference as if fully stated herein the preliminary statement from AT&T's previously-filed Responses to October 6, 2010 Bench Requests, including but not limited to the objections asserted in that preliminary statement.

BENCH REQUEST NO. 11 (to AT&T):

Sections 1 and 24 of the Agreement between the Washington Department of Corrections (DOC) and AT&T dated March 16, 1992, and included in the record in this docket state that the Agreement incorporates by reference the DOC's Request for Proposal No. CRFP2562, dated September 4, 1991 (RFP), and the combined proposals from AT&T and other carriers submitted in response to the RFP on November 12, 1991. Please provide copies of the documents incorporated by reference into the Agreement.

AT&T'S RESPONSE TO BENCH REQUEST NO. 11:

AT&T previously searched for the documents dated from 1991 referenced in Bench Request No. 11 and, upon receiving this Bench Request, AT&T conducted another search of its records. AT&T has not located these documents in its possession, custody, or control.

BENCH REQUEST NO. 12 (to AT&T):

Section 4 in Attachment B to Amendment No. 2 to the Agreement between the Washington Department of Corrections and AT&T dated June 16, 1995, and included in the record in this docket provides, “In the event AT&T is unable to provide [Inmate Calling Service (ICS)] as of the effective date of this Agreement, as defined in Section 3 of the Agreement, then AT&T will provide its standard live operator services to connect the inmate’s call to the called party until it is able to provide ICS.” Did AT&T provide its standard live operator services to connect an inmate’s collect call to the called party from any of the correctional institutions covered by the Agreement between June 20, 1996, and December 31, 2000? If so, please describe those services and identify the time period during which AT&T provided the services, the types of intrastate calls (local, intraLATA, or interLATA) for which AT&T provided the services, and the location from which the calls originated.

AT&T’S RESPONSE TO BENCH REQUEST NO. 12:

It is undisputed in this proceeding that T-Netix’s P-III Premise platform was installed and utilized at the four prisons at issue prior to June 20, 1996 through later than December 31, 2000. See T-Netix’s Response, Amended Response, and Second Supplemental Response to AT&T’s Second Data Request No. 7, attached hereto as Exhibit A (T-Netix’s Response and Amended Response are also attached to AT&T’s Petition for Administrative Review at Tabs 16 & 17). As the Administrative Law Judge (“ALJ”) found, T-Netix’s P-III Premise platform “provided call control services including: screening the dialed number against a list of prohibited telephone numbers; if the number is not prohibited, seizing a dedicated outbound trunk and outpulsing the destination number as a 1+ call; and if the recipient accepted the call, the platform would complete the audio path.” Order No. 23, Initial Order, at ¶ 135, Finding of Fact No. 5.¹ That particular finding has not been challenged by any party. The ALJ further concluded that

¹ Although the ALJ correctly found that the platform performed these functions, the Initial Order incorrectly stated that AT&T, not T-Netix, owned the platform, even though the factual record indisputably establishes that at all relevant times T-Netix, not AT&T, owned the platform. The ALJ concluded that the owner of the platform was the OSP. The question of who owned the platform is central to AT&T’s Petition for Administrative Review, which is the matter presently pending before the Commission. AT&T has asked the Commission to review and reverse the ALJ’s conclusion that AT&T owned the platform rather than T-Netix, which the factual record plainly shows was the platform’s owner.

“[c]onnection, based on an examination of the call schematics and the plain meaning of the regulation, occurs after the P-III Premise platform verifies that the call is valid and not prohibited, and when the platform passes the ‘0+’ call to the local or long-distance service provider by outpulsing it as a ‘1+’ call.” *Id.* at ¶ 142, Conclusion of Law No. 4. That particular conclusion has not been challenged by any party. Moreover, the ALJ concluded that “[t]he P-III Premise platform provided the connection between the intrastate or interstate long-distance or local services and the correctional facilities,” citing WAC 480-120-021 (1991 and 1999). *Id.* at ¶ 143, Conclusion of Law No. 5. That particular conclusion also has not been challenged by any party.

AT&T objects to this Bench Request to the extent that it covers correctional institutions other than the four at issue in this proceeding on all available grounds, including but not limited to overbreadth, irrelevance, lack of standing, improper jurisdiction, lack of due process, and other constitutional and legal issues. Without waiving its objections, AT&T states that, to the best of its knowledge, information and belief, it did not provide its standard live operator services to connect an inmate’s collect call to the called party from any of the correctional institutions covered by the Agreement between June 20, 1996, and December 31, 2000.

BENCH REQUEST NO. 13 (to AT&T):

Did AT&T bill, or have a third party bill on AT&T’s behalf, any consumer (as that term was defined and used in WAC 480-120-021 and WAC 480-120-141) for any intrastate operator services or operator-assisted calls placed from the four correctional institutions at issue in this proceeding between June 20, 1996 and December 31, 2000? If so, please identify the service(s) billed and provide a copy of the tariff or price list provisions in effect at that time that established the rates, terms, and conditions for the billed service(s).

AT&T'S RESPONSE TO BENCH REQUEST NO. 13:

To the extent that Bench Request No. 13, by seeking information regarding billing, deviates from the Commission's own regulation at issue, WAC § 480-120-021, which expressly defines an Operator Service Provider ("OSP") as the entity "providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators," AT&T respectfully objects to this Bench Request. Consistent with the fact that billing information is not relevant to the question at issue — namely, determining which entity provided the "connection" for the prison collect calls received by the Complainants at issue in this proceeding — the information now sought in this Bench Request was not developed or argued by the parties, or considered by the ALJ, prior to the Commission's Bench Request. As a result, raising these billing issues now, on this incomplete record, and straying from the express language of the Commission's own regulation at issue, raises concerns about due process, fundamental fairness, inadequate notice, and the lack of an opportunity to be fully heard. Moreover, to the extent this Bench Request seeks information received by persons other than the Complainants, the Request raises concerns with respect to the Commission's limited jurisdiction in this proceeding.

Subject to its objections, AT&T states that, with respect to operator-assisted collect calls placed from the four correctional institutions at issue in this proceeding, for the period between June 20, 1996 and December 31, 2000, AT&T provided operator-assisted ("0+") interLATA, intrastate service. AT&T expressly denies that it provided the requisite "connection," under the Commission's regulation at issue in this proceeding, "to intrastate or interstate long-distance or to local services." AT&T is in the process of searching for and retrieving the appropriate tariff(s) to respond to this Bench Request, but requires additional time to do so. Accordingly, AT&T respectfully requests an additional seven (7) days to locate and retrieve the appropriate tariff(s) and to provide the additional information requested regarding tariffs.

BENCH REQUEST NO. 15 (to AT&T and T-Netix):

Does AT&T or T-Netix have any record of billing Ms. Herivel, or having a third party bill Ms. Herivel on its behalf, for operator services or an operator-assisted call in connection with any collect call placed from the Airway Heights correctional institution near Spokane and received by Ms. Herivel at her home in Seattle between August 26, 1997, and January 1, 1999? If so, please provide a copy of the bill(s). If a copy of the bill is unavailable, please identify the service(s) for which Ms. Herivel was billed, the amounts billed, and the date(s) on which the billed service(s) was (or were) provided.

AT&T'S RESPONSE TO BENCH REQUEST NO. 15:

AT&T has conducted a reasonable search of its records and has not located any record of billing Ms. Herivel for an operator-assisted call from Airway Heights correctional institution between August 26, 1997 and January 1, 1999.

Dated: December 8, 2010

SUBMITTED BY:

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

By: /s/ Charles H.R. Peters

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CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I hereby certify that I have this day, December 8, 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, December 8, 2010, filed MS Word and PDF versions of this document by e-mail, and six copies of this document by Federal Express, with the WUTC at the e-mail address and mailing address listed below:

Mr. David W. Danner
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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, December 8, 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: December 8, 2010

/s/ Charles H.R. Peters
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