

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 AT&T'S
RESPONSE TO BENCH REQUESTS
NO. 12 AND 13**

PUBLIC VERSION

Respondent T-Netix, Inc. (T-Netix), through counsel, submits this Reply to AT&T's Response to Bench Requests No. 12 and 13 dated December 8, 2010 ("AT&T Response"). Information deemed to be Confidential in this case has been redacted.

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

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.

T-NETIX REPLY TO AT&T'S RESPONSE TO BENCH REQUEST NO. 12

As an initial matter, T-Netix states that it agrees with the objections AT&T has lodged to this Request on the ground 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." AT&T Response at 3.

For its response, AT&T states that "the factual record indisputably establishes that at all relevant times T-Netix, not AT&T, owned the platform" from which inmate-initiated calls were made. AT&T Response at 2 n.1. That statement ignores a considerable amount of record evidence on which Administrative Law Judge Friedlander relied.

It is not and cannot be disputed in this case that AT&T served correctional facilities and "entered into a contract (DOC contract) with the State of Washington Department of Corrections (DOC) to provide telecommunications services and equipment to various inmate correctional institutions and work release facilities." Order No. 23, Initial Order ¶ 33 (Apr. 21, 2010); *see also* Bench Exhibit A-8 (DOC Contract).

It is also well established that AT&T chose to “subcontract with three LECs, Verizon, Qwest, and CenturyTel, for the provision of public telephone sets and equipment, lines ... and local and intraLATA telephone service and operator service.” *Id.*; *see also* Bench Exhibits A-9, A-10, and A-11 (contracts). AT&T has not disputed these facts.

AT&T also does not and cannot dispute that in 1995 AT&T was “required” by Amendment No. 2 to the DOC contract to “arrange for the installation of certain call control features for intraLATA, interLATA, and international calls’ which AT&T was to carry.” Initial Order ¶ 35. T-Netix was chosen in 1995 “to provide a computerized platform at the correctional facilities[.]” *Id.* In 1997, AT&T and T-Netix established the Contract whereby AT&T obtained from T-Netix a particular type of “computerized platform” called the P-III Platform. *Id.* AT&T does not contest any of those findings in its Petition for Review, dated May 11, 2010, or in the AT&T Response.

The General Agreement for the Procurement of Equipment, Software, Services, and Supplies Between T-Netix, Inc. and AT&T Corp. (attached hereto as **Exhibit 1**)

[CONFIDENTIAL] states that

[REDACTED]

TNXWA 00746. There is no allegation or evidence in this case that any condition precedent in this provision was not satisfied. The Contract also states that [REDACTED]

[REDACTED] TNXWA
00757.

The Contract between AT&T and T-Netix also states that AT& [REDACTED]

[REDACTED] TNXWA 00751. The [REDACTED]

[REDACTED] *Id.* If corrections were requested, AT&T had [REDACTED]

[REDACTED] *Id.* The Contract allowed AT&T [REDACTED]

[REDACTED] *Id.* A [REDACTED] from AT&T was to contain several instructions, including [REDACTED]

[REDACTED] and the [REDACTED]

[REDACTED] *Id.*

Based on this evidence, ALJ Friedlander found that

In 1997, T-Netix and AT&T contractually agreed that AT&T would purchase title to the P-III Premise software platform from T-Netix and that T-Netix would solely provide support and training for the platform.

Initial Order at 53 (Finding of Fact No. 4).

Also based on this evidence, ALJ Friedlander also found that “AT&T possessed the ability to direct T-Netix to modify the P-III platform.” *Id.* (Finding of Fact 7).

Additional record evidence demonstrates that AT&T directed the operations of the calling platform. A letter from AT&T to T-Netix that is marked in evidence as Confidential Exhibit C-4 states that AT&T will [REDACTED]

[REDACTED]. In that letter, AT&T [REDACTED]

[REDACTED] The letter then [REDACTED]

[REDACTED]

[REDACTED]

Finally, the record also shows that AT&T was the brand identified audibly on inmate-initiated interLATA collect calls from Washington DOC facilities. According to WAC 480-120-141, an OSP must identify itself “audibly and distinctly at the beginning of every call.” As ALJ Friedlander found, “the rule provided that the OSP must disclose the identity of the OSP providing the service to the customer.” Initial Order ¶ 102. AT&T has not sought review of ALJ Friedlander’s interpretation of WAC 489-120-141 in Paragraph 102 nor has it attempted to refute that the interLATA collect calls placed from Washington DOC facilities identified AT&T.

T-Netix notes, however, that neither Complainants nor T-Netix nor AT&T have been able to find any evidence that either Complainant received an interLATA call from a Washington DOC facility. *See* T-Netix Response to Bench Request No. 15; AT&T Response to Bench Request No. 15; T-Netix Response to Bench Request No. 7 (Oct. 20, 2010).

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).

T-NETIX REPLY TO AT&T'S RESPONSE TO BENCH REQUEST NO. 13

As part of its Response, 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.” T-Netix replies that it likewise did not provide a “connection to intrastate or interstate long-distance or to local services,” because it did not own, lease, or control any transmission or switching facilities from which any of the calls at issue in this proceeding commenced. As T-Netix stated in response to Bench Request No. 6 on April 2, 2010

T-Netix is not, and was not, a facilities-based carrier and did not provide any network facilities, transmission facilities, network switching facilities, or central office call processing services or facilities. T-Netix did lease facilities needed to provide local calls from five (5) facilities on behalf of AT&T. For those calls, the underlying network, transmission, and switching facilities and central office call processing services were provided by PTI. For local calls placed beginning March 3, 1998, from the five WA DOC facilities, AT&T agreed, among other things, to purchase all inmate telephone sets and reimburse T-Netix for the commissions paid and for the cost of inmate telephone lines. T-Netix refers to the letter from John Giannaula, T-Netix, Inc. VP Finance, to Sandi Hornung, AT&T, dated March 10, 1999, attached as Exhibit 12 to AT&T’s Amended Motion for Summary Determination.

AT&T was denied leave to file a reply to this Response by Order No. 22 issued April 12, 2010.

According to her telephone bills produced by T-Netix to the Commission in response to Bench Request No. 7 on October 20, 2010 (SJ 000022 and TNXWA 41943), prior to March 3, 1998, Complainant Sandra Judd received two calls from the Clallam Bay facility, one of the “five (5) facilities” to which the above-quoted Response refers. On November 3, 2010, T-Netix filed a Motion for Leave to Reply to Complainants’

Response to AT&T and T-Netix (Bench Requests 7 Through 10), together with the substantive Reply which explains the significance of this fact. Ms. Herivel does not allege that she received calls from Clallam Bay, and her telephone bills show no such calls.

DATED this 15th day of December, 2010.

T-NETIX, INC.

By:



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CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of December, 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 (1), of the foregoing document will be delivered to the WUTC, via the method(s) noted below, properly addressed as follows:

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 Overnight Mail (UPS)
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I hereby certify that I have this 15th day of December, 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:

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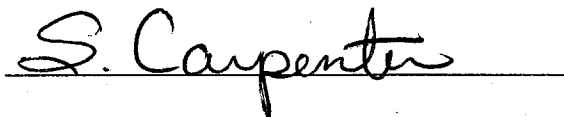


EXHIBIT 1

General Agreement for the Procurement of Equipment, Software, Services, and Supplies Between T-Netix, Inc. and AT&T Corp. [CONFIDENTIAL]